

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE TO APPEAL (CIVIL) NO. 3804 OF 2021**

**IN THE MATTER OF:-**

HUMAM AHMAD SIDDIQUI ... PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

**COUNTER AFFIDAVIT ON BEHALF OF THE  
UNION OF INDIA**

PAPER-BOOK

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INDIA**

I, Satya Prakash Chaudhary, s/o Shri. R.S. Chaudhary, aged about 39 years, working as Under-Secretary in the Ministry of Home Affairs, Government of India, do hereby solemnly affirm and sincerely state as follows:

1. That, I am an Under-Secretary in the Ministry of Home Affairs, Government of India. As such I am well acquainted with the facts of the case as per the records perused during the course of performance of my duties. I am filing this Affidavit on behalf of the Union of India as I am authorized to do so.

2. It is respectfully submitted that in the present SLP, the Petitioner has challenged the order dated 29.7.2019 passed by Unlawful Activities (Prevention) Tribunal published in the



Notification No. SO 3083(E) dated 27<sup>th</sup> August, 2019 and seek special leave to appeal against the said order.

3. At the very outset it is submitted that the Petitioner has failed to establish their *locus standi* to file the present SLP. It is humbly submitted that the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 21<sup>st</sup> February, 2019 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Students Islamic Movement of India (SIMI) as unlawful association and the said Hon'ble Tribunal vide its order dated 29.7.2019 confirmed the declaration of Students Islamic Movement of India (SIMI) as an unlawful association under the Unlawful Activities (Prevention) Act 1967 as made in the notification number SO 564 (E) dated 31.01.2019 under the Act. As regards the challenge to other notifications pertaining to ban for the period prior to 31.01.2019, it may be submitted that the Petition has been filed at a very belated stage and is attracted by the provisions of limitation.

4. It is submitted that the contents of the present Special Leave Petition are incorrect and therefore, all averments, contentions, allegations, statements made in the Special Leave Petition are denied, unless specifically admitted herein.

**PRELIMINARY OBJECTIONS:-**

5. It is respectfully submitted that the Petitioner herein does not have *locus standi* to file the present SLP. It is submitted that Sections 4(2) and (3) of the Act recognizes that only the association or any of its '*office bearers or member*' are entitled to show-cause to the notification banning the organization. In the present case, the Petitioners are neither officer-bearers, nor members of SIMI. They claim to be ex-members of the said organization; and in that capacity seek to represent the cause of SIMI. It is submitted that Petitioners do not fall in any of the required categories. And the statute being worded in clear and unambiguous terms should be given a literal meaning. Therefore, the present petition filed by the Petitioner is not maintainable and is liable to be dismissed.

6. It is humbly submitted that this Hon'ble Court has in a catena of cases categorically held that only a person having sufficient interest in the dispute alone has the *locus standi* to file a proceeding before a court. It is submitted that, section 4 (2) & (3) recognizes only the association, the office bearers or members, are entitled to show cause to the notification. It is submitted that the petitioner Shri H.A. Siddiqui does not appear for and on behalf of SIMI nor is he an office bearer of SIMI. Furthermore, the present Petitioner Shri H.A. Siddiqui concedes that he has ceased to be a

member of SIMI under Article 13(a) of the constitution of SIMI: -

*“Every Student or youth below 30 years of age can become a member who is co-operating with the programme of SIMI”*

7. Therefore, once a person attains the age of 30 years he/she ceases to be a member. In the present batch of Petitions, the Petitioners have already crossed the said age and therefore, ceased to be members of SIMI. Therefore, it is submitted that third parties without any sufficient cause should not be allowed to initiate/continue court proceedings.

8. It is further submitted that the Petitioner further has failed to place on record any prejudice that would be caused to them by the ban imposed on SIMI. Therefore, a mere fact that the Petitioner was once upon a time member of the banned organization cannot be a good enough ground for calling a ban prejudicial to their interest. Such prejudice should be real, direct and substantial, which the Petitioners have failed to prove in the present matter. Hence, the jurisdiction of this Hon’ble Court under Article 136 of the Constitution being a special discretionary jurisdiction requires even stricter requirement of showing such prejudice and the existence of *locus standi*.

9. It is humbly submitted that even if the reasoning of the Ld. Tribunal of having inherent power to hear any person under Section 5(7) is presumed to be accepted without admitting it, such permission granted by the Tribunal does not confer any right or *locus standi* on the Petitioner to file the present Special Leave Petition.

10. It is submitted that as stated earlier, even according to the Petitioner he is neither an office-bearer nor member of SIMI. Also, he doesn't even claim to be representing SIMI. Therefore at best, he is a member of the public, who has no direct interest in the present litigation. In light of the same, Petitioner should not be granted the special leave to appeal.

11. It is submitted that the 'constitution' of SIMI in sum and substance not only disclaims, questions, and intends to disrupt the sovereignty and integrity of our country; but, also cause disaffection against India and the Constitution of India. Furthermore, the objects as mentioned in the constitution of SIMI are liable to be qualified as offences under sections 153A and 153B of the Indian Penal Code. For example, the oath of allegiance for an Ansar is as under:-

*"I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be."*

12. Hence, the present petition is not maintainable and liable to be dismissed.

**STATEMENT OF OBJECTS AND REASONS:-**

13. It is respectfully submitted that, Article 19(1)(c) of the Constitution provides that all citizens shall have the right to form associations or unions. At the same time, Article 19(4) provides that nothing in the said sub-clause (c) shall effect the operation of any existing law or prevent the State from making any law thereby imposing, in the interest of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. Thus, a legislation which imposes reasonable restrictions upon the exercise of rights conferred by the said sub-clause in the interest of sovereignty and integrity of India is within the constitutional frame work. In this context, a reference can be made to the 'Introduction' and to the statement of 'Objects and reasons' to the Unlawful Activities (Prevention) Act, 1967:-

*“Introduction : The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the*

*sovereignty and integrity of India. In order to implement the provisions of 1963 Act the Unlawful Activities (Prevention) Bill was introduced in the Parliament.*

14. It is submitted that, pursuant to the acceptance by the Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixteenth Amendment) Act, 1963, was enacted empowering Parliament to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India, on the :-

- (i) freedom of speech and expression;
- (ii) right to assemble peaceably and without arms;  
and
- (iii) right to form associations or unions.

15. It is stated that the object of this legislation, is to make powers available for dealing with activities directed against the integrity and sovereignty of India.

16. It is respectfully submitted that, the 'Opinion' of the Central Government, in terms of the requirement of Section 3(1) of the UAPA is based upon the grounds as stated in the notification dated 5th February 2010, that SIMI is believed to be indulging in activities which are prejudicial to the

integrity and security of the country. The grounds and the facts have been assessed and considered in the formation of the said opinion.

17. It is therefore incorrect that, there has been any permanent denial of the fundamental rights, as alleged. It is also incorrect that the association/SIMI has lawful objects. Accordingly, there is no unreasonable restriction, as alleged. It is specifically denied that it has never been the case of the Central Government that SIMI's Constitution is unlawful or that its aims and objects or any part of them are unlawful. It has been the specific case of the Central Government, as stated, *inter alia*, in the evidence by way of affidavit filed on its behalf that the objective of SIMI as per its own constitution is contrary to the basic fabric of the Indian Constitution.

18. It is stated that the UAPA recognizes the imposition of a ban by the Central Government, which ban has to be adjudicated afresh by the Tribunal constituted under Section 5 of the UAPA.

19. It is submitted that Section 4 (2) of the Act provides that on receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, why the association should not be declared unlawful. In this regard, Section 4(3) of the Act states that "*after considering the cause, if any, shown by the*

*association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9.* Therefore, in other words Section 4 (3) provides that; Only the association or the office-bearers or members of the association, can show cause pursuant to the notice issued under Section 4 (2) and the Tribunal shall consider the cause shown only and only if the cause is shown by the association or the office-bearers or members of the association. Therefore, firstly, the association or the office-bearers or the members of the association, can show cause, and, secondly, if someone else other than the association or the office-bearers or the members of the association show cause, the same shall not be considered by the Tribunal.

20. It is further submitted that, Section 4(3) further provides that the Tribunal can call for further information from the office-bearers or the members of the association. Therefore, the association or the office-bearers or the members of the association as used in section 4 (2) and 4 (3) would not include ex-members or anyone else.

21. It is submitted that in the case of *Harbhajan Singh v. Press Council of India*, (2002) 3 SCC 722, at page 727 : Para 7 it has been observed as under:-

*“.....The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a*



*provision to honour the rule — the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material — intrinsic or external — is available to permit a departure from the rule”.*

Further, in Page 728 : it was also observed as under:-

*“Justice G.P. Singh in his celebrated work — Principles of Statutory Interpretation (8th Edn., 2001) states (at p.54):*

*“The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.”*

22. It is further submitted that, Section 6 (2) of the Act also provides that ‘any person aggrieved’ can make an application ‘at any time’ before the Central Government for cancelling the notification issued under Section 3. Therefore, under Section 6 (2) ‘any person aggrieved’ can approach the Central Government at any time after the declaration is issued under Section 3, i.e. before confirmation by the Tribunal or after confirmation by the Tribunal.

23. It is stated that, the phrase used in Section 6 is “any person aggrieved’ which is distinct from the words used in

section 4 (2) and (3) which is association or the office-bearers or members of the association. Thus, it is submitted that before the Tribunal only an association or the office-bearers or members of the association can appear but before the Central Government 'any person aggrieved' can approach for cancellation.

24. In the case of *Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala*, (2001) 5 SCC 175, at page 192: Para 19 it was observed as under:-

*“When the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature, unless context otherwise requires. However, in relation to the same subject-matter, if different words of different import are used in the same statute, there is a presumption that they are not used in the same sense...”*

25. It is further submitted that, the scope of the proceedings before the Tribunal under Section 4 is different from the scope of proceedings before the Central Government under section 6.

26. It is stated that, in the case of *SEBI v. Saikala Associates Ltd.*, (2009) 7 SCC 432, at page 438 : Para 15 and 16 it was observed as under:-

*“15. The Tribunal has been constituted under Section 15-K of the Act and is thus a creation of the said statute and as such the Tribunal is to*

*exercise the jurisdiction, powers and authority conferred on it by or under the Act or any other law for the time being in force. Under Section 15-T(4) of the Act, the Tribunal has been empowered to pass such orders on the appeal as it thinks fit, confirming, modifying or setting aside the order appealed against. Under Rule 21 of the SAT Rules, 2000 the Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to seek the ends of justice.*

27. It is submitted that, in the instant case, the position of broker/sub-broker in case of violation is statutorily provided under Section 12 of the Act, which has to be read along with Rule 3 of the Rules. Thus, no power is conferred on the Tribunal to travel beyond the areas covered by Section 12 and Rule 3. When something is to be done statutorily in a particular way, it can only be done that way. There is no scope for taking shelter under a discretionary power”. Therefore, when the Act provides that the Tribunal can consider a cause shown only by an association, office bearer or member thereof, the Tribunal cannot consider a reply by an ex-member contrary to the provisions of the Unlawful Activities (Prevention) Act, 1967.

28. It is further submitted that only ‘an association’ ‘office bearer’ or ‘member thereof’ are given the right to participate in an inquiry to be conducted by the Tribunal under Section 4 (3) of the Act.

29. It is submitted that, in the case of *Jamaat –E-Islami Hind Vs. UOI* [(1995) 1 SCC 428] at Page 443 para 11 it has been observed by the Supreme Court as under:-

*“.....The nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under sub-section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them...”*

30. It is submitted that the *lis* between the Government and the Association which comes into existence by the declaration issued under Section 3 (1) of the Act cannot be adjudicated if somebody else seeks to replace the ‘Association’, or its office bearer, or members before the Tribunal. Further, Rule 3 of the Unlawful Activities (Prevention) Rules, 1968 provides that in holding an inquiry under sub-section (3) of section 4 the Tribunal shall follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872.

31. It is further submitted that, Section 137 of the Evidence Act provides that “examination of a witness by the

adverse party shall be called his cross-examination.” If the opposite party has a right to take part in the proceedings, only then, such party shall have a right to cross-examine.

32. It is respectfully submitted that, in the case of *Kishori Lal and Anr. vs. State of Rajasthan and Anr.* 1999 CriLJ 840, it has been observed by the Rajasthan High Court as under:-

*“10. The second question that arises for determination is whether the petitioners against whom the inquiry is conducted by the Sub-Divisional Magistrate have a right to cross – examine the witnesses to be examined during the inquiry. The right to cross-examine , it may be noted, was not recognized in the early years of present Anglo-Saxon system of administration of justice. This right was developed at a later stage and Section 138 of the Evidence Act deals with the right to cross –examine. Section 138 of the Evidence Act reads :*

*Order of examinations.- Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

*It is submitted that a bare perusal of Section 138 of the Evidence Act shows that in any proceedings before any Court as defined in Section 3 of the Act, a witness is examined-in-chief, and, if the opposite party has a right to take part in the proceedings, then, such party shall have a right to cross-examine the witness if such party so desires. I am, therefore, of the opinion that the right to cross- examines the witness is available to a party, who is entitled to take part in the inquiry or trial or in any proceedings before a Court, and, this right is available by virtue of Section 138 of the Evidence Act”.*

33. It is submitted that, the present petitioners have no right to take part in the inquiry and also have no right to cross-examine the witnesses as well. It is therefore prayed that this Hon'ble court may be pleased to dismiss this Petition as being devoid of merit and pass such other and further order as it deems fit .

**BRIEF FACTS:-**

34. It is respectfully submitted that the Students Islamic Movement of India (hereinafter referred to as 'SIMI') came into existence on 25.4.1977 in Aligarh Muslim University, Aligarh, Uttar Pradesh as an organization of youth and students having faith in the Jamait-e-Islami-Hind (JEIH). In 1993, SIMI vide a resolution declared itself to be independent.

35. It is stated that the objectives of SIMI are:-

- i) Governing of human life on the basis of Quran;
- ii) Propagation of Islam;
- iii) "Jehaad" (religious war) for the cause of Islam;
- iv) Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

36. It is respectfully submitted that, SIMI aims to mobilize students/youth in the propagation of Islam and obtain support for Jehaad. The organization also emphasizes on

the formation of “Shariat” based Islamic rule through “Islami Inqalab”. The organization does not believe in nation-state or in the Indian Constitution including its secular nature. It further regards idol worship as a sin, and propagates its ‘duty’ to end such practices.

37. It is submitted that the financial position of SIMI is said to be sound. Wherein, its resources are through donations, membership fees and other financial assistance provided from time to time by supporters from Gulf countries etc.

38. It is respectfully submitted that SIMI through its members has contacts in Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Being an organization for students/youth, SIMI is influenced by and used by various fundamentalist Islamic terrorist organizations operating *inter alia* from the state of Jammu & Kashmir. Also, terrorist organizations such as *Hizb-ul-Mujahideen* and *Lashkar-e-Toiba* have successfully managed to penetrate into the SIMI cadres to achieve their anti-national goals.

39. It is further submitted that SIMI has been active in Andhra Pradesh, Bihar, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and National Capital Territory of Delhi. It is stated that SIMI is also known to have launched a countrywide campaign to mobilize the support

of Muslims for the creating a *Caliphate*. As stated above, SIMI is against Indian nationalism, and works to replace it with an international Islamic order.

40. It is respectfully submitted that since the ban, SIMI is carrying out its activities under the garb of cover organizations in several states of the country. Many SIMI cadres have regrouped under several names including '*Wahadat-e-Islami*' in Tamil Nadu; '*Indian Mujahideen*' in Rajasthan, Karanataka, Gujarat , Andhra Pradesh and Delhi; '*Ansarullah*' in Karanataka; '*Muslim Muttahida Mihad*' in Uttar Pradesh; in Madhya Pradesh '*Wahadat-e-Ummat*;' '*Nagarik Adhikar Suraksha Manch*' in West Bengal;. It is stated that one '*Karuna Foundation*' in Kerala, in fact, was used by ex-SIMI members to counter threats against Islam. One other organization by the name '*Amanat Foundation*' also showed pro-SIMI leanings. At all India level SIMI has been regrouped under various names including '*Tahreek-e-Ehyaa-e-Ummat*,' a movement for the revival of the Community, '*Tehreek-Talaba-e-Arabia*;' '*Tehrik Tahaffuz-e-Sha'aire Islam*' etc. Besides the above, there are over three dozen other front organizations through which SIMI is being continued. These front organizations help SIMI in various activities including collection of funds, circulation of literature, regrouping of cadres, etc.



41. It is respectfully submitted that, it was in the year 2001 that SIMI was banned for the first time under the provisions of the Unlawful Activities (Prevention) Act, 1967 vide Notification No. S.O. 960 (E) dated 27<sup>th</sup> September, 2001. Accordingly, the Unlawful Activities (Prevention) Tribunal was constituted, consisting of Justice S.K. Agarwal to adjudicate the notification banning SIMI. The said tribunal upheld the ban, and the order of Tribunal was published in the Gazette of India vide Notification No. S.O. 397(E) dated 8.4.2002. A copy of Notification No. S.O. 960(E) dated 27<sup>th</sup> September, 2001 along with Notification No. S.O. 397 (E) dated 8.4.2002 are annexed herewith and marked as **Annexure R-1**.

42. It is respectfully submitted that the above order of the Id. Tribunal was challenged before this Hon'ble Court in SLP (C) No. 20294/2002 (converted to Civil Appeal 9208/2003). The same is pending adjudication.

43. It is submitted that after the expiry of two years, a fresh ban on SIMI was imposed keeping in view its continued indulgence in unlawful activities. Accordingly, Notification No. S.O.1113(E) dated 26.9.2003 was issued. The Unlawful Activities (Prevention) Tribunal was constituted chaired by Justice R.C. Chopra. The said tribunal upheld the ban, and the order of the tribunal was published in the Gazette of India being Notification no. S.O.499(E) dated 16<sup>th</sup> April

2004. A copy of the Notification No. S.O. 1113(E) dated 26<sup>th</sup> September, 2003 along with the Notification No. S.O. 499 (E) dated 16.4.2004 is annexed herewith and marked as **Annexure R-2**.

44. It is submitted that the above order of the Ld. Tribunal was challenged before the Hon'ble High Court of Delhi *vide* W.P. (C) No. 19950/2004.

45. It is respectfully submitted that again after the expiry of two years, a fresh ban was imposed on SIMI keeping in view that it had continued to indulge in unlawful activities. Accordingly, Notification No. S.O.191 (E) dated 8<sup>th</sup> February, 2006 declaring SIMI as an unlawful association was issued. In this regard, the Unlawful Activities (Prevention) Tribunal was constituted chaired by Justice B.N. Chaturvedi. Wherein, the Tribunal upheld the ban, and the order of the Tribunal was published in the Gazette of India notification No.S.O.1302 (E) dated 11<sup>th</sup> August, 2006. A copy of the Notification No. S.O. 191 (E) dated 8<sup>th</sup> February, 2006 along with the Notification No. S.O. 1302 (E) dated 11.8.2006 is annexed herewith and marked as **Annexure R-3**.

46. It is respectfully submitted that the above order of the ld. Tribunal was challenged before this Hon'ble Court in SLP (C) No. 1251/2007. Wherein, the same is pending adjudication.

47. It is submitted that since the activities of SIMI continued, a fresh ban was imposed in February 2008 vide Notification No. S.O. 276 (E) dated 7<sup>th</sup> February, 2008 published in the Gazette of India. Wherein, the Unlawful Activities (Prevention) Tribunal chaired by Justice Gita Mittal was accordingly constituted. However, the Id. Tribunal did not confirm the said ban. A copy of Notification No. S.O. 276 (E) dated 7<sup>th</sup> February, 2008 is annexed herewith and marked as **Annexure R-4**.

48. It is stated that aggrieved by the said order, the respondent herein filed SLP (C) No. 19845 of 2008 before this Hon'ble Court. Accordingly, this Hon'ble Court was pleased to stay the above order of the Ld. Tribunal. The matter was also referred to be heard by a larger bench.

49. It is respectfully submitted that, at the expiry of two years ban on SIMI a fresh ban was imposed vide Notification No. 260 (E) dated 5<sup>th</sup> February 2010 declaring SIMI as an unlawful association. Herein, the Unlawful Activities (Prevention) Tribunal was constituted chaired by Justice Sanjiv Khanna. The Tribunal upheld the ban, and the order of the Tribunal was published in the Gazette of India Notification No.S.O.1990 (E) dated 12<sup>th</sup> August, 2010. A copy of the Notification No. S.O. 260 (E) dated 5<sup>th</sup> February, 2010 along with the Notification No. S.O. 1990 (E) dated

12.8.2010 is annexed herewith and marked as **Annexure R-5**.

50. It is stated that the above order of the Ld. Tribunal was challenged before this Hon'ble Court in SLP (C) No. 140/2011. The same is pending for adjudication.

51. It is respectfully submitted that at the expiry of two years ban on SIMI, a fresh ban was imposed vide Notification S.O. 224 (E) dated 3<sup>rd</sup> February 2012 declaring SIMI as an unlawful association. The Unlawful Activities (Prevention) Tribunal was constituted chaired by Justice V.K. Shali. The Tribunal upheld the ban, and the order of the Tribunal was published in the Gazette of India notification No.S.O.1745 (E) dated 6<sup>th</sup> August, 2012. A copy of the Notification No. S.O. 224 (E) dated 3<sup>rd</sup> February, 2012 along with the Notification No. S.O. 1745 (E) dated 6.8.2012 is annexed herewith and marked as **Annexure R-6**. It is further submitted that the Petitioners have also filed WP (C) No. 138/2012 in this Hon'ble Court *inter alia* challenging various provisions of the Act.

52. It is respectfully submitted that at the end of two years from the last ban during 2012, a fresh ban was imposed on it vide Notification No. SO 299 (E) dated 1.2.2014. Accordingly, an Unlawful Activities (Prevention) Tribunal was constituted chaired by Mr. Justice Suresh Kait. The

Tribunal upheld the ban vide the impugned judgment. A copy of the Notification No. S.O. 299 (E) dated 1<sup>st</sup> February, 2014 along with the copy of UA (P) Tribunal's judgment vide Notification No. S.O. 2050 (E) dated 13.8.2014 is annexed herewith and marked as **Annexure R-7**.

53. It is respectfully submitted that, despite being banned over the number of years, SIMI through various front organizations continues to indulge in unlawful activities. Therefore, at the end of five years [remain in force for a period of 5 (five years) from the date of Notification has been substituted from "two years" w.e.f. 1-2-2013] from the last ban during 2014, a fresh ban was imposed on it vide Notification No. SO 564 (E) dated 31.01.2019. Accordingly, an Unlawful Activities (Prevention) Tribunal was constituted chaired by Hon'ble Ms. Justice Mukta Gupta, Judge of the High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 931 (E), dated 21<sup>st</sup> February, 2019. A copy of the Notification No. S.O. 564 (E) dated 31<sup>st</sup> January, 2019 along with the copy of UA (P) Tribunal's judgment vide Notification No. S.O. 3083 (E) dated 27.8.2019 is annexed herewith and marked as **Annexure R-8**. It is submitted that the order of the Ld. Tribunal has been impugned wide the present SLP.

54. It is respectfully submitted that besides the above, SIMI has filed various writ petitions before Hon'ble Delhi High Court including W.P.(C) No.3886/2004; W.P.(C) No.19950/2004; W.P.(C) No.9638/2003; W.P.(C) No. 6030/2007. Wherein, few of them have been transferred to this Hon'ble Court and numbered as C.A. No. 9208 of 2003; and C.A. No. 1323 of 2007.

**PARAWISE REPLY TO GROUNDS:-**

55. It is respectfully submitted that, the contents of **paragraphs A to D** are incorrect, and therefore, denied. It is humbly submitted that the legal maxim *Omnia praesumuntur rite et solnniter esse acta donec probetur in contrarium*, which according to Broom's Legal Maxims, Tenth Edition, means '*everything is presumed to be rightly and duly performed until the contrary is shown,*' is a maxim which is applicable where acts are of an official nature, or require the concurrence of official persons, and states that a presumption arises in favour of their due execution. It is stated that in the present case, this maxim is not applicable to the argument advanced by the Petitioner. It is respectfully submitted that it would be misapplication of this maxim if it is used to argue that a banned organization would be presumed to have ceased to exist because an order banning it has been passed. This maxim is inter alia used to raise a

rebuttable presumption that an official act was properly done.

56. Furthermore, it is for the legislature to provide for legal presumptions through enacted law. One such presumption which is applicable to the present case is Section 41 of the Act. According to this section, a banned organization would not be deemed to have ceased to exist only because a formal order banning it is passed; but would be deemed to continue so long as the purposes of the banned organization continues to be carried on by its members. Moreover, it is humbly submitted that cases such as AIR 1931 Bombay 129 are not applicable to the present case as the principle that a person's continued membership to a banned organization has to be proved after such a ban, is not applicable in the reverse to assert that a member who is caught indulging in an activity which is in furtherance or related to the objectives of the banned organization cannot be attributed to the banned organization, especially, for the purposes of the Unlawful Activities Act.

57. It is respectfully submitted that in the present case, as stated in the notification dated 31.01.2019, and evidence produced before the Tribunal, there was enough evidence on record to show that members of SIMI were clandestinely furthering the purposes of SIMI. Moreover, the argument of

Petitioner that '*actual combination*' under Section 41 has to be proved on the basis of cogent and legally admissible evidence has to be seen in light of the law laid down by this Hon'ble Court in the *Jamaat-e-Islami Hind's* case vis-à-vis principles of law of evidence applicable to such proceedings. It is clear from the impugned judgment that the answering respondent has produced enough evidence admissible before the Ld. Tribunal to prove that SIMI members were clandestinely carrying on the objects of the banned organization. Thus, the ground urged in para. 3 is wrong and denied. It is denied that the Central Government did not have any credible basis for determining whether or not the persons accused of various criminal offences were members of SIMI. It is submitted that substantial evidences were led before the Tribunal to be proved beyond any doubt that SIMI and its members were continuing with their unlawful and terrorist activities despite imposition of ban by the Central Government. Without prejudice to the aforesaid, it is further submitted that it is settled proposition of law that in exercise of power of judicial review this Hon'ble Court will not interfere with the findings of the fact.

58. It is respectfully submitted that, the contents of **paragraphs E to R** are incorrect and therefore, denied. It is humbly submitted that SIMI had been banned not only because its members were carrying out unlawful activities, but because the objects of SIMI itself were illegal and



challenged the sovereignty and integrity of our country. It is stated that once banned, its members were clandestinely furthering the illegal objects of SIMI. There is no contradiction in the stand of the Central Government. It is clear, as stated above, that SIMI activists have been carrying on the objectives of SIMI even after the ban. It is further submitted that the detailed 'background note' was sufficient for the purposes of Section 4 of the Act; especially, as detailed material was submitted before the Ld. Tribunal during its inquiry under Section 9. It is further clear that the background note was based on all the material that was later produced, and therefore, was clear, authentic and reliable.

59. In this regard, it is stated the law laid down in *Aruj Bhiyan v. State of Assam* cited as (2011) 3 SCC 377 and in *Indra Das v. State of Assam* cited as (2011) 3 SCC 380 held +that, mere membership of a banned organization would not make a person a criminal is not applicable in the reverse to the present case. Moreover, the answering respondent has placed on record more than sufficient evidence not only to prove that the objects of SIMI were illegal, but that its members were carrying on its work through various front organizations.

60. It is respectfully submitted that, the existence of the SIMI is proved on account of the current and unlawful

activities undertaken by its activists/members in furtherance of the unlawful objectives of SIMI. It is stated that, these activists/members of SIMI *inter alia* are involved in cases relating to terrorist activities. Wherein, these members have been identified by various witnesses and co-accused. Furthermore, various publications/literature of SIMI have been seized from these persons at their behest.

61. It is respectfully submitted that the content of **paragraphs S to BB** are questions of law.

62. It is respectfully submitted that the contents of **paragraphs CC to LL** are incorrect and therefore denied. It is respectfully submitted that, Section 9 of the Act states that the procedure to be followed by the Tribunal would be so far as may be, the procedure laid down in the Code of Civil Procedure, 1908. Even under Section 5(7) of Act for the purposes of Sections 193 and 228 IPC, and 195 CrPC, the tribunal is said to be a civil court. Therefore, it is clear that the procedure to be followed by the Tribunal is more akin to a civil proceedings and not a criminal trial. Keeping that in mind, it is clear that the principle of preponderance of probabilities would be applicable to such proceedings, and not the burden of proof beyond reasonable doubt. This was also held by this Hon'ble Court in *Jamat-I-Islami Hind's*

case, wherein, it was held that the test of greater probability applies.

63. It is further submitted that Rule 3(1) of the Rules stipulates that the Tribunal subject to sub-rule (2) shall follow, as far as practicable, the rules of evidence laid down in the Evidence Act. This Hon'ble Court has held in *Jamaat-E-Islami Hind's* case that "*The materials*" produced by Central Government in support of the ban, especially, confidential information "*need not be confined only to legal evidence in the strict sense.*" Moreover, it is settled law that words such as '*as far as practical*' make the applicability of the particular statute to suit the requirement of the act in light of the objectives sought to be achieved by that act. Therefore, while applying the principles laid down in the Evidence Act, the objects and realities of the Unlawful Activities (Prevention) Act, 1967 would have to be kept in mind.

64. It is respectfully submitted that, section 24 of the Evidence Act states that a confession made by an accused person is irrelevant in a criminal proceeding if it appears to the Court that it has been given under the influence of inducement, threat or promise from a person in authority which is sufficient as per the concerned court to give the accused grounds for supposing that he would, by making

the confession gain advantage or avoid any evil of temporal nature. However, as noticed above, this section refers only to criminal proceedings. And therefore, proceedings before the Ld. Tribunal being civil in nature are not hit by the bar of section 24 of the Evidence Act.

65. It is submitted that, on the other hand, the bar of Section 25 is applicable only against proving a confession against the maker of the confession. However, such a confession is admissible for other purposes under Section 18 of the Evidence Act. In the case of *Mahanta Singh vs. Het Ram Pakhar* cited as AIR 1954 P&H 27, Section 25 of the Indian Evidence Act was referred to, and the contention was raised that the statement in which a confession is made by an accused cannot be used in any proceedings.

66. It is respectfully submitted that, the contents of **paragraph MM** as far as they relate to Petitioner claiming that the Central Government does not have the power to issue repeated orders continuously banning an organization are denied. It is humbly submitted that, section 6(1) of the Act stipulates that ban once imposed shall remain in force for a period of two years (now five years) from the date on which the notification becomes effective. The central government has the power to renew the ban if the grounds mentioned in the Act still exist. This time period after which

a ban automatically ceases to exist is not a restriction on the Central Government's power to ban the organization again. However, if the Central Government is said not to have this power then organizations with the most anti-national purposes would thrive with impunity after the expiry of the first ban.

67. It is respectfully submitted that the contents of **paragraph NN to SS** are incorrect and therefore, denied. It is stated that the Central Government appropriately complies with the provisions of section 3(3) of the Act. It is humbly submitted that SIMI had been banned not only because its members were carrying out unlawful activities, but because the objects of SIMI itself were illegal and challenged the sovereignty and integrity of our country. It is stated that once banned, its members were clandestinely furthering the illegal objects of SIMI. Furthermore, there is no contradiction in the stand of the Central Government. It is clear as stated above, that SIMI activists have been carrying on the objectives of SIMI even after the ban. It is further submitted that the detailed 'background note' was sufficient for the purposes of Section 4 of the Act; especially, as detailed material was submitted before the Ld. Tribunal during its inquiry under Section 9. It is further clear that the background note was based on all the material that was later produced, and therefore, was clear, authentic and

reliable. It is stated that the grounds mentioned in the notification is only with respect to the cases registered against the activist of SIMI.

68. It is respectfully submitted that the existence of SIMI is proved on account of the current and unlawful activities undertaken by its activists/members in furtherance of the unlawful objectives of SIMI. These activists/members of SIMI *inter alia* are involved in cases relating to terrorist activities, wherein, these members have been identified by various witnesses and co-accused. Furthermore, various publications/literature of SIMI have been seized from these persons at their behest. In this regard, material also shows that the continuation of the ban, and an immediate ban u/s 3(3) was also needed in light of the clandestine unlawful activities which had not ceased and were continuing after the first and subsequent bans. The Ld. Tribunal was correct in stating that the ban u/s 3(3) was proper if evidence establishes that unlawful activities of the organization are still being carried on. The above material shows that the immediate ban on SIMI was required for the sake of security, sovereignty and integrity of our country. Therefore, the contents of the notification dated 31/01/2019 was appropriate and justified.

69. It is stated that the contents of **paragraphs TT to AAA** are questions of law.

70. It is respectfully submitted that contents of paragraph **BBB to DDD** are incorrect and therefore, denied. It is submitted that the proviso to sub-section (2) of Section 3 of the Act permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the Government considers against the public interest to disclose. It is further submitted that the unlawful activities of a banned organization are often carried on in a clandestine manner and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information and full particulars thereof, is likely to be against public interest. Furthermore, such a disclosure may prejudice few ongoing investigations.

71. It is respectfully submitted that, SIMI was banned in 2001 and it does not operate and function in the open. Also, it does not maintain a list of members, which would be open to scrutiny and can be examined. It is stated that, their operations are clandestine and underground. They cannot be unearthed except on the basis of interrogation and statements by persons who are associated with SIMI. It is

stated that, accomplices in such cases are rare and members of public do not come forward out of fear. The Central Government, therefore, *per se* has to rely upon the reports submitted by various State Governments including agencies. Therefore, it is submitted that sharing all the material with the Petitioner(s) who anyway had no right, whatsoever, to be a part of the proceedings before the Tribunal would have been against public interest. Furthermore, material which was not required to be in the sealed-cover was fully disclosed to the Petitioner(s). This proposition has also been upheld by this Hon'ble Court in *Jamaat-E-Islami Hind v. Union of India* cited as (1995) 1 SCC 428:

*“20. As earlier mentioned, the requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show-cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a Tribunal constituted by a sitting High Court Judge, which distinguishes the scheme under this Act with the requirement under the preventive detention laws to justify the anticipatory action of preventive detention based on suspicion reached by a process of subjective satisfaction. The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice*



*must be satisfied, to make the adjudication meaningful. No doubt, the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the Government considers against the public interest to disclose. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same.”*

72. It is respectfully submitted that the contents of **paragraph EEE to GGG** are incorrect and therefore, denied. It is stated that the Place to sit of Tribunal entirely depend upon the Chairperson of the Tribunal and proximity of witnesses.

73. It is respectfully submitted that the contents of **paragraph HHH** are incorrect, it is stated that Crime No.31/2011, was registered on 22<sup>nd</sup> August, 2011 when a secret information was received that one person namely Haroon Rashid was residing at Amber Guest House, Dadar

(West), Mumbai and was in possession of counterfeit Indian currency notes in huge quantity for circulation in the market. A raid was carried out and counterfeit currency amongst other articles was seized. During the course of investigation, it was revealed that Haroon was an active member of SIMI. He further disclosed the names of two other persons namely Asrar Ahmed Abdul Hamid Tailor @ Sagari and Azhar Ul Islam Mohd. Ibrahim Siddiqui @ Munna. It was further revealed that Asrar arranged a meeting of Haroon at the office of SIMI at Phitwala Compound, Kurla, Mumbai and thereafter another meeting was arranged with Riyaz Bhatkal who was supposed to make arrangements for his travel to Pakistan for militant training. It is submitted that the Special Court acquitted Haroon Rashid for the offences punishable under Sections 10/11/13/18 UAPA. Wherein, the State has filed an appeal against the acquittal which is pending before the Bombay High Court vide Criminal Appeal No.592/2019. In this matter, Prakash Parihar (PW-24) tendered his affidavit and deposed about cases registered prior to 2014 in which judgments have been delivered by the Trial Court.

74. It is respectfully submitted that contents of **paragraph III** are incorrect. It is stated that, one SIMI activist was convicted and sentenced to death by Special Sessions Court, Shivaji Nagar, Pune in Case Crime No. 06/2010, registered by Anti-Terrorism Squad, Mumbai, Maharashtra under

sections 120B, 153A, 302, 307, 326, 325, 324, 427, 467, 468, 471, 474, 109 and 34 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with sections 10, 13, 16, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967. Herein, Crime No. 257/2008 was registered for the offences punishable under Sections 122/124A/153A/120B IPC and Sections 10/13 UAPA and Sections 25/27 Arms Act, wherein it was noted that the activists of SIMI had assembled at an isolated place at Tangal Para near Kolahalamed, Wagamon and were conducting physical training and arms training of its members. They even marked signs on the rocks promoting enmity between different groups and trying to break the integrity of the nation. It is stated that, investigation in this case was transferred to NIA vide communication dated 22nd February, 2010 and the FIR was re-registered as RC-04/2010/NIA/DLI. The PW-28 tendered his affidavit and deposed that during the course of investigation it was revealed that a secret training camp was being organized by members of SIMI at Thangalpara, Wagamon and the training camp was attended by various SIMI activists from various States across the country. During the camp participants were engaged in physical training, arms training, firing practice, manufacture of petrol bombs, motor bike racing and rope climbing. Statement of one accused person namely Manjar Alam was recorded under Section 164 Cr.P.C. wherein he confessed that he was a member of SIMI and

gave various details about the training camp. It is stated that on completion of investigation, a Chargesheet was filed on 13<sup>th</sup> January, 2011 against 37 accused persons. The learned Special Court (NIA) vide judgment dated 14<sup>th</sup> May, 2018 convicted Saduli, Hafeez Hussain, Safdar Nagori, Shibily P, Mohammed Ansar P A, Abdul Sathar, Aamil Parwaz, Mohammed Sami, Mohd Asif, Nadeem Sayeed, Mufti Abdul Bashir, Danish @ Safi, Manzar Imam, Alam Jeb Afridi, Dr. Asadulla H A, Mohammed Abu Faisal Khan @ Shamsheer, Kamaruddin Nagori, Shakeel Ahammed and Dr. Mirza Ahamed Baig for the offences punishable under Sections 120 B/122/124A and 153 IPC, Sections 10/13/18/20 and 38 of the UAPA, Section 4 of the Explosives Substances Act and Sections 25 and 27 of the Arms Act.

75. It is respectfully submitted that the contents of **paragraph JJJ** are incorrect. It is stated that, from the evidence of witnesses particularly PW-8, PW-11, PW-14, PW-17, PW-28, PW-31, PW-33 and PW-45, there is sufficient material to show that the activists of SIMI are getting finances in two forms besides the foreign funding. The funds received within the country can be broadly classified in two different heads;

- i) Jhakat/Donation and funds from members/ ex-members and sympathizers and
- ii) by robberies and dacoities.

**Jhakat/Donation/Funds from members/ex-members and sympathizers:**

It is stated that though the literal meaning of Jhakat is religious tax, however from the evidence of witnesses it is revealed that monies were being collected as donations for which donation slips were issued and they were being utilized for funding the unlawful activities of members, activists, sympathizers of SIMI and to carry out its aims and objectives. One D. Hari Kumar Yadav (PW-8) who has deposed about the CR.No. 338/2014 stated that on 22<sup>nd</sup> October, 2014 at 9.50 hours while Inspector S. Ramachander Reddy was on normal checking duty on Secundrabad Railway Station, he noticed two persons in suspicious circumstances, namely Shah Mudassir Talha and Shoaib Ahmed Khan @ Tareek. On their search incriminating material in the form of literature, CDs, pen-drives, mobile phone, original passport of Shoib Ahmed, cash and a donation slip for a sum of ₹100/- in favour of SIMI were recovered. One Ankit Garg (PW-28) also deposed that Farooq Saheb, the Treasurer of Jhakat Committee went for Haj when protected witness (X-10), worked as the Treasurer of the Committee for two months and found that a sum of ₹ 30,000/- had been given from the Committee

fund to Haider. One Abhishek Maheshwari (PW-17) deposed that in CR.No. 740/2013 on search of Umair Siddiqui's residence blank SIMI Membership forms, ammonium nitrate, laptop, lay-out planning of Bodh Gaya bomb blast, etc. were recovered. From the house search of Umair Siddiqui donation slips were recovered. In his statement recorded under Section 164 Cr.P.C. Umair Siddiqui stated that he received ₹2.5 lakhs from Haider which had been given by Abu Faizal. The said amount was given through one Saddani Darbar at Raipur. Further, Haider gave ₹55,000/- to Abu Faizal which he kept for Patna bomb blast and also borrowed money from one of his friends. It is stated that, Haider also brought ₹70,000/- to deposit and send for the expenses of Muslim families relating to SIMI of Madhya Pradesh. It is stated that Umair's personal expenses were met through Hidayat Bhai and Aslam Bhai of Ranchi and Aftab Bhai of Mujafarpur. One Azharuddin Qureshi stated that, Umair Siddiqui used to bear the expenses of their lodging and boarding through the money of Jhakat and used to get all his work done through him. Furthermore, one witness Ramesh Sahu stated that Amar Parvez used to collect donations for SIMI from Raipur and even now a sum of ₹72,500/- was kept as donation for SIMI from Raipur with his associate Wahid. One witness Abdul Mosim Khan stated that he had attended one of the programmes of SIMI wherein it was stated that those killed in the attack were martyrs and will go to Jannat, that they had to do Jihad against

Hindustan and collect funds for training of Jehadees. Further, the PW-31 also deposed in relation to the collection of funds for Jihad. The learned Special Judge while convicting Umair Siddiqui, Haider Ali and Azharuddin Qureshi held that Haider was given ₹10,000/- as funds collected as Chanda on the request of Shahbaz. The witness who appeared before the Trial Court also gave ₹30,000/- to Haider Ali and the said money was given by Jhakat Committee run by Ujair Bhai. It is stated that, after taking money Haider asked him '*bomb rakhne chalega*', however the witness refused.

76. The contents of **paragraphs KKK and LLL** are question of law.

77. With regard to contents of **paragraphs MMM to QQQ**, it is stated that the evidence recorded by this Tribunal clearly establishes that SIMI continues to indulge in unlawful activities causing a serious threat to the internal security of the country. In this regard various intelligence inputs received, further establishes that SIMI has been continuing its activities throughout the country. He also stated that despite the ban on SIMI, its sympathizers have continued to carry on their unlawful activities under the garb of various cover organizations. They have indulged in radicalizing and brain washing the minds of Muslim youth by Jehadi propaganda and through provocative Taqreers. It

is stated that the arrest of various SIMI activists has revealed their plans to eliminate targeted individuals and establish nexus with like-minded Jehadi outfits in India and abroad. Therefore, the evidence adduced before this Tribunal and the material placed on record, it is evident that the activities of SIMI are continuing through its members/activists/sympathizers, wherein they are expanding the cadres by indoctrinating young boys and that its cadre is being used by other terrorist organizations to continue unlawful/terrorist activities in India. Some of the Members/activists of SIMI are working under the umbrella of front organization and/or are having links with number of other terrorist organizations e.g. Al-Qaeda, LET, JEM, ISIS, IM etc. It is also evident that they are continuing to receive funds within India and also through foreign funding despite SIMI having been declared a banned organisation in the year 2001 which ban is still continuing till date, except for a very brief period.

78. It is submitted that, witnesses further tendered in evidence a sealed cover containing intelligence inputs and correspondence received from the various states as also the Draft of the note put up to the Cabinet Committee on Security. In his cross-examination conducted by Mr. Ashok Aggarwal, Advocate for Mr. Humam Ahmed Siddiqui questions with respect to non-application of mind by the Ministry while handing over the Cabinet Note were put up



which were denied by him. He further deposed that the note put up to the Cabinet Committee was prepared as per the laid down practice and procedure which consisted of the background of the subject matter, the summary of the cases, the intelligence inputs, analysis thereof and the views of the Ministries consulted insofar as what was relevant for the Government to form its opinion under Section 3(1) UAPA. He further stated that the material placed before the Cabinet Committee shows reasonable association of the accused with SIMI. Furthermore, suggestions were made to him regarding the authenticity of the background note, which were strongly denied by him.

79. It is respectfully submitted that, the appreciation of the aforesaid evidence is only for the purpose of making an assessment of “sufficiency of material” as available to the Central Government, when the Notification No. S.O.564(E) dated 31<sup>st</sup> January, 2019 was issued and not whether the said material can withstand judicial scrutiny during a trial in a court of law. There may be defects, incoherency, contradictions and procedural irregularities during the recording of these statements, which may prove fatal during the trial when placed under the scanner of Indian Evidence Act, but for the purpose of these proceedings, they are material which can be relied upon to determine “sufficiency of cause” and would also constitute material which the agencies, responsible for enforcement of law and order,

could not have ignored for recommending suitable action under the Unlawful Activities (Prevention) Act. A small single lead in a statement, whether recorded by the police or otherwise, can lead to unearthing of organized acts of crime and conspiracy and keeping in view the objects of the Act, such statements/information may become relevant for action under the Act.

80. It is respectfully submitted that, a reference at this stage is also invited to the Constitution of the Students Islamic Movement of India (SIMI) wherein Annexure-III is the Oath of Allegiance for 'Ansar'. The said oath is administered to the new members. It, *inter alia*, reads as under:

“ .....

*The aim of my life is reconstruction of human society according to the principles given by Allah and His messenger, thereby achieving pleasure of Allah. I am joining SIMI in order to be able to work for this aim, purely for Allah's pleasure.*

*I fully agree with the methodology and programme of SIM and will abide by its discipline according to its constitution.*

*I will invite students and youth towards Islam and will try to organize them.*

*I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be.*

*I, .....*

*My prayer and my sacrifices and my life and death are all for Allah, the lord of universes. No one is His partner.*

*I have been instructed to do so and I am among those who surrender.  
May Allah help me to keep these promises.  
(Amen)”*

81. It is respectfully submitted that, any constitution which prescribes such an Oath of Allegiance to its members must be seen as in direct conflict with the democratic sovereign setup of India and should not be allowed to be perpetuated in our secular society.

82. To summarize, the evidence brought on record clearly and unambiguously establishes that despite being banned since 27<sup>th</sup> September, 2001, except for a brief period in between, the SIMI activists are associating, meeting, conspiring, acquiring arms & ammunitions, and indulging in activities which are disruptive in character and capable of threatening the sovereignty and territorial integrity of India. They are in regular touch with their associates and masters based in other countries. Their actions are capable of disrupting peace and communal harmony in the country. Their stated objectives are contrary to the laws of our country. Especially their object of establishing Islamic rule in India can, under no circumstances, be permitted to subsist.

83. From the foregoing discussion, it is evident that SIMI association and its activists are continuing to indulge in

unlawful activities within the meaning of Section 2(1)(o) of the Act. The Central Government has sufficient credible material and grounds for taking action under sub-section (1) of Section 3 of the Act for declaring SIMI as an Unlawful Association. Therefore, it is stated that there exists “sufficient cause” to confirm the Notification issued under sub-section (1) of Section 3 of the Act, declaring SIMI to be an ‘Unlawful Association’.

84. It is submitted that these writ petitions filed before the Hon’ble High Courts were transferred to this Hon’ble Court and are numbered as follows:-

- i. C.A. No. 9208 of 2003
- ii. C.A. No. 1323 of 2007

85. Therefore, it is respectfully submitted that SIMI is still in existence and is a necessary party in the present SLP, wherein, in absence of the association itself no person who claims to be an ex-member can oppose and challenge the declaration or file an SLP before this Hon’ble Court.

86. It is further submitted that the Prevention of Terrorist Activities Act (POTA) was an anti-terrorism legislation enacted by the Parliament of India in 2002. In September 2004, the Union Government approved ordinances to repeal POTA and amend the Unlawful Activities (Prevention) Act, 1967 to fill the lacuna that have been created due to the

repeal of the Act; adequate amendments were being brought to the Unlawful Activities (Prevention) Act, 1967 to define a terrorist act and provide for banning of terrorist organisations and their support systems, including funding of terrorism, attachment and forfeiture of proceeds of terrorism, etc. Thus, all terrorist organisations banned under POTA would continue to remain banned, under the Unlawful Activities Act, after the repeal of the Act.

87. Furthermore, after the Mumbai attacks of November 26, 2008, the Parliament amended the UAPA through the Unlawful Activities (Prevention) Amendment Act, 2008. The Schedule in POTA contained a list of 25 terrorist organizations which has been carried forward to the UAPA. An additional 11 terrorist organizations have been added to the list which means that the UAPA schedule contains a list of 38 terrorist organizations. In addition, the organisations listed in the Schedule to the U.N. Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 made under section 2 of the U.N. (Security Council) Act, 1947 and amended from time to time.

88. It is stated that Section 15 of the Unlawful Activities Act provides as under:-

*“Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India .....*”

*Section 2 (o) (ii) which defines ‘unlawful activity’ also uses the same expression as ‘disrupts the sovereignty of India’.*

*Therefore, all terrorist organization would be an ‘unlawful association’ but all unlawful association need not be a terrorist organization.*

89. It is submitted that the act also provides for de-notification of a terrorist organization under section 36 and 37. In this regard, the Review committee under Section 37 is chaired by a person who is or has been a judge of a High Court. It is further submitted that, SIMI association has not yet faced the review Committee for de-notification. However, SIMI has been in the schedule as ‘terrorist organization’ in this act since 2004.

90. In view of the facts enumerated above, no question of law arises in the present petition in paragraph 2 of the petition.

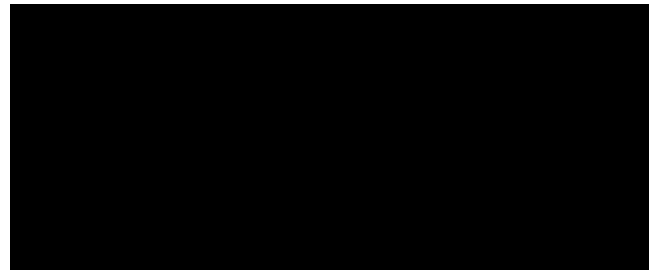
91. It is stated that the contents of the **ground (A) to (QQQ)** are misconceived and incorrect, hence denied for the reason stated above.

92. In view of the foregoing the petition is liable to be dismissed as the petitioners have failed to make out a case justifying interference by this Hon’ble Court for seeking the quashing of the order dated 29.7.2019 passed by the Unlawful Activities (Prevention) Tribunal constituted vide notification No. 3083 (E) dated 27.8.2019 confirming the

Ban on the Students Islamic Movement of India as an Unlawful Association under the Unlawful Activities (Prevention) Act 1967.

93. That the deponent craves leave of this Hon'ble Court to reserve his/her right to file a detailed counter affidavit subsequently if directed by this Hon'ble court or considered necessary to do so.

94. The present affidavit is bona fide and in the interest of justice.

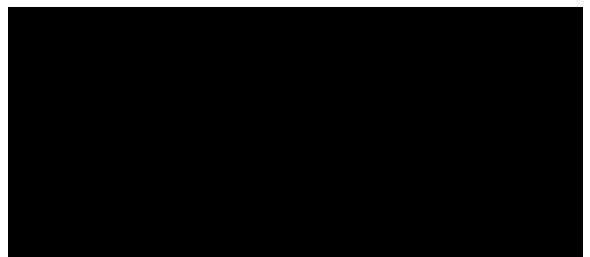


**DEPONENT**

**VERIFICATION**

I, the deponent abovenamed, do hereby verify that the contents of Para 1 to 94 of my above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this the 18<sup>th</sup> day of January, 2023.



**DEPONENT**



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं. 705 ]

No. 705]

नई दिल्ली, बुधस्वतित्वार, सितम्बर 27, 2001/आश्विन 5, 1923

NEW DELHI, THURSDAY, SEPTEMBER 27, 2001/ASVINA 5, 1923

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 27 सितम्बर, 2001

का.आ. 960(अ).—स्टूडेन्ट्स इस्लामिक मूवमेन्ट आफ इंडिया (जिसे इसमें इसके पश्चात् सिमी कहा गया है) ऐसे क्रियाकलापो में संलिप्त है जो देश की सुरक्षा पर प्रतिकूल प्रभाव डालने वाले हैं और जिनसे देश की शांति तथा साम्प्रदायिक सामंजस्य को विछुब्ध और देश के पंथनिरपेक्ष ताने-बाने के छिन्न-भिन्न होने की संभावना है ;

और केन्द्रीय सरकार की यह राय है कि-

- (i) सिमी आतंकवादी गुटों के घनिष्ट संपर्क में है और पंजाब, जम्मू-कश्मीर तथा अन्य स्थानों में उग्रवाद/आतंकवाद को समर्थन दे रहा है ;
- (ii) सिमी संघ से भारतीय राज्यक्षेत्र के एक भाग को विलग करने के दावे का समर्थन करता है, इस प्रयोजन के लिए संघर्ष कर रहे ग्रुपों का समर्थन करता है और इस प्रकार भारत की प्रादेशिक अखंडता पर प्रश्न उठाता है ;
- (iii) सिमी एक अन्तरराष्ट्रीय इस्लामिक व्यवस्था के लिए कार्य कर रहा है ;
- (iv) इखवान सम्मेलन के दौरान सिमी की राष्ट्र विरोधी और उग्रवादी छवियां उन नेताओं के भाषणों से स्पष्ट रूप से प्रकट हुई थीं जिन्होंने पान इस्लामिक कट्टरवादिता को महिमा मंडित किया है, अन्य धर्मों के देती-देवताओं के लिए अपमानजनक भाषा का प्रयोग किया है और मुसलमानों को जेहाद के लिए प्रोत्साहित किया है ;



- (v) सिमी ने आपत्तिजनक पोस्टर तथा साहित्य प्रकाशित किया है जो साम्प्रदायिक भावनाओं को उद्दीप्त करने वाला है और जो भारत की प्रादेशिक अखंडता पर प्रश्न उठाता है ;
- (vi) सिमी देश के विभिन्न भागों में साम्प्रदायिक दंगे तथा विभाजित करने वाले क्रियाकलापों की योजना बनाने में संलिप्त है ;

और केन्द्रीय सरकार की यह भी राय है कि पूर्वोक्त कारणों से, सिमी के क्रियाकलाप भारतीय समाज की शांति, एकता और पंथनिरपेक्ष ताने-बाने को बनाए रखने के लिए अहितकर हैं ;

अतः, अब, केन्द्रीय सरकार, विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्टूडेन्ट्स इस्लामिक मूवमेन्ट आफ इंडिया (सिमी) को विधि विरुद्ध संगम घोषित करती है ;

और केन्द्रीय सरकार की यह भी राय है कि यदि सिमी के विधि विरुद्ध क्रियाकलापों को तत्काल रोका और नियंत्रित नहीं किया जाता है तो इसे-

- (i) विलग करने को प्रोत्साहित करने और उग्रवाद का समर्थन करने ;
- (ii) देश के विभिन्न भागों में साम्प्रदायिक हिंसा भड़काने और देश के पंथनिरपेक्ष ताने-बाने को छिन्न-भिन्न करने,

का अवसर मिल जाएगा ।

और केन्द्रीय सरकार की यह भी राय है कि ऊपर वर्णित सिमी के क्रियाकलापों को ध्यान में रखते हुए यह आवश्यक है कि सिमी को तात्कालिक प्रभाव से विधि विरुद्ध संगम घोषित किया जाए और तदनुसार केन्द्रीय सरकार, धारा 3 की उपधारा (3) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि यह अधिसूचना किसी ऐसे आदेश के अधीन रहते हुए, जो उक्त अधिनियम की धारा 4 के अधीन किया जाए, राजपत्र में अपने प्रकाशन की तारीख से प्रभावी होगी ।

[फा. सं. II 14017/3/2000-एमआई (बी-V)]

बी. के. हल्दर, संयुक्त सचिव

**MINISTRY OF HOME AFFAIRS****NOTIFICATION**

New Delhi, the 27th September, 2001

**S.O. 960(E).—** Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, the Central Government is of the opinion that-

- (i) SIMI is in close touch with militant outfits and is supporting extremism/militancy in Punjab, Jammu and Kashmir and elsewhere;
- (ii) SIMI supports claims for the secession of a part of the Indian territory from the Union, supports groups fighting for this purpose, and is thus questioning the territorial integrity of India;
- (iii) SIMI is working for an International Islamic Order;
- (iv) during Ikhwan conferences, the anti-national and militant postures of the SIMI were clearly manifest in the speeches of the leaders who glorified Pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jihad ;
- (v) SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India;
- (vi) SIMI is involved in engineering communal riots and disruptive activities in various parts of the country;

And whereas, the Central Government is also of the opinion that for the aforesaid reasons, the activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity of-

- (i) escalating secessionism and supporting militancy ;
- (ii) instigating communal violence in different parts of the country and thereby disrupting the secular fabric of the country.

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI mentioned above, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

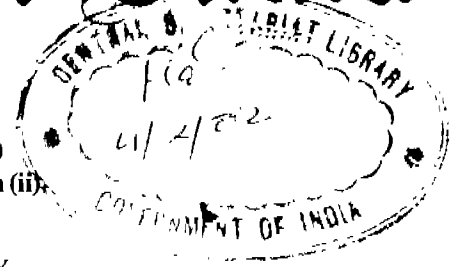
[F.No. II-14017/3/2000-NI(D-V)]  
B. K. HALDER, Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITYसं. 340 ]  
No. 340]नई दिल्ली, मंगलवार, अप्रैल 9, 2002/चैत्र 19, 1924  
NEW DELHI, TUESDAY, APRIL 9, 2002/CHAITRA 19, 1924

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 8 अप्रैल, 2002

का.आ. 397(अ).—केन्द्रीय सरकार, ने विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 27 सितम्बर, 2001 को स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को भारत सरकार के गृह मंत्रालय की अधिसूचना सं० का०आ० 960 (अ), तारीख 27 सितम्बर, 2001 द्वारा विधि-विरुद्ध संगम घोषित किया था;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं० का०आ० 1005 (अ), तारीख 8 अक्टूबर, 2001 द्वारा विधि-विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति एस०के० अग्रवाल थे ;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए उक्त अधिसूचना को 20 अक्टूबर, 2001 को इस बात का न्याय निर्णयन करने के प्रयोजन हेतु उक्त अधिकरण को निर्दिष्ट किया था कि क्या उक्त संगम को विधि-विरुद्ध घोषित करने के लिए पर्याप्त कारण था अथवा नहीं;

और उक्त अधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिसूचना सं० का०आ० 960 (अ), तारीख 27 सितम्बर, 2001 में की गई घोषणा की पुष्टि करते हुए 26 मार्च, 2002 को एक आदेश किया था;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त अधिकरण के उक्त आदेश को प्रकाशित करती है, अर्थात् :—

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[फा०सं० II-14017/3/2000-एनआई(डीपी)]

बी०के० हल्दर, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 8th April, 2002

S.O. 397(E).—Whereas, the Central Government, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared on the 27th September, 2001 the Students Islamic Movement of India (SIMI) as an unlawful association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 960(E), dated the 27th September, 2001;

And whereas, the Central Government, in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, constituted on the 8th October, 2001 the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice S.K. Agarwal, Judge of the Delhi High Court vide notification of the Government of India in the Ministry of Home Affairs number S.O. 1005(E), dated the 8th October, 2001;

And whereas, the Central Government, in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, referred the said notification to the said Tribunal on the 20th October, 2001 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as an unlawful association;

And whereas, the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an Order on the 26th March, 2002, confirming the declaration made in the notification number S.O.960(E) dated the 27th September, 2001;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said Order of the said Tribunal, namely :—

**The Unlawful Activities (Prevention) Tribunal, New Delhi.****In Re : Students Islamic Movement of India****Union of India (Central Government)/petitioner**

through :

Mr. K.K. Sud, Additional Solicitor General with Mr. Mahipal, Mr. R.V. Sinha and Mr Neeraj Jain, Advocates.

versus

**Students Islamic Movement of India—****Respondent No. 1.**

through :

Mr. Sidharth Luthra, Advocate with Mr. Manish Goel, Mr. S.N. Vashist, Mr. K B.S. Nalwa, Advocates.

**State of Maharashtra—Respondent No. 2.**

through :

Ms. Shubhangi Tuli, Advocate,

**State of Kerala—Respondent No. 3**

through :

Mr. Ramesh Babu M. R., Advocate,

**State of M.P. —Respondent No. 4.**

through :

Mr. B.S. Banthia and Mr. T.S. Chaudhary, Advocates

**State of Tamil Nadu—Respondent No. 5.**

through :

Mrs. Revathy Raghavan and Ms. Shweta Garg, Advocates.

**State of West Bengal—Respondent No. 6.**

through :

Mr. Tara Chandra Sharma, Advocate.

**State of Gujarat —Respondent No. 7.**

through :

Mrs. Hemantikawahi with Ms. Anu Sawhney, Advocates.

**State of Rajasthan—Respondent No. 8.**

through :

Ms. Shubhangi Tuli, Advocate.

**State of Andhra Pradesh—Respondent No. 9.**

through :

Mr. G. Prabhakar, Advocate.

Coram :

Hon'ble Mr Justice S.K. Agarwal

#### ORDER

This order will answer the reference under Section 4 (1) of the Unlawful Activities (Prevent (hereinafter referred to as 'the Act')).

The Central Government vide notification No. S.O. 960 (E) dated 27-9-2001, in exercise of the powers conferred under sub-section (1) of Section 3 of the Act, declared Students Islamic Movement of India (hereinafter for short referred to as 'SIMI') to be an unlawful association. Under proviso to sub-section (3) of the Act, the Central Government also declared the said association to be unlawful with immediate effect, as in its opinion the circumstances so warranted. The Central Government by another notification No. S.O. 961(E) dated 8-10-2001, under sub-section (1) of Section 5 of the Act, constituted this Tribunal, and made the reference under Section 4(1) of the Act for adjudicating whether or not there is sufficient cause for declaring the said association unlawful. The notification was accompanied by a resume of facts and grounds on the basis of which the said notification was issued, as required by rule 5 of the Unlawful Activities (Prevention) Rules, 1968 (hereinafter referred to as "the Rules").

On receipt of reference, notices were issued, calling upon the SIMI to show cause within 30 days from the date of service of notice, as to why it should not be declared unlawful. The notices were directed to be served by ordinary process as well as by publication in the national and local newspapers and by pasting on notice board of the offices of District Magistrates and Tehsildars. SIMI entered appearance through its All India President, Shahid Badar. States of Maharashtra, Kerala, Madhya Pradesh, Tamil Nadu, West Bengal, Gujarat, Andhra Pradesh, Rajasthan, Uttar Pradesh and Delhi also entered appearance and supported the notification declaring SIMI to be unlawful. For the purpose of reference, Central Government was arrayed as the petitioner and SIMI as respondent No. 1 and other States were arrayed as respondents 2 to 11.

Parties were directed to file their written statements along with the documents on which they proposed to rely. Learned counsel of Union of India made the statement that the Background Note and documents filed along with the notification be treated as their statement. SIMI-respondent No. 1 filed the written statement/objections, through its President, to which a rejoinder was filed by the UOI.

The case set-up by the Central Government in brief is that SIMI came into existence on 25-4-1977 in the Aligarh Muslim University as a front organisation of youth and students having faith in Jamait-e-Islami-Hind (JEIH). It declared itself independent in the year 1993 with the following proclaimed objectives :—

1. Governing of human life on the basis of Quran ,
2. Propagation of Islam ;

3. Jehaad (religious war) for the cause of Islam ;
4. Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

SIMI aims to utilize students and youths in the propagation of Islam religion and mobilise support for 'Jehaad'. It aims at achieving Shariat based Islamic rule through 'Islamic Inqulab'. It does not believe in the nation state, therefore, it also does not believe in the constitution or the secular order. It regards Idol worship as a sim and its holy duty to end such worship. It is stated that SIMI organisation has been indulging in anti-national, militant and objectionable activities and is known to have launched a country-wide campaign since November 1996 to mobilize support for the caliphate (Rule of Islam) for Muslim community. It advocates self-determination in Jammu and Kashmir and is in close touch with the militant outfits in Jammu and Kashmir, including pro-Pak Hizb-ul-Muzahideen (Hum) and Jammu and Kashmir Liberation Front. The leadership of SIMI also extended full support to Punjab extremists and Jammu and Kashmir insurgents.

Further, it is stated that SIMI is closely associated with Al-Ummah, All India Jihad Committee (AIJC) and Tamil Nadu Muslim Munnetra Kazagham (TMMK) in Tamil Nadu and is also involved in various militant activities relating to killing of Hindus, especially persons associated with RSS/Hindu organizations, since August, 1993. Its anti-national posture was exposed by its pro-Pak stand on the issue of Kargil. During the Kargil crisis, SIMI leaders, contrary to the views of most other Muslim leaders and organizations who had supported the Indian Government's actions including the air strikes, had adopted an anti-India posture. The contentions of SIMI on the Kargil issue were that : it were the Kashmiri 'freedom fighters' who had been fighting the Indian Army in Kargil, and not the Pakistan Army or Pakistani nationals as claimed by the Government. The Indian Army was engaged in barbaric torture of Muslims in Kargil, including Muslim women, on the pretext of fighting the infiltrators.

It is pleaded that in the Ikhwan Conferences at Kanpur, Aurangabad and Malappuram, the anti-national and militant posture of SIMI was manifest in the speeches of its leaders and the conduct of different programmes. SIMI leaders, in their addresses, eulogized and glorified Pan-Islamic terrorists and fundamentalists like Osama Bin Laden, Sheikh Mohd. Yasin (HAMAS leader) and Gulbuddin Hekmatyar. They used derogatory language for Hindu Gods and Goddesses, and, exhorted Muslims for Jihad and martyrdom to counter atrocities on Muslims and to establish the supremacy of Islam. Describing the concept of secularism, democracy and nationalism as anti-Islam, the speakers gave a call to obey only the law of Allah and not man-made laws. Cassettes containing provocative and fundamentalist speeches of Pan-Islamic leaders like Qazi Hussain (Pak JEI leader) and Sheikh Mohd. Yasin (HAMAS) were played at the conference. In an in-camera meeting of selected SIMI leaders at Kanpur, it was decided to promote militant, ideas among the Muslim students and youth, directed against Hinduism and establish clandestine links with militant outfits like the Lashker-e-Toiba.

It is further pleaded that SIMI had published posters captioning the advent of a 'new Mahmood of Ghaznawi' in the context of the Babri Masjid. The circulation of these posters has the potential of hurting the sentiments of Hindus, polluting the minds of various religious groups and disturbing peace and communal harmony. As part of their anti-India propaganda SIMI has also published a calendar containing distorted and misleading historical facts about the accession of Kashmir to India and giving an impression that Kashmiri Muslims had been suppressed and exploited for long. SIMI has procured audio cassettes containing the speech of Mohd. Masood Azhar (Harkat-ul-Mujahideen), who was released in exchange for the hostages of the Indian Airlines plane, in which Azhar exhorted Muslims for "Jehad" till Kashmir is liberated. It is *inter alia* stated that in the State of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, West Bengal, Tamil Nadu, Kerala, Uttar Pradesh and Delhi more than 100 cases have been registered against members of SIMI under various Sections of IPC/Cr. P.C. The reasons for banning SIMI with immediate effect are given as under :—

- (a) SIMI is in close touch with militant outfits and is supporting extremism/militancy in Punjab, Jammu and Kashmir and elsewhere ,
- (b) SIMI supports claims for the secession of a part of the Indian territory from the Union, supports groups fighting for this purpose, and is thus questioning the territorial integrity of India ;
- (c) SIMI is working for an International Islamic Order;
- (d) During Ikhwan conferences, the anti-national and militant postures of the SIMI were clearly manifest in the speeches of the leaders who glorified Pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jehad;



- (e) SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India;
- (f) SIMI is involved in engineering communal riots and disruptive activities in various parts of the country ;

Respondent No. 1-SIMI, in their reply, have denied the allegations stating that these are *mala fide*, illegal, unsustainable and without jurisdiction. It is claimed that SIMI organisation was founded on April 25, 1977 in Aligarh by educated and enlightened citizens of India. It is a Deeni (religious) secular organization and its activities are a political and non-communal besides being spiritual and religious. It believes in unity of God and unity of humankind. Till its ban, SIMI was connected only with lawful activities. The primary objective/aim of SIMI is to guide the mankind and to provide a practical example of putting God's guidance into practice and reconstruction of human life according to the guidance given by God. It believes in unity of God and unity of Human kind. Its main function is upliftment of mankind and service of human beings by carrying out social service and by helping those affected during natural or man made calamities, without distinguishing people on the basis of religion, caste, creed or sex. It has its own written constitution and till its ban it was carrying on only lawful activities which were in consonance with its aims and objectives.

It is pleaded that SIMI is an absolutely lawful and patriotic association working for the betterment of the lives of the people, development of the society, unity, peace and prosperity and universal brotherhood. The organization structure of SIMI is democratic and its working advisory in nature. It has a Central Representative Council (CRC). This body, in turn, elects the President and the Central Advisory Committee. The Secretary General of the Organization is appointed by the President in consultation with the Central Advisory Committee. There are 400 "Ansar" (basic members) and about 20,000 Ikhwan (ordinary members). Only persons of proven integrity, good character and those imbued with a spirit of sacrifice and service to humankind are enrolled as Ansars. The maximum age limit of an Ansar is 30 years and after attaining the age of 30 years a person ceases to be a member of the organization both in the capacity of Ansar and that of Ikhwan. SIMI is therefore purely a student youth organisation and is in no manner connected with or related to any of the allegations levelled against it. It is claimed that the whole of the organisation cannot be blamed or banned just because a few members of the organisation were allegedly working against the interest, aims and objectives of the organisation. Actions of such members cannot be attributed to be the actions of the organisation. The organisation works through its resolutions and there is no resolution that warrants the ban on the organisation.

It is further pleaded that SIMI is an organization of the minority community and should not be blacked out unjustly as it will lead to panic based on minority discrimination. It is submitted that banning an organisation of a minority community having only socio-religious aims is a clear violation of Articles 25 and 26 of the Constitution of India. The activities of SIMI have always been open and lawful. There is no iota of secrecy or unlawfulness in the activities of SIMI. There has been no occasion in the 25 years of SIMI's existence where any violence or even a strife or disturbance has occurred in any part of the country as a result of any activity of SIMI. It has undertaken several programs such as scholarships & career guidance to the needy students. The grounds spelt out in the Notification for banning the organization fall short of mandatory conditions and that the ban is authoritarian and bad in law. It is pleaded that the timing of the ban is actuated by the political motives and is not based on any legal foundation. It was intended to create terror in the minds of minority Muslim community and an "anti national" image out of ordinary Muslims in the country.

It is further pleaded that SIMI had never challenged the territorial integrity of the country nor has it stated anything which will incite communal violence in the country. The most outstanding contribution of SIMI has been in the field of social service and in the field of relief work during natural and man made calamities. It undertook extensive social work and provided relief to the victims of the earth quake in Gujarat without discrimination between people of various religions. It is denied that SIMI is in close touch with militant outfits and is supporting extremism in Punjab, Jammu and Kashmir and elsewhere. It is claimed that SIMI believes in an International Islamic Order just as the socialists have an International Socialists Order as their aim. It was pleaded that any citizen, if he so desires, can be a part of an international Hindu Order or an International Christian Order. Islam having an international presence, every Muslims has a right to aspire to be a part of International Islamic Order. It is pleaded that the present Central Government is inimical to the minorities and the ban on SIMI is wholly unconstitutional. It has been denied that during Ikhwan conferences, the anti-national and militant postures of SIMI were manifested in the speeches of its leaders who glorified pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jihad. It is denied that SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India. It is pleaded that no poster has been displayed or literature published by SIMI to incite communal feeling and which question the territorial integrity of India.



Taking into consideration the issues involved and the statutory limitation of six months under the Act for completion of the enquiry, parties were directed to lead their evidence by way of affidavits. Shri B.K. Halder, Joint Secretary, Union Ministry of Home Affairs, New Delhi, filed an affidavit, in support of the notification. On the other hand, Shahid Badar, All India President of SIMI filed his affidavit and Mohammad Hasan, President of Rajasthan Zone, and Humam Ahmad President of U.P. Zone also filed their affidavits. During the course of enquiry affidavits of Shakir Azim, Secretary Tamil Nadu Unit; Mohd. Ikrar, Secretary, Madhya Pradesh Unit; K.T. Mohd., President, Kerala Zone; Shamsul Haque, Secretary, West Bengal Unit; Mohd. Athar Qureshi, President, Hyderabad Unit on behalf of respondent SIMI were also filed. They also filed additional affidavits and documents when they appeared as witnesses. Affidavits along with documents were also filed by the concerned officers of respondent Nos. 2 to 11, in support of the notification. Thereafter parties also examined their witnesses. As per the request of parties hearings of the Tribunal were held in Delhi as well as in the States.

The Central Government in support of its case examined PW-41, B K Halder, Joint Secretary, Ministry of Home Affairs, Government of India, who proved his affidavits Ex.PW-41/1 and Ex.PW-41/4; and the notification Ex.PW-41/2; the background note prepared by Mr. Jag Ram, Deputy Secretary, Ministry of Home Affairs Ex. PW-41/3. He also proved Summary Chart of Cases registered against members of SIMI during 1997-2001 in different States and the supporting documents marked PW-41/3-A (Collectively), copies of posters, calendars and pamphlets published by SIMI marked PW-41/3-B and other notification marked PW-41/3C. He deposed that the Government received the material regarding unlawful activities of SIMI from the States and other agencies; that SIMI has close links with extremist and militant organisations in Punjab, Jammu and Kashmir and supports the claim for secession of Indian territory; that during "Ikhwan" conferences SIMI had glorified Islamic fundamentalism, used derogatory language against Hindu deities and exhorted Muslims for "Jehad"; that SIMI had published objectionable literature and pamphlets, instigating communal disharmony in the country and engineering communal disturbances and disruptive activities in various parts of the country. On the basis of this material, the Govt. took a decision to ban SIMI, declaring it to be an unlawful organisation under sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act.

Evidence was also led on behalf of the ten respondent-states. Nodal officers and the investigating Officers, who investigated the cases registered against the members of SIMI have been examined. The Nodal officers proved the affidavits of the Investigating officers working under them and the documents filed along with those affidavits. In some cases, Investigating officers also appeared as witnesses and proved their affidavits. They proved FIRs, charge-sheets, investigation reports, panchnama showing recovery of arms, explosives and other case property of the cases registered against SIMI members. Some confessional statements made by the accused persons have also been proved.

Respondent-SIMI examined nine witnesses. RW-1, Shahid Badar, All India President, SIMI supported his case and proved constitution of SIMI Ex. RW-1/1. RW-2, Shakir Azim, Secretary, Tamil Nadu Unit; RW-3, Humam Ahmad, President of U. P. Zone; RW-4, Mohammad Hasan President of Rajasthan Zone; RW-5, Mohd. Ikrar, Secretary, Madhya Pradesh Unit; RW-6, K.T. Mohd., President, Kerala Zone; RW-7, Shamsul Haque, Secretary, West Bengal Unit; RW-8, Mohd. Athar Qureshi, President, Hyderabad Unit; and RW-9, Irshad Khan Salim Khan, Zonal President of SIMI Unit in Maharashtra appeared as witnesses in support of the case of SIMI. These witnesses proved their respective affidavits and have stated that the activities of SIMI are lawful, social and educational.

I have heard Sh.K.K. Sud, learned Additional Solicitor General, Sh. Sidharth Luthra learned counsel for SIMI and have been taken through the record.

Mr. Sidharth Luthra, learned counsel for respondent No. 1-SIMI argued that for the purpose of adjudicating whether or not there is sufficient cause for declaring SIMI as unlawful, the material collected by the Central Government after issuance of the notification dated 27th September, 2001, declaring SIMI to be an unlawful association, cannot be considered, as the same was not available before the Appropriate Authority when it took the decision to ban SIMI. He further argued that the material relied upon by the Government while declaring SIMI as an unlawful association is stale and insufficient and on the basis of such material, no opinion for declaring an association unlawful could be formed. I am unable to agree. These principles are applicable while examining the validity of a preventive detention order; where the Court, is required to see whether the subjective decision was reached by the detaining authority on the material available before it. The adequacy of material on which the satisfaction purports to rest cannot be examined by the Court. However, under sub-section (1) of section 4 of the Act, the Tribunal is required to adjudicate whether or not there is sufficient cause for declaring the Association unlawful. Thus, the material which existed prior to the notification but comes in possession of the government after the issuance of the Notification under Section 3(1) of the Act, can be considered by the Tribunal to determine the sufficiency of the cause.

Learned counsel for respondent No. 1-SIMI next argued that the confessional statements made by the accused persons arrested in different cases, even prior to 27th September, 2001, cannot be relied upon either to show that the accused persons were members of SIMI or to prove that the activities of SIMI were or are unlawful or that it encourages or aids the persons to undertake unlawful activities. He argued that the facts revealed through these confessional statements; were within the knowledge of the different investigating agencies, therefore, the reception of the said statements would be barred under Section 27 of the Evidence Act. Reliance is placed on *Pulukuri Kottaya and Ors. Vs. Emperor* 1947 Privy Council, 67. Learned counsel for UOI argued to the contrary. The confessional statements referred to and relied upon by the Government, were recorded during investigation of the criminal cases in which they were arrested. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved against a person accused of any offence. The expression 'a person accused of an offence' describes the person against whom evidence is sought to be proved in a criminal case. The adjective clause "accused of an offence", is therefore, descriptive of the person against whom a confession is sought to be proved. The confessional statements, can be used in Civil Proceedings and other collateral proceedings under the Criminal Procedure Code. The inquiry before this Tribunal is clearly not a trial against the accused persons, who made the confessional statements. Therefore, in my considered view confessional statements made by the accused persons during investigation of different cases to the police or before the court., would not be hit by Section 25 of the Evidence Act and are admissible in evidence, to show whether the accused persons were or are the members of the association, as well as to show whether the activities of the association are unlawful or not. This view finds support, from *Mahanta Singh Natha Singh Vs. Het Ram Pakhar and Anr.*, AIR 1954 (Punjab) 27 and Full Bench decision of Madras High Court in *Suman and etc. Vs. State of Tamil Nadu*, AIR 1986 (Madras) 318, wherein it was held :

"It has to be remembered that when S.25 refers to a confession which is not permitted to be proved as against a person accused of any offence, it refers to a confession made by an accused person which is proposed to be proved against him to establish an offence. The scope of S.25 is therefore restricted only to a confession made by a person who is an accused that is being used in a proceeding to establish an offence against him"

(Emphasis supplied)

In view of the above, the confessional statements recorded during the course of investigation of various criminal cases by the police would be admissible to determine the activities of the Association as well as its members.

Learned counsel for SIMI next argued that Government could not claim privilege in public interest and withhold inputs received from its agencies, while declaring SIMI as an unlawful association and that no privilege could be claimed under Section 123 read with Section 162 of the Evidence Act in respect of such documents. Reliance is placed on the Supreme Court decision in *Dr. George Mathew Vs. Union of India*, 1997 (10) SCC 537 and *State of U.P. Vs. Raj Narian*, 1975 (5) SCC 428. Law with regard to claim of privilege is well settled. Privilege can always be claimed regarding the internal files which are meant for the use of the department and not meant for the outside exposure or publication. PW-41, Mr. B.K. Haldar, Joint Secretary, in his affidavit has clearly stated that the disclosure of the inputs received from various Government agencies would be against public interest. The objection was taken at the earliest opportunity. Learned counsel for the Government further submitted that they have no objection if the relevant files are perused by the Tribunal. In view of this settled proposition of law, this contention is also held to be without any merit.

Learned counsel for the respondent SIMI next argued that the material relied upon by the government in the form of calendars, magazines, posters, etc. only reflects historical facts or reproduction of religious scriptures. It is argued that this material could not form the basis to show any unlawful activity of an individual or an Association, within the meaning of Section 2(f) of the Act. He further argued that the said material falls within the scope of freedom of speech and expression guaranteed under Articles 19 and 25 of the Constitution of India and that banning or forfeiture of such material would violate Article 25 thereof. Every religion is to be treated equally and no preference is to be given to any particular religion. Liberty of thought, expression, belief, faith and worship are assured under the Constitution, therefore, Section 153-A and 153-B, IPC are not attracted. In support of his submission he placed reliance on the decision of the Supreme Court in *Balwant Singh Vs. State of Punjab* (AIR 1995 SC 1775); *Chanda Mal Chopra Vs. State of West Bengal* (1986 Cr.L.J. 182); *Joseph Bain D' Souza Vs. State of Maharashtra* (1995 Cr.L.J. 1316); *Shiv Kumar Mishra Vs. State of Uttar Pradesh* (1978 Cr.L.J. 701); and *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282).

There can be no dispute about this proposition when someone is sought to be prosecuted under Sections 153-A and 153, IPC. Here the issue is whether SIMI is an 'unlawful association' as defined under clause (g) of Section 2 of the Act, which reads :

2(g) "Unlawful Association" means any association :

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity.

A bare reading of the above would show that an 'unlawful association' means an Association which has, for its object, any unlawful activity or which encourages or aids persons to undertake any unlawful activity or of which the members undertake any such activity or which has for its object any activity, which is punishable under Sections 153-A and 153-B, IPC. The section is very wide. If an Association has for its object any unlawful activity, it can be declared as an unlawful association. The "unlawful activity" in relation to an individual or association has been defined under section 2(f) of the Act, to mean any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. Therefore, while considering the question whether an Association is carrying out any unlawful activity or not, we have to go by the definition as given in Section 2 (f) of the Act. The "cession of any part of the territory of India" defined under sub-section (b) of Section 2 of the Act includes admission of the claim of any foreign country to any such part. "Secession of a part of the territory of India from the Union" defined under sub-section (d) includes the assertion of any claim to determine whether such part will remain a part of the territory of India or not. None of the cases cited by learned counsel for the respondent SIMI under Sections 124-A and 153-A are applicable to the facts of this case. The factual situation in each of those cases is different. Mere inciting of feeling of one group, without any reference to another religion was held not to attract the provisions of Section 153-A. Again, mere casual raising of some slogans couple of times by the accused persons, without intention to incite people to create disorder was held neither to constitute any threat to Government of India nor it gave rise to a feeling of hatred amongst different communities or religions. Therefore, in ultimate analysis, it would be a question of fact to be examined whether the material available before the Government and placed before the Tribunal is sufficient to hold the association as an unlawful association or to hold that the activities alleged are unlawful activities or not, as defined in sub-section (f) and (g) of section 2 of the Act.

Learned counsel for the respondent next argued that no reliance can be placed on the affidavit or the documents filed by PW.41, B.K. Haldar, as the facts stated in his affidavit are not based on his personal knowledge but are based on information gathered from the record. Thus, the government has failed to prove its case. The enquiry under this Act is not a regular trial. Strict rules of evidence and standard of proof are not applicable. The material placed before the Tribunal need not be a legal evidence in the strict sense. The Tribunal can even look into undisclosed material for the purpose of assessing the credibility of information and satisfying itself whether it can be safely acted upon. Law in this regard is authoritatively laid down by the apex Court decision in *Jamaat-e-Islami Hind Vs. Union of India*, (1995) 1 SCC 428 wherein it was held :—

"22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office bearers is in public interest, it may permit its non-disclosure to the association or its office bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. *The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdication of its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without*

jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.”

(emphasis supplied)

It was further held :—

“.....What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.”

(emphasis supplied)

Now the stage is reached to consider the material on record. The Central Government in support of its case proved the Background Note on the unlawful activities of SIMI. Along with this note, they have filed the list of more than hundred criminal cases registered against the members of SIMI under various Sections of IPC/Cr. P.C (annexure-I). They have also filed posters, pamphlets, articles, speeches, denigrating the Hindu religion and instigating Muslims to fight against Hindus. The calendar Published by SIMI contain distorted and misleading historical facts about accession of Kashmir to India giving an impression that Kashmiri Muslims had been suppressed and exploited for long. Some of the posters, pamphlets and a calendar have also been proved along with the note as annexure-II. The slogans on some of the posters read :—

1. Khoon ka Badla Khoon Se Lenge.
2. Kaba Ka Itihass Dohrainge.
3. Jaha Jaha Hindustan Me Mandir Bane Hai, Unhe Masjid Banadenge.
4. Ayodhya Main Jo Murtiya Rankhi Hai Unhe Uthakar Phenk Denge.
5. Jis Murti Ko seer Jhukakar Puja karte Hain Use Bhi Phenk Denge.
6. Pas Bode Ne Bano Or Suleh Ki Darkhast Na Karo Tum He Galib Rahonge.
7. Tera Badla Hai Karz Humpur.
8. Bada Mubarak Jihad Hai Ye Sahar Ki Ummind Jinda Rakhna, Nai Chain Julmat Ko Lene Dena, Sabo Ki Nind Udai Rakhna.
9. Srinagar Se Dili Tak Dusra Pakistan Banega.
10. Sang-e-Azadi Hai Ye, Zang-e-Azadi Zari Rakhna.
11. Bharat Ka Sar Phodo, Bolo Labaek Ala.
12. Mil Ke Uththo Or Masrike Pakistan Ka Karz Bhi Chuka Do
13. Ya Ilahi Bhej De Mahmood Koi.
14. Ye Door Apne Ibrahim Ki Talash Main Hain.
15. Hinduo Ka Ek Ilaz Inse Padhao Namaz.
16. Parlok Main Jahainnum Ki Aag Ke Karak.
17. Ayodhaya to Jerusalem Jihad will go on.
18. Waiting, How Long.
19. Waiting for another Gaznavi.

The above slogans clearly prove the involvement of SIMI in questioning the unity and integrity of India, instigating communal strife, hurting sentiments of other religions and various social groups thereby disturbing peace and communal harmony. The pamphlet/publication calling Kashmir the “Kosovo of India” showing that Kashmir is not to be the part of India, article calling for “Islamisation of India” and the speeches by activists further show that they had no faith in the Constitution of India.

The respondents, in support of their case, have examined their All India President, Mr. Shahid Badar, as RW. 1 and other State office-bearers as RW. 2 to RW. 9. While denying the allegations against SIMI alongwith the affidavit, he has claimed that SIMI was never involved in questioning the unity and integrity of India, instigating communal strife, polluting the mind of people, disturbing peace and spreading communal disharmony; and that SIMI association and its members have faith in the Constitution of India.

However, this does not find support from their own evidence. The respondent No. 1-SIMI examined RW-2, Shakir Azim, Secretary of their Tamil Nadu Unit, a lecturer in Mohd. Sadar College of Arts and Science at Chennai. He



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 stated that they got the calendars from the Head Office of SIMI in Delhi and were circulated among various units containing preaching of SIMI. It also contains narration of the sufferings of the people of Jammu and Kashmir. He admitted that SIMI believes that Muslims of Jammu and Kashmir have a right of plebiscite for self determination. In cross-examination, he stated that "political-religious State, comprising the Muslim community and the lands and the people in its domain are called Caliphate. It is correct that SIMI believes in establishing Caliphate all over the world. I have not heard of the expression International Islamic Order." He further admitted that on 25th June, 1999, two persons, Shah Jahan and Abu Thadeer were arrested while distributing copies of SIMI Sethi Madal, containing inflammatory and objectionable writings and FIR No. 722/99 was registered against them. However, he denied that they were the members of SIMI. He further admitted that on 4th December, 2000, Manzoor, Hakkim and Shabeer were arrested by police of Tamil Nadu while pasting objectionable posters at Coimbatore. He admitted that case FIR No. 722/99, under Sections 124A/153A and 153B was registered at P.S. Kattur on 25-6-1999 against seven persons including Shamimul Islam, Syed Abdur Rahman Umari and Khader Basha. Admittedly they were the members of SIMI. The FIR reads : "We found that they were in possession of copies of Magazines "Seithi Madal" of Students Islamic Movement—June 1999 issues containing 8 pages. Each copy was enclosed with May 1999 Seithi Madal issue a special issue relating to KOSOVO. An article with captions Kashmir: KOSOVO OF INDIA was found in the first and fifth pages of June month issue. The wording of the article was framed in such a way that it would create ill feelings among the Muslims against India. Hence the accused were arrested." The said case is admittedly pending trial.

Admittedly, on 10th January, 2001, one sticker bearing monogram of SIMI was found pasted near the guard post of SRK Hotel of Jamia Milia Islamia University, Okhla, New Delhi in which three mosques, i.e. Masjid Kartaba, Babri & Masjid Akha with symbols of cross, swastic and star respectively were shown in tears, with Hindi translation of Quaranic Aayaat No. 2:14, which says that person who prevents people from offering Namaz and damages the mosques is the most cruel man. The intent was to instigate the sentiments of Muslims to strive for the liberation of these Mosques. A case under Sections 153A/153B/505(1) read with Section 124, IPC was registered at P.S. New Friends Colony. Investigation revealed the identity of accused Shahid Badar as the All India President of SIMI. He was arrested and the case is pending trial.

On 7th October, 2000, another case FIR No. 489/2000, under Sections 124A/153B IPC was registered on the basis of calendar Published by SIMI which was examined by the Government of NCT. The calendar contains references that are likely to create enmity and communal disharmony as well as prejudicial to the national integration, legal proceedings against the authors and the publisher of the calendar were initiated. Investigations were taken up. The calendars presents distorted facts about accessation of Kashmir to India and gave an impression that Muslims have been persecuted for long in Kashmir. Thus they promoted disaffection against the Government established by law in India. It is stated that "the self-styled champions of human rights the British sold Kashmir and Kashmiris to Raja Gulab Singh for a mere 75 lakh rupees. Allama Iqbal lamented: "dehkan o kisi jua khiyaban frohltand. Laumeiy frukhland che arzan frokhtand". The tillers, the crops, the lakes and orchards they sold. A whole nation they sold—and for a pittance. It show that Kashmiri Muslims were subjected to extreme repression at the hands of Gulab Singh and his descendants for one hundred and one years. A number of mosques were razed to the ground. Imams restrained from delivering sermons. In 1931 the Khattev of Jammu Idgah was nabbed out while delivering the Khatba. It is claimed that desecration of the Holy Quran was a common occurrence. For beggar (forced labour) any number of Muslims were lifted from their Homes and driven away like cattle. It was not always that all of them returned to their kith and kin. It claimed that Muslim women bit a cow under Raja Hari Singh's order her head was shaved, her tongue chopped off and she was paraded in the streets. The skins of Milli Khan and Sabz Aliwer peeled off and stuffing with rubbish and they were left hanging on a tree. They claim that Kashmir is today subjugated oppressed and poverty stricken.

January, 2000 issue (i) Front page of the magazine, and at page 29, an article, "Bandh Lo Sar Par Kafan Phir" written by Asif Hussain contain objectionable material which attract Section 153-A of the IPC, 1860 as it promotes or attempts to promote enmity, hatred or ill-will between different religious groups on grounds of religion, which is prejudicial to maintain communal harmony.

State of Delhi in support of its case examined PW-1, Govind Sharma, Sub-Inspector, Special Cell, Lodhi Colony, New Delhi, who in his evidence proved his affidavit Ex. PW-1/1. Copy of FIR No. 304/2001 registered at P.S. Kamla Market u/s. 121/121A/122/123 etc. IPC and under Sections 4/5 of the Explosive Substances Act; and copies of the disclosure statements of the accused persons as well as connected documents are marked PW-1/1A to PW-1/1E respectively, showing recovery of 1.9 kg. of RDX, four detonators, two remote control detonating devices and a wireless set, etc. effected from Ghulam Mohidin Shah.

PW-2, Chander Bhan Sharma, Inspector, Special Cell, Lodhi Colony, New Delhi, who in his evidence proved

his affidavit Ex. PW-2/1; that he conducted raid on the night between 27-28/9/2001 and arrested Shahid Badar, National President of SIMI; Saif Nachan, Office Manager-cum-Circulation Manager, SIMI; Mohd. Khalid, Assistant Manager SIMI; and Irfan Ahmed, Office Secretary, in the case FIR No. 532/2001, P.S. New Friends Colony and proved the incriminating material seized vide different seizure memos, marked PW. 2/1A1 to PW. 2/1A10. Transcripts of floppies CPU and audio-video cassettes, and disclosure statements of Shahid Badar and Saif Nachan were recorded and copies of magazines seized and scrutinised, marked PW. 2/1C.

PW-3, Satyavir Dagar, Inspector, District Investigation Unit, South Distt, New Delhi, who in his evidence proved his affidavit Ex. PW-3/1; he investigated the case FIR No. 489/2000 dated 7-10-2000, P.S. New Friends Colony, with respect to the calendar for the year, 2000, published by SIMI received from Ministry of Home Affairs through the Home Department of the Government of Delhi, containing distorted facts regarding accession of Kashmir to India, disharmony between various sections of the Indian Community. FIR No. 535/2000 was also registered on the basis of monthly magazine Islamic Movement and other documents, which are collectively marked PW-3/1A.

PW-10, Braham Pal Sub-Inspector, P.S. New Friends Colony, Delhi, who in his evidence proved his affidavit Ex. PW-10/1. He registered FIR No. 643/2001 on 25-11-2001, on the basis of 13 magazines seized from the possession of Mohd. Hakib Iqbal at Batla House Chowk, Jamia Nagar. Copy of the seizure memo of the magazine as well as disclosure statements of the accused is marked PW-10/C and PW-10/D respectively.

PW-24, Hukam Chand S.I. Special Cell, Lodhi Colony, New Delhi, who in his evidence proved his affidavit Ex. PW-24/1; He on 19-5-2001, registered FIR No. 269/2001 under Sections 153-A/153-B/505(1) B&C & 124A IPC, PS New Friends Colony, New Delhi. On 10th January, 2001, some stickers were found pasted on the walls of SRK Hostel, Jamia Millia University, Okhla, Delhi. On those stickers three marks, namely, Masjid Kartaba (Spain), Masjid Babri (U.P.) and Masjid Aksha (Philistine) were printed. On Masjid Aksha cross mark, on Masjid Babri, Swastic mark and on Masjid Kartaba star mark were also printed. He also proved on record copies of stickers. Copy of FIR is marked PW-24/A; and copy of confessional statement is marked PW-24/D.

In the State of Uttar Pradesh, as per the material on record, 12 criminal cases were registered from 28th March, 1999 to 27th September 2001 against the persons, some of whom are admittedly activists of SIMI for various heinous offences including the following:—

(i) On 9th August, 2000 at 11.30 pm. in Mohala Qureshi, there was a bomb explosion. Three persons were seriously injured in the said explosion and they later on died. Inquiries revealed that the persons who had died were students of Aligarh Muslim University. A case FIR No. 988 dated 9th August, 2000, under Sections 4/5 Explosive Substances Act and Sections 420/467/468/121/121A/122/123/124/A IPC, P.S. Sadar Bazar Agra. Investigations revealed that they had come to Agra for the purpose of some practical training. During investigations on 3rd September, 2000, Maroof Ahmed and Abdul Mobin of Aligarh Muslim University were arrested large quantity of RDX, pamphlets and magazines were recovered. One Gulzar of Jammu and Kashmir was also arrested, and on his disclosur Ex.PW-5/1E several other incidents in U.P. were solved. The accused confessed that he had been participating in weekly meeting SIMI known as "Izaatmaas". confessional statements of Maroof Ahmed and Mobbin, Ex.PW-5/1C and Ex.PW/5/1D also show that they are members of SIMI indulging in unlawful activities.

(ii) On 16th March, 2001, in a firing incident ADM (Finance) Shri C.P. Pathak was killed on the spot and his orderly Ram Chander and S.P. City, Pankaj Pathak were badly injured. Case vide FIR No. 72/2001 under Sections 302/307/147/148/153 IPC at P.S. Mool Ganj, Kanpur was registered. Four persons, namely, Mohd. Wasif, Mumtaz @ Maulana, Haji Atiq and Safaaq were arrested. Mumtaz in his confessional statement admitted that he is an active member of SIMI and has been pursuing the guide-lines laid down by SIMI and has been indulging interterrorists activities with a view to achieve its objectives and that he through SIMI leaders came in touch with militant outfits Hizbul Muzahideen. Mohd. Wasif also made similar confessional statement marked PW-6/E. He also stated that he is an active member of SIMI and he came in touch with militant outfit organization Hizbul Muzahidcen. These facts stand proved by the evidence of PW-6, Bijender Singh Tyagi, SHO, P.S. Kotwali, Kanpur Nagar, and his affidavit is Ex. PW-6/1.

(iii) On 3rd August, 2001, during the course of investigation, one Wasif was arrested. From his house search one factory made .30 bore pistol, 3 magazines, 24 cartridges, 1.38 bore pistol, one magazine, 6 cartridges were recovered without licence. A case vide FIR No. 72/2002 was registered. On his disclosure statement, he led to the recovery of 200 grams of RDX, 2 kg of potassium chloride, timer and other material used in making the country-made explosive was recovered, 9 hand-grenades were also recovered and a separate case vide FIR No. 73/2001 was registered. In his disclosure statement Ex. PW-12/1D, he confessed that he met, Amir, Zamir, Najir office-bearers of SIMI. Nazir has taken him to Kashmir where he was given training in handling arms and ammunitions. He further confessed that he was persuaded for all that on the ground that atrocities are being committed by Indian Army on the Muslims in Kashmir. These facts stand proved by the evidence of PW-12, Dharam Pal Singh, Inspector, P.S. Raipurwah, Kanpur and his affidavit is Ex. PW-12/1.

(iv) On 14th August, 2000, there was a bomb blast in Sabarmati Express at Railway Station, Rosa Gaon, 10 persons were killed and 44 were injured. Consequently, a case vide FIR No. 148/00 under Sections 150(2)/151 Railways Act and Section 3 Explosive Substances Act and Sections 302/307/338/120B/121/122/123/124 IPC at GRP Barabanki was registered. During investigations, three persons were arrested. Mohd. Akil, Maroof Ahmed and Abdul Mobin in their confessional statement submits that they are the active members of SIMI and they had been participating in the meeting of SIMI and they had kept the bag containing bag in Sabarmati Express at the instance of Guljar. They confessed their involvement in their disclosure statements which are PW 18/D collectively. These facts are proved by the evidence of PW. 18, S O., P.S. Railway Barabanki and also by his affidavit PW 18/1.

(v) On 3-8-2001, 200 gms. RDX, 2 kg. Potassium Chloride, Power Circuits, Remote Circuits, Detonators, Rocket Cells, Bomb making chemicals were recovered from the possession of Mumtaz Ahmed, FIR Nos. 83/2001 under Sections 3/4/5 Explosive Substances Act was registered. Similar articles/materials were recovered from Gulam Jilani and Mohd. Zuber and FIR No. 85/2001 under Sections 4 and 5 of Explosive Substances Act and FIR No. 70/2001 and FIR No. 71/2001 under Sections 25/27 Arms Act and Sections 3, 4, 5 Explosive Substances Act were registered. During investigations, they confessed that they are the active members of SIMI and they have been participating in the terrorist activities and in touch with Kashmiri militants. This was proved by PW-2 Ajay Kumar Kulshreshtha, SHO, P.S. Bajaria, Kanpur and by his affidavit Exhibit PW 20/1. RW. 3 Humam Ahmed in his evidence, has admitted some of the accused persons mentioned are the member of SIMI. President, Uttar Pradesh Zone of SIMI. Other accused persons are the members of SIMI stands proved by the disclosure statement of the accused persons made during investigations as referred to above.

RW-4, Dr. Mohammad Hasan, President, SIMI Unit, Rajasthan in his affidavit admitted pendency of six cases from 1998 to 2001 in different districts. FIR No. 136/98 under sections 153A/295A IPC P.S. Kotwali, Bikaner where around 300 people of Muslim community were present, case was registered against Yaseen Patel, Muzaffar Ali and Niyamat Ali, who are stated to be members of the SIMI. Perusal of FIR No. 136/98 reveals that the case was registered on the basis of speeches delivered in front of Masjid wherein Hindu Deities, Gods and Goddesses were ridiculed and abused. Prima facie it reveals that they have been abusing Hindu Gods and Goddesses with an intent to cause disaffection between different communities.

During the Naved-e-saher on 10th, 11th and 12th September, 2000 at Indore, members of SIMI exhibited posters instigating the Mohamaddan youths saying "Pas bode na bano aur sulah ki darkhwast naa karo, tum hi galib rahoge". They also published poster containing "Vah din bhi babri masjid dikhayenge ek din, sujid se tujhe apane sajayenge ek din, Inshaallah" showing three weeping mosques and also written "Ye dor apane ibrahim ki talash mein hai". Cases under sections 153A/153B/295A were registered against them. RW-5, Mohd. Ikrar, Secretary, Madhya Pradesh State supporting the case of SIMI in his affidavit admitted the pendency of 40 cases in different districts of State of Madhya Pradesh.

The evidence led by the other States and the respondent -SIMI through RW-6 to RW-9 is practically on similar lines and further discussion on their evidence is not required. The above material clearly shows that activities of SIMI are unlawful.

From the foregoing discussion it is clear that members, office-bearers and activists of SIMI Association have been indulging in unlawful activities. There is sufficient material, justification and grounds for the Central Government for taking action under sub-section (1) of section 3 of the Act for declaring SIMI as an unlawful association. It may also be noticed that apart from the evidence lead by the Central and the State Governments, which was made available to respondent-SIMI, the Central Government also produced original files. Perusal of the files showed that the Central Government had received intelligence reports from other agencies, and together with material which was available with the Government, it formed its opinion to declare SIMI as an unlawful association and imposing the ban with immediate effect.

For the foregoing reasons, I hold that there is sufficient cause for confirming the notification issued under sub-section (1) of section 3 of the Act, declaring SIMI to be an unlawful association and the same is hereby confirmed. The reference is answered accordingly.

Justice S. K. AGGARWAL  
Unlawful Activities (Prevention) Tribunal

March 26, 2002.  
New Delhi

[F. No. II-14017/3/2000-NI (DV)]

B.K. HALDER, Jt. Secy.



# भारत का राजपत्र

## The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 26 सितम्बर, 2003

का.आ. 1113(अ).—स्टूडेन्ट्स इस्लामिक मूवमेन्ट आफ इंडिया (जिसे इसमें इसके पश्चात् सिमी कहा गया है) ऐसे क्रियाकलापों में संलिप्त है जो देश की सुरक्षा पर प्रतिकूल प्रभाव डालने वाले हैं और जिनसे देश की शांति तथा साम्प्रदायिक सामंजस्य को विछुद्ध और देश के पंथनिरपेक्ष ताने-बाने के छिन्न-भिन्न होने की संभावना है ;

और केन्द्रीय सरकार की यह राय है कि-

- (i) सिमी आतंकवादी गुटों के घनिष्ठ संपर्क में है और पंजाब, जम्मू-कश्मीर तथा अन्य स्थानों में उग्रवाद और आतंकवाद को समर्थन दे रहा है ;
- (ii) सिमी संघ से भारतीय राज्यक्षेत्र के एक भाग को विलग करने के दावे का समर्थन करता है, इस प्रयोजन के लिए संघर्ष कर रहे ग्रुपों का समर्थन करता है और इस प्रकार भारत की प्रादेशिक अखंडता पर प्रश्न उठाता है ;
- (iii) सिमी एक अन्तरराष्ट्रीय इस्लामिक व्यवस्था के लिए कार्य कर रहा है ;
- (iv) इखवान सम्मेलन के दौरान सिमी की राष्ट्र विरोधी और उग्रवादी छवियां उन नेताओं के भाषणों से स्पष्ट रूप से प्रकट हुई थीं जिन्होंने पान इस्लामिक कट्टरवादिता को महिमा



मंडित किया है, अन्य धर्मों के देवी-देवताओं के लिए अपमानजनक भाषा का प्रयोग किया है और मुसलमानों को जेहाद के लिए प्रोत्साहित किया है ;

- (v) सिमी ने आपत्तिजनक पोस्टर तथा साहित्य प्रकाशित किया है जो साम्प्रदायिक भावनाओं को उद्दीप्त करने वाला है और जो भारत की प्रादेशिक अखंडता पर प्रश्न उठाता है ;
- (vi) सिमी देश के विभिन्न भागों में साम्प्रदायिक दंगे तथा विभाजित करने वाले क्रियाकलापों की योजना बनाने में संलिप्त है ;

और केन्द्रीय सरकार की यह भी राय है कि पूर्वोक्त कारणों से, सिमी के क्रियाकलाप भारतीय समाज की शांति, एकता और पंथनिरपेक्ष ताने-बाने को बनाए रखने के लिए अहितकर हैं और यह एक विधि विरुद्ध संगम है ;

अतः, अब, केन्द्रीय सरकार, विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्टूडेंट्स इस्लामिक मूवमेन्ट आफ इंडिया (सिमी) को विधि विरुद्ध संगम घोषित करती है ;

और केन्द्रीय सरकार की यह भी राय है कि यदि सिमी के विधि विरुद्ध क्रियाकलापों को तत्काल रोकना और नियंत्रित नहीं किया जाता है तो इसे-

- (i) विलग करने को प्रोत्साहित करने और उग्रवाद का समर्थन करने ;
- (ii) देश के विभिन्न भागों में साम्प्रदायिक हिंसा भड़काने और देश के पंथनिरपेक्ष ताने-बाने को छिन्न-भिन्न करने,

का अवसर मिल जाएगा ।

और केन्द्रीय सरकार की यह भी राय है कि ऊपर वर्णित सिमी के क्रियाकलापों को ध्यान में रखते हुए यह आवश्यक है कि सिमी को तात्कालिक प्रभाव से विधि विरुद्ध संगम घोषित किया जाए और तदनुसार केन्द्रीय सरकार, विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (3) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि यह अधिसूचना किसी ऐसे आदेश के अधीन रहते हुए, जो उक्त अधिनियम की धारा 4 के अधीन किया जाए, राजपत्र में अपने प्रकाशन की तारीख से प्रभावी होगी ।

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 26th September, 2003

**S.O. 1113(E)**— Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas the Central Government is of the opinion that—

- (i) SIMI is in close touch with militant outfits and is supporting extremism and militancy in Punjab, Jammu and Kashmir and elsewhere;
- (ii) SIMI supports claims for the secession of a part of the Indian territory from the Union, supports groups fighting for this purpose, and is thus questioning the territorial integrity of India;
- (iii) SIMI is working for an International Islamic Order;
- (iv) during Ikhwan conferences, the anti-national and militant postures of the SIMI were clearly manifest in the speeches of the leaders who glorified Pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jihad ;
- (v) SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India;
- (vi) SIMI is involved in engineering communal riots and disruptive activities in various parts of the country;

And whereas the Central Government is also of the opinion that for the aforesaid reasons, the activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity of-

- (i) escalating secessionism and supporting militancy ;
- (ii) instigating communal violence in different parts of the country and thereby disrupting the secular fabric of the country.

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI mentioned above, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F.No. 140177/2003-NI-III]

A. K. JAIN, Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 16 अप्रैल, 2004

**का.आ. 499(अ).**—केन्द्रीय सरकार ने, विधि-विरुद्ध क्रिया कलाप निवारण अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 26 सितंबर, 2003 को स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमि) को भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ.1113(अ) तारीख 26 सितंबर, 2003 द्वारा विधि विरुद्ध संगम घोषित किया था ;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं.1229 (अ) तारीख 23 अक्टूबर, 2003 द्वारा विधि विरुद्ध क्रिया कलाप (निवारण) अधिकरण का गठन किया था जिसमें दिल्ली उच्च न्यायालय के न्यायमूर्ति श्री आर.सी.चोपड़ा थे ;

और केन्द्रीय सरकार ने उक्त अधिसूचना की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना को तारीख 24 अक्टूबर, 2003 को इस बात का न्याय निर्णयन करने के प्रयोजन के लिए उक्त अधिकरण को निर्दिष्ट किया था कि क्या उक्त संगम को विधि-विरुद्ध घोषित करने के लिए पर्याप्त कारण था या नहीं ;

और उक्त अधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना सं. का.आ.1113 (अ) तारीख 26 सितंबर, 2003 में की गई घोषणा की पुष्टि करते हुए 23 मार्च, 2004 को एक आदेश किया था ;

अतः, अब केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात् :-

(आदेश इस अधिसूचना के अंग्रेजी पाठ में छपा है ।)

[फा. सं. 14017/1/2004-एन आई-III]

ए. के. जैन, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 16th April, 2004

S.O. 499(E).— WHEREAS the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) declared on the 26<sup>th</sup> September, 2003 the Students Islamic Movement of India (SIMI) as an unlawful association, vide notification of the Government of India in the Ministry of Home Affairs number S.O. 1113 (E) dated the 26<sup>th</sup> September, 2003;

AND WHEREAS, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, constituted on the 23<sup>rd</sup> October, 2003 the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice R.C. Chopra, Judge of the Delhi High Court vide notification of the Government of India in the Ministry of Home Affairs number S.O. 1229 (E) dated the 23<sup>rd</sup> October, 2003;

AND WHEREAS the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, referred the said notification to the said Tribunal on the 24<sup>th</sup> October, 2003 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as an unlawful association;

AND WHEREAS the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act made an Order on the 23<sup>rd</sup> March, 2004 confirming the declaration made in the notification number S.O. 1113 (E) dated the 26<sup>th</sup> September, 2003;

NOW, THEREFORE, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely: -

Before The Tribunal constituted under Section 5 of the Unlawful  
Activities (Prevention) Act, 1967.

In the matter of :

Gazette Notification No.SO-1113-E dated 26.9.2003 declaring Students Islamic Movement of India an Unlawful Association under Section 3(1) of Unlawful Activities (Prevention) Act, 1967.

**CORAM:**

**HON'BLE MR.JUSTICE R.C.CHOPRA**

Present :

Mr.K.K.Sud, Additional Solicitor General with Mr.Mahipal,  
Mr.R.V.Sinha and Mr.Neeraj Jain, Advocates for Union of India.

Mr. Siddharth Luthra with Mr.Mateesh Goyal, Mr.S.N.Vashisht  
and Mr.H.A.Siddiqui, Advocates for SIMI

**ORDER**

The Students Islamic Movement of India (hereinafter referred to as "SIMI" only) was established in the year 1977 at Aligarh, U.P. On 27.9.2001, by a Gazette Notification No.SO-960-E, the Central Government banned SIMI in exercise of powers under Section 3 (3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "Act" only). A Tribunal was constituted under Section 5 (1) of the

Act which confirmed the declaration made by the Central Government under Section 3(1) of the Act.

On 26.9.2003, vide notification No.S.O.-1113-B, the Central Government issued a fresh notification under Section 3 Sub-Clause (1) of the Act and again declared SIMI to be an unlawful Association. Vide notification No.S.O.-1229-B dated 23.10.2003, this Tribunal was constituted under Section 5 (1) of the Act for adjudicating as to whether or not there is sufficient cause for declaring SIMI an unlawful Association.

Vide orders dated 29.10.2003, a notice under Section 4(2) of the Act was issued to SIMI to show cause, within 30 days from the date of the service of the notice, as to why the Association should not be declared unlawful. The notice was ordered to be served upon SIMI at its principal office or by affixing a copy of the notice at some conspicuous part of the office of the Association, if any. In addition, the notice was also ordered to be served by publication in two national newspapers, one in English and one in Hindi and in one newspaper of the concerned State in which the activities of the Association were ordinarily carried on. It was further ordered that the notice be served upon the Association by way of broadcast on All India Radio and telecast on Doordarshan. The object of issuing notice under Section 4(2) of the Act by so many modes was to ensure that the Association was duly served with the notice and it

was in a position to appear before the Tribunal in the course of proceedings.

On 10.12.2003, Shri Siddharth Luthra, Shri Manish Goyal and Shri M.A.Siddiqui, Advocates, put in appearance on behalf of the Association. The Central Government placed on record an affidavit of Shri C.B. Sharma, Inspector, Special Cell, to show that the notice under Section 4(2) of the Act had been affixed/pasted at the main entrance gate of the Head Office of the Association at Zakir Nagar, New Delhi and in addition, a copy of the notice had been served upon Mohd. Ashraf Zafri as well as Shahid Badar Falai, members/activists of SIMI, who refused to accept the same. The notice was published in "Hindustan Times" (English), "Navbharat Times" (Hindi) and a vernacular newspaper "Kaumi Awaz". It was telecast on Doordarshan and broadcast on All India Radio also.

Copies of the background note and other documents were supplied to learned counsel for the Association. The background note contained the grounds for issuance of notification under Section 3 (1) of the Act. Copies of those documents were not supplied, which the Central Government considered proper to withhold in terms of proviso to Section 3 (2) of the Act. The time for filing a reply to the show cause notice was extended within which a reply was filed.



The Association entered appearance through its erstwhile President Shri Shahid Badar, who was the last President of SIMI as no fresh elections of the SIMI had been held. Learned counsel for the SIMI pointed out that in terms of Article 26(c) of the Constitution of SIMI, the term of its President is for one year only but he continues to hold Office till the next President is elected. In these premises, the Association SIMI is being represented through Shri Shahid Badar, the last President of SIMI.

In the written statement/reply filed on behalf of the Association, it has been pleaded that material documents have been deliberately withheld by the Central Government and the background note does not specify the entire material that was placed before the Cabinet Committee for forming opinion under Section 3(1) of the Act. It is submitted that there is complete absence of material to show that the circumstances existed making it necessary for the Central Government to declare the Association unlawful with immediate effect. It is stated that Central Government has acted arbitrarily, with mala fide intentions and for political gains by banning the Association without giving it an opportunity to represent its case. It is pointed out that Notification has been issued mechanically by reiterating the same grounds on which first Notification of 2001 was issued. It is emphasized that the notification has been issued without application of mind, without scrutiny of the

material/documents and it suffers from suppressio veri and suggestio falsi.

It is submitted that the Association was formed on 25.4.1977 as a social, cultural and religious organization for the welfare of all persons in India and it believes in unity of God and human kind. It is stated that the activities of the Association have always been open and lawful and it has undertaken several programmes for providing help to the needy students, career guidance to students and other social events. It is denied that the Association has ever challenged the territorial integrity of India or has done anything to incite communal violence in the country. It is also pleaded that in view of the ban on 27.9.2001, it ceased to exist and as such, had no activities, which could attract the declaration of ban on 26.9.2003. It is stated that under the Act, there is no power with the Central Government to renew a ban and as such, the declaration made by the Central Government is in excess of authority. By referring to the notifications dated 27.9.2001 and 26.9.2003, it is argued that the two notifications are almost identical in language and allegations and as such, have been issued mechanically, without application of mind and without there being sufficient cause to issue the same or enforce it with immediate effect. It is also pleaded that in the past two years, there has been no incident by the Association or its erstwhile members, which may constitute unlawful activity under the provisions of the Act and the

Association is a victim of disinformation campaign by a section of media. Terming the notification mala fide and colourable exercise of powers, it is prayed that the declaration may not be confirmed.

It is also contended that the extension of ban by the notification in question is contrary to the decisions of the Supreme Court in Mohd. Jafar Vs. U.O.I. in 1994 Supplementary (2) SCC P-1 and Jamaat-E-Islami Hind Vs. U.O.I reported in (1995) 1 SCC P-428. It has been emphatically denied that SIMI has been indulging in any activity, which is prejudicial to communal harmony or hurts the religious sentiments of other communities or incites or propagates against territorial integrity of India. It is denied that the "Jehad" has anything to do with the Government established by-law. It is stated that "Jehad" is nothing but a war against evil and it means making of all possible efforts to remove evil from this earth. It is also denied that Association is receiving any financial assistance from any other country or it has any connection with any terrorist organization or outfit. It is asserted that since 27.9.2001, when the first ban came into operation, all the Offices of SIMI are sealed and this Association is not functional at all. It is denied that the Association or its members have ever advocated a right of self-determination in Kashmir or have ever taken any pro-Pakistan stand regarding Kashmir. It is submitted that it has never eugolized or glorified Islamic terrorists and fundamentalists like Osama Bin Laden, Sheikh

Mohd.Yasin or Gulbudin Hikmatyar or has ever used any derogatory language for Hindu Gods and Goddesses. It is denied that SIMI members or activists have been ever arrested with arms and ammunitions or have been involved in any terror related activity. The cases registered against its members are stated to be false. It is denied that the Association is working for an International Islamic order or is in close touch with Muslim militant outfits. It is disputed that SIMI or its activists were involved in bomb blasts in Mumbai.

After hearing learned counsel for the parties, this Tribunal vide orders dated 16.12.2003, decided to hold its sittings in different States so that the evidence produce by the Central Government, State Governments, public witnesses and SIMI may be recorded for forming its opinion under Section 4(3) of the Act. The evidence of the witnesses was to be filed on affidavits and cross-examination of the witnesses was to be permitted, if found necessary.

On 27.12.2003, the Tribunal commenced recording of evidence. Seven witnesses were produced by the Central Government at Hyderabad. PW-1 Shri S.Girdhar, Public Relations Officer, Office of Commissioner of Police, Hyderabad, proved the public notice issued by the State Government in terms of the directions issued by this Tribunal regarding its sittings. The original cuttings of the newspapers in English, Telugu and Urdu were proved as Exhibit P-1 (colly). The affidavit of

this witness is Ex.P-2. PW-2 Mohd. Jameeluddin, Inspector of Police, P.S. Kalapathar, Hyderabad produced his affidavit Ex.P-3 and stated that this affidavit may be read as his examination-in-chief. In his affidavit, he gave details of a criminal case No.51/2001 under Section 153-B IPC read with Section 10/13(1)/3 of the Unlawful Activities (Prevention) Act, 1967 registered on 30.9.2001. Two accused, who were arrested, were found sitting in a room and criticising the Government for banning SIMI. They were supporting Kashmiri militants and condemning the Government for supporting the Americans against Taliban. In the course of their interrogations, these accused gave details of the activities of SIMI and their support to the demand for cession of Kashmir to Pakistan. The office bearers of SIMI were supporting Mujahidins all over the world and creating hatred against Hinduism. From their possession, Constitution of SIMI, unused membership forms of SIMI, subscription forms, receipts of SIMI and various books, posters were recovered, which disclosed the unlawful aims and objects of SIMI. Two audio cassettes were also recovered in which Ilias Khan, regional Secretary of SIMI was making anti-Hindus and anti-India remarks. He was also eugolising Mujahidins, who had died while attacking security forces. He also referred to another case registered under Section 10 read with Section 3 of Unlawful Activities (Prevention) Act, 1967 on 30.9.2001 in which four persons were arrested. They were condemning

the Government for banning the SIMI and were supporting Kashmiri militants' demand for separate Jammu & Kashmir. They were praising Osama Bin Laden. In the course of their interrogations, they admitted that they were active members of SIMI. A poster was recovered from them in which SIMI had declared that there was great danger to Islam and Muslims around the world should resist. He also referred to a case registered on 2.10.2001 in which five accused were arrested and it was found that one of them was condemning the Government and supporting Jammu & Kashmir militants as well as Osama Bin Laden. Some literature also was recovered from them which reflected their will to globalize Islam. This witness also referred to a criminal case No.55/2001 registered on the intervening night of 2<sup>nd</sup> & 3<sup>rd</sup> October, 2001 in which one person named Mohammad Abdul Quddus was arrested. In the course of his interrogations, he confessed that he was propagating ideology of SIMI, which advocated "Jehad" as well as "Shahadat" and called Hindus as "Kafirs". SIMI also advocated cession of Kashmir to Pakistan and they supported Osama Bin Laden. He gave the names of some office bearers of SIMI, who were proposing training to Muslim youth at Militant Camps. Some literature was recovered from him also. He proved on record documents Ex. P-4 (colly), which were true and correct copies of the original official documents and included English translations of those documents, which were in vernacular. He also

added that he was dealing with SIMI activists in the State of Andhra Pradesh and had found that the office bearers and members of SIMI were misguiding and misleading Muslim youth by telling them that "Jehad" was their path and "Shahadat" was their desire. They have been telling these youths that Kashmir is not a part of India and Muslim terrorists in the State of Jammu & Kashmir are not militants but freedom fighters called "Jehadis". He also stated that SIMI activists and office bearers do not believe in secularism and democracy and they propagate global Islamization. They call upon their workers to make efforts to convert Hindus into Muslims and call Hindus "Kafirs". They also tell their workers that if a "Kafir" is killed, they will attain heaven. They do not believe in Hindu "Devi Devatas" and condemn Hinduism. It leads to communal disharmony and tension. According to him, they do all this with a view to destroy secularism in India. In his cross-examination by counsel for SIMI, he denied that the accused in case FIR No.115/2003 at P.S. Kalapathar had no links with SIMI. He also denied that this case was falsely registered with a view to provide material to the Government for banning SIMI. It is noteworthy that except putting two suggestions, which were denied, no other question was put to this witness.

PW-3 Shri B.Prakash, Inspector of Police, P.S. Narsapur, Hyderabad also proved on record his affidavit Ex.P-5 in which he had stated that his predecessor had registered criminal case No.81/2001 under

Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 on 2.10.2001. He had conducted raid in which he found five accused in a meeting propagating the ideology of SIMI among Muslim youth for raising funds for the activities of SIMI and achieving their goal of establishing Islamic rule in India. He had seized SIMI literature and one volunteer entry card in the name of Mohammad Aziz. He added that the accused against whom cases have been registered at Narsapur are SIMI activists. He also corroborated PW-2 to say that the SIMI members and activists do not believe in the Constitution of India and say that Kashmir is not a part of India and the Muslim activists in the State of Jammu & Kashmir are not militants but freedom fighters called "Jehadis". He also added that in spite of ban, the SIMI activists are carrying out their activities surreptitiously and in case this Organization had not been banned, its members would have destroyed the country by spreading communal disharmony and tension. In his cross-examination, he admitted that in Narsapur, only one FIR had been registered on 3.10.2001 and no FIR had been registered thereafter under the said Act. He stated that they were keeping strict surveillance to prevent such crimes. He mentioned names of so many persons in Narsapur, who were working for this Organization and were accused in the aforesaid FIR. Some of the SIMI activists had gone underground also. According to him, the accused in the FIR, had confessed that they were the members of SIMI.



PW-4 Shri M.Venkata Swamy, Circle Inspector, P.S.Haliya, A.P. proved his affidavit and documents on record and stated that the FIR under the Act had been registered on 29.9.2001. No FIR had been registered thereafter. PW-5 Shri D.Surya Prakash, Inspector of Police, P.S. Chandraghat, Andhra Pradesh, proved his affidavit and documents and stated that the activities of SIMI were continuing and had this Association not been banned, it would have created havoc in the country. He stated in his affidavit that SIMI activists believe in Islamic fundamentalism and they are working for an international Islamic order. He also stated that they promote communal hatred through their speeches and posters. He admitted that after the FIR No.284/2001 registered under Section 10 of the Act, no fresh case had been registered. PW-6 Shri Ravindra Naik, D.S.P., General Offences Wing of CID, Hyderabad proved his affidavit and documents and stated that the accused whose names were mentioned in Ex.P-12, were members of SIMI as well as an Organization known as "Indian Muslim Mohammad Mujahidin", which was having links with ISI of Pakistan. He stated that SIMI had organized a conference at Aurangabad between 5<sup>th</sup> and 7<sup>th</sup> September, 1999, which was attended by the aforesaid accused and thereafter only, they had started indulging in serious offences including Section 153-A of IPC. They were indulging in offences of murder, planting of bombs, lootings etc. in predominantly Hindu inhabited areas as well as areas of

public importance with a view to create communal disturbances. According to him, the case registered vide FIR No.39/2000 was still pending. In his affidavit, he gave details of various cases registered against SIMI activists, which were pending trial. In his cross-examination, he admitted that the said case was relating to offences committed prior to 26.9.2001 and after that date, no case had been registered. PW-7 Shri T.Raghupati Gaud, Inspector of Police, P.S. Mir Chowk, Hyderabad, also proved on record his affidavit and the documents. In his cross-examination, a suggestion was given to him that except persons mentioned at S.No.1 to 3, others were not members of SIMI and even persons mentioned at S.No.1 to 3 were only past members of SIMI. After the close of evidence at Hyderabad by the Central Government, learned counsel for SIMI also stated that he did not wish to produce any witness at Hyderabad. No public witness came forward to make any statement.

In the State of Maharashtra, PW-8 Shri Gansyamsingh T.Padwal, Inspector of Police, P.S.Kurla, Mumbai, proved his affidavit Ex.P-16 and stated that it may be read as his examination-in-chief. In his affidavit, he gave details of the activities of SIMI and stated that they propagate "Jehad" and spread hatred between Hindus and Muslims to damage secular fabric of society. He also stated that activities of SIMI are under control because of the ban and the regular surveillance kept

over them. He also proved on record documents Ex.P-17 (colly), which were true copies of the official documents. He also placed on record the translations of those documents, which were in vernacular. He deposed about a photograph on page 29 of Ex.P-17, which was attached with the challan of FIR No.1841/2001, registered at P.S.Kurla in which the SIMI activists were shown to be holding a meeting. He also proved his affidavit P-18 and documents P-19 and stated that in the course of investigation of the cases against SIMI, he had found that their main object is not to abide by the Constitution of India and the laws of India and globalize Islamization. They also try to create communal tension and proclaim that Kashmir is not a part of India. He stated that had there been no surveillance, they would have created more problems in the State. In his cross-examination, he stated that even after declaration of SIMI as an unlawful Association and arrest of some of its office bearers/members, the SIMI activities have been going on. He added that when the SIMI activists, who were arrested on 27<sup>th</sup> & 28<sup>th</sup> September, 2001, came out of the Court, they raised anti-India slogans and eugolized Osama Bin Laden.

PW-9 Shri Shrikant K.Ramdas, Sub-Inspector of Police, Detection Crime Branch, CID, Unit-VI, Mumbai, proved his affidavit Ex.P-23 and the documents P-24 (colly) and stated that he was one of the Investigating Officers in the three bomb blast cases which took place in

Mumbai on 6.12.2002, 28.1.2003 and 13.3.2003. He stated that most of the accused involved in these case were active members of SIMI. In para 3 of the affidavit, he gave the names of those SIMI activists, who were prime accused in the three bomb blast cases. The first bomb blast took place in McDonald restaurant near Mumbai Central Railway Station on 6.12.2002 in which 25 persons sustained injuries and property worth lacs of rupees was destroyed. The second bomb blast took place on 28.1.2003 at Mongibai Sabzi Market, Ville Parle, Mumbai in which one lady died and 32 persons sustained injuries. The third bomb blast took place on 13<sup>th</sup> March, 2003 in a sub-urban local train at Murund Railway Station, Mumbai in which 11 persons died and 82 suffered injuries. There was substantial damage to public property also. He stated that in the course of investigations, it was found that all these three bomb blasts were in pursuance of one criminal conspiracy and out of 16 accused, six were found to be having connections with SIMI. One accused C.A.M.Basheer, who was declared a Proclaimed Offender, was from Kerala and was having links with SIMI. C.A.M.Basheer was All India President of SIMI and accused Saquib Abdul Hamid Nachan was All India General Secretary of SIMI. He also gave names of other accused, who were found to be members of SIMI. He added that a telephonic conversation between C.A.M.Basheer and Saquib Abdul Hamid Nachan disclosed that accused Nachan had given shelter to a Pakistani terrorist

named Faizal Khan of Lashkar-E-Toeba. Said Faizal Khan was later killed in a Police operation at Goregaon, Mumbai. The accused, who were SIMI activists, had a meeting with Faizal Khan at Pune before these bomb blasts in which they decided to give training to Muslim youth for carrying out "Jihad". Thereafter, they had actually given training to some Muslim youth regarding use of weapons at Mohali Hills as well as Karvi Hills in District Thane, Mumbai. This witness stated that large quantities of arms and ammunition, live hand grenades, hand bomb shells and hazardous chemicals required for manufacturing bombs were recovered. Three of the accused whose names were given by him, gave confessions also which were recorded by a designated Officer under Section 32 of the Prevention of Terrorism Act, in which they admitted that they were SIMI activists and were involved in aforesaid bomb blasts. According to this witness, the aforesaid SIMI activists were having inter-State connections with other SIMI activists and were having links with Lashkar-E-Toeba also, which is a Pakistan based terrorist Organization. Accused Noor Abdul Malik Ansari had undergone three months' training given by Lashkar-E-Toeba at Pakistan. He also stated that in the meeting held at Pune with Faizal Khan, the aforesaid accused had hatched a conspiracy to eliminate some Hindu leaders. It was also found that accused Saquib Abdul Hamid Nachan had already been convicted in a TADA case and was awarded 10 years' sentence but after his release, he

came back to Maharashtra and got involved in unlawful activities. This witness stated that a diary was recovered from deceased terrorist Faizal Khan in which it was stated that the aforesaid accused had been paid by him and it contained accounts also of money disbursed by the terrorist Faizal Khan. This witness stated that their investigations had revealed that SIMI activists were creating havoc and tension in India and they wanted Muslim youth to carry out "Jehad". They also propagate that those Muslims, who killed non-Muslims, go to heaven. They also declare that Kashmir is not a part of India. He also added that had there been no ban on SIMI, its members would have indulged in more criminal activities and created havoc in the country. In his cross-examination, he stated that only after the arrest of the accused in the third bomb blast, their investigations revealed that the aforesaid 16 accused were involved in the earlier two bomb blasts also and there was a common conspiracy for all the three bomb blasts. It was at this stage, that they found that the above mentioned six accused were SIMI activists. He admitted that they do not have complete list/details of SIMI members/activists. He denied that the aforesaid six accused had been falsely implicated in the bomb blast cases. He denied that he was making a false statement against SIMI and its members/activists.

PW-10 Shri Raghunath T.Chalke, S.I., P.S. Park Side,  
Mumbai, PW-11 Shri Rashid B.Sheikh, S.I., P.S. Dharavi, Mumbai and

PW-12 Shri Waman Mahaduji Turukmane, Under Secretary to Government of Maharashtra, Home Department, Mantralaya, Mumbai also proved their affidavits on record and the documents attached with the affidavits.

PW-13 Shri Pardeep B.Sawant, Dy. Commissioner of Police, CID, Mumbai proved his affidavit Ex.P-31 and stated that he was well aware of the activities of SIMI. In his affidavit, he stated that he was controlling and supervising various Officers dealing with communal affairs in Mumbai and as such, was well acquainted with the cases relating to SIMI. He gave details of those FIRs, which were registered against SIMI office bearers or activists after the imposition of first ban on 27.9.2001 to show that even after ban, the SIMI activists were trying to spread communal unrest and wage Islamic struggle from Ayodhya to Jerusalem. Some of the accused were found in possession of provocative pamphlets/books belonging to SIMI Organization and eugolising Osama Bin Laden. He referred to the three bomb blast cases and the involvement of SIMI members therein. He stated that in the course of investigations, it was found that the accused, who were SIMI members, were in touch with Pakistani based military Organizations such as Lashkar-E-Toeba. They were getting funds from illegal sources and propagating hatred between Hindus and Muslims. He also stated that their aim was to globalize Islam. In the course of the investigations of

bomb blast cases, they had found that the activities of SIMI were still going on. He added that after September, 2001, there have been cases against SIMI member/activists, which were mentioned in para 2 of his affidavit.

PW-14 Shri Arun Prabhakar Borude, Inspector of Police, Crime Branch, Mumbai, proved his affidavit and documents. He also stated that he was the Investigating Officer of CR.No.156/2002 registered with DCB, CID, Mumbai in connection with bomb blast in a Bus on 2.12.2002 near Ghatkopar Railway Station, Mumbai. In this bomb blast, two persons had died and 49 were seriously injured. Public property was also destroyed. In the course of investigations, 19 persons were arrested against whom a challan was filed in a POTA Court. Investigations disclosed that 11 out of 19 accused were SIMI members or having connections with SIMI and they were involved in the earlier three bomb blast cases, which had taken place in Mumbai. These accused were having links with Lashkar-E-Toeba, a Pakistani terrorist outfit as well as Muslim Defence Force, which was having its roots in Madras. He added that Muslim Defence Force was being funded by Abu Hamza, who was staying at Saudi Arabia and was wanted in Ghatkopar bomb blast case. He was, at present, Chairman of Lashkar-E-Toeba in Saudi Arabia. He stated that in the course of his confession, one accused Imran Rehman Khan had admitted that he was a member of Lashkar-E-Toeba. This



confession was recorded by a designated Officer under Section 32 of Prevention of Terrorism Act. This witness went on to say that from the custody of an accused Sheikh Mohammad Muzzammi Jameel Ahmed, 30 CDs were recovered, which contained an appeal by Maulana Azhar, a terrorist, who was involved in the hijacking of IC-814 from Nepal to Kandhahar and later released by the Government of India. These CDs contained the clippings of Godhara riots in Gujarat and interviews of victims, demolition of Babri Masjid and a Mosque in Palestine and 52 photographs of different Hindu Shrines. It contained an Al-Qaeda manual of a terrorist outfit run by Osama Bin Laden. He stated that SIMI was being funded by Abu Hamza, a terrorist, based in Saudi Arabia. According to him, prior to Ghatkopar bomb blast, 11 accused connected with SIMI were under their surveillance but still they managed to commit the aforesaid bomb blast. Out of these, 10 accused are absconding and steps are being taken to declare them Proclaimed Offenders. In his cross-examination by learned counsel for the SIMI, he stated that he could not tell the number of Officers, who were keeping surveillance over SIMI activists as this information could not be disclosed in public interest. The CDs seized by him did not contain the names of SIMI but it could be linked with SIMI because these were being viewed and used by SIMI members. Al-Qaeda literature also did not contain any stamp of SIMI.

PW-15 Shri Kishore Bhivsenrao Baviskar, Inspector of Police, Andheri Police Station, Mumbai, PW-16 Shri Ramesh Narayan Chaudhary, Asstt. Police Inspector, P.S. Andheri, Mumbai, PW-17 Shri Suhas P.Kamble, Sub-Inspector of Police, P.S. Bhandup, Mumbai and PW-18 Shri Vijay Shankarrao Dalvi, Inspector of Police, PCB, CID, Mumbai placed on record their affidavits along with documents. They also corroborated other Police Officers regarding activities of SIMI activists. They denied the suggestions given by learned counsel for SIMI that they were deposing falsely only with a view to support the ban on SIMI imposed by Central Government. After the evidence was closed at Mumbai by the Central Government, learned counsel for SIMI stated that he did not wish to produce any defence witness at Mumbai. No public witness came forward to make a statement in spite of public notices issued.

In the sitting held at Trivendram, Kerala, PWs-19 & 20 were produced by the Central Government. PW-19 Shri Rajesh Dewan, IPS, DIG of Police, CBCID, Ernakulam, proved on record his affidavits Ex.P-42 and P-44 and stated that these may be read as his examination-in-chief. He also placed on record the documents Ex.P-43 (colly) and a list of the cases registered against SIMI activists after the imposition of ban. The list is Ex.P-45. His affidavit Ex.P-42 is in regard to the issuance of public notice and the affidavit Ex.P-44 in regard to the cases registered

against SIMI activists in the State of Kerala after the ban imposed on 27.9.2001. The list Ex.P-45 gives the names and addresses of the accused and the status thereof. In his cross-examination, he admitted that some of the cases mentioned in Ex.P-45 have ended in acquittal and some are still at the stage of trial. He stated that in some of those case, SIMI had been specifically referred to. PW-20 I.P.Velappan Nair, Superintendent of Police (Intelligence), CID, Ernakulam, Kerala proved his affidavit Ex.P-46. He also proved on record the photocopy of a leaflet published by "Muslim Ikya Samithi", an Organization which was a group formed by some of the SIMI activists. Ex.P-47 is a photocopy, P-48, a true translation thereof and P-49, a photocopy of the report published in "Hindu" on 3.9.2003. In this leaflet, the "Muslim Hindi Forum" (Muslim Ikya Samithi) had called upon the Muslims to stand against Shiv Sena, Vishwa Hindu Parishad terrorists. By referring to Godhara incident, Gujarat riots, Babri Masjid, Bombay riots and some other incidents, a message was sought to be conveyed to the Muslims that with the support of the Government and Prime Minister, criminals were coming to behead the Muslims and they do not understand the language of peace and compassion and only strong retaliation could make them understand. In the newspaper "The Hindu" dated 3.9.2003, a report was published, a copy of which is Ex.P-49. It also stated that SIMI activists were re-grouping in the State of Kerala and a former President

of SIMI was a prime suspect in the bomb blasts in Mumbai. In the cross-examination of this witness, it came out that his affidavit was based on information received from the Police sources as well as Intelligence Agencies and the SIMI activists had started working under different banners. No witness was produced by SIMI at Trivendrum also. No public witness came forward.

At the sitting of the Tribunal at Bhopal, Madhya Pradesh, PW-21 Shri Dashrath Kumar, Under Secretary, Home Department, Government of Madhya Pradesh, Bhopal, PW-22 Shri Laxmi Narayan Kataria, D.S.P., Khandwa, M.P., PW-23 Shri Jitender Dwivedi, S.D.O.P., Shahjapur, M.P., PW-24 Shri Gajendra Singh Jadon, D.S.P., P.S. Guna, M.P., PW-25 Shri T.S.Nagraj, S.D.P.O., Sheopur, M.P., PW-26 Shri N.P.Barkhade, Additional S.P., Neemach, PW-27 Shri Rajiv Mishra, City Superintendent of Police, Brahampur, M.P., PW-28 Shri I.B.Singh, D.S.P., Jabalpur, M.P., PW-29 Shri Santosh Pathak, S.D.P.O., Seoni, M.P., PW-30 Shri Avinash Singh, Deputy Superintendent of Police, Distt. Special Branch, Bhopal, PW-31 Shri Ravi Shankar Shukla, D.S.P., Indore, M.P., PW-32 Shri Manoj Kumar Srivastava, D.S.P., Ujjain, M.P. and PW-33 Shri Aditya Dubey, Asstt. Inspector General of Police, Bhopal were examined by the Central Government. They proved their affidavits as well as documents.

PW-22 Shri Laxmi Narayan Kataria, D.S.P., Khandwa, M.P.

placed on record his affidavit Ex.P-52 and the documents Ex.P-53 (colly). In his affidavit Ex.P-52, he stated that in spite of strict surveillance, the SIMI activists were still indulging in their activities secretly. According to him, SIMI activists have no faith in the Constitution of India and they intend to establish Islamic rule in the country as well as world. They also try to disturb communal harmony and creat communal tension and keep close contacts with terrorists. They believe in "Jehad" and call non-Muslims "Kafirs". They also support terrorism in Jammu & Kashmir by saying that the same is a freedom movement. He gave details of four cases registered against SIMI activists under Unlawful Activities (Prevention) Act, 1967. In his cross-examination, he stated that his affidavit is based on personal knowledge as well as documents, which had been brought to his notice. He had obtained information from intelligence sources that SIMI was having close connections with terrorist groups and the FIRs referred to in his affidavit were against those SIMI members who were having connections with terrorists.

PW-23 Shri Jitender Dwivedi proved his affidavit Ex.P-54 and the documents Ex.P-55 (colly). In his affidavit, he gave details of some cases registered against SIMI activists and stated that in spite of strict surveillance, SIMI activists were still continuing with anti-national

activities. In his cross-examination, he stated that through the records of the cases referred in his affidavit, he came to know that the accused involved therein were SIMI activists. He had not seen any document to show that the accused mentioned in the FIRs were members of SIMI. They had not been able to trace out the printers or the publishers of the pamphlets referred to in the documents filed by him. PW-24 Shri Gajendra Singh Jadon, D.S.P. proved his affidavit Ex.P-56 and documents Ex.P-57 (colly). He gave details of some cases registered against SIMI activists in District Guna, M.P. These cases were under Section 108 of Cr.PC. One of these cases was against accused Abdul Farid Khan. The allegations against him were that on 11.12.2001, he was found spreading communal hatred and was having connections with SIMI. Copies of the statements of the witnesses are found in Ex.P-57 (colly) at pages 295 to page 301. In his cross-examination, he stated that the confessions made by the accused in regard to their connections with SIMI had come to his notice through the documents as well as briefings given by the Investigating Officers.

PW-28 Shri I.B.Singh, Dy.Superintendent of Police, proved his affidavits as Ex.P-64 in which he had given details of the aims and objects of SIMI as well as the details of the cases registered against SIMI activists on 30.9.2001 and 1.10.2001. He also gave details of the literature and material seized from the accused, which included SIMI

literature as well as a photocopy in which Babri Masjid structure was shown to be shedding tears. There was a Chechnya poster also as well as an audio cassette in which SIMI activists were delivering inflammatory speeches. From Page 645 to page 825 is Exhibit P-65 (colly) containing copies of the magazines and other literature issued by SIMI in which anti-India and anti-Russia comments are contained with criticism of idol worship. He deposed in regard to certain pamphlets and admitted in his cross-examination that they had not succeeded in tracing out the printers/publishers of the said pamphlets. He denied that he was making a false statement. PW-29 Shri Santosh Pathak, S.D.O.P. proved his affidavit Ex.P-66 and the documents Ex.P-67 (colly). In his affidavit Ex.P-66, he stated that SIMI members/activists believe in "Jehad" and treat non-Muslims as "Kafirs". They do not believe in the Constitution of India and oppose idol worship. He also stated that in spite of strict surveillance and ban, SIMI activists were continuing with their activities secretly. In his cross-examination, he stated that on the basis of intelligence reports, documents recovered from the accused and confessions made by them, it was clear that the accused were having connections with SIMI. He stated that the activities of SIMI were quite secret and clandestine and as such, no list of its members was available.

PW-30 Shri Avinash Singh, D.S.P., proved his affidavit Ex.P-68 and the documents Ex.P-69 (colly). In his affidavit Ex.P-68, he



not only corroborated other witnesses regarding the aims and objects of SIMI, but also gave details of the cases registered against SIMI activists. In his cross-examination, he stated that since he is working as Deputy Superintendent of Police in Special Branch, Bhopal, he has personal knowledge about SIMI activists and he knows the names of most of them. He stated that he is in a position to identify also most of them as he is continuously monitoring them. He admitted that at present, SIMI has no office in Bhopal but before the imposition of ban, they had an office in Bhopal. PW-31 Shri Ravi Shankar Shukla, D.S.P., proved his affidavit P-70 and the documents Ex.P-71 (colly). In his affidavit, he also stated that SIMI activists are still active in spite of ban. He also deposed about their aims and objects and stated that they have no faith in the Constitution of India. They are also propagating "Jehad". He gave details of various cases registered against SIMI activists in District Indore. Some of these cases were registered on 6.10.2001, 18.10.2001 which shows that even after imposition of ban, the SIMI activists were continuing with unlawful activities. He placed on record copies of certain pamphlets also in Ex.P-71 (colly) issued by SIMI, which condemned demolition of Babri Masjid and proclaimed that Muslims were being subjected to various atrocities. The pamphlets on page 1071 of Ex.P-71 (colly) eugolized "Talibans". In his cross-examination, he stated that they could not recover any list of SIMI activists/members. He

denied that his affidavit is false. PW-32 Shri Manoj Kumar Srivastava, D.S.P., proved his affidavit Ex.P-72 and the documents Ex.P-73 (colly). In his cross-examination, he stated that on the basis of the records, he has stated that the accused mentioned in his affidavit were connected with SIML.

PW-33 Shri Aditya Dubey, Asstt. Inspector General of Police, proved his affidavit Ex.P-74 and a list of cases Ex.P-75 registered in the State of Madhya Pradesh against SIMI activists/members after the imposition of ban on 27.9.2001. In his affidavit, he deposed that SIMI activists do not believe in the Constitution of India and want to rule the country according to Islam. They do not consider Kashmir to be a part of India. They do not believe in idol worship and they try to create hatred between different religious groups. He also stated that the people were by and large afraid of them and reluctant to come forward and depose against them. According to him, actions of SIMI are a threat to national integrity and communal harmony of the country. He also stated that the SIMI activists were somewhat under control because of the ban and continuous surveillance but still, they were conducting their activities in a clandestine manner. He also stated that they were trying to re-group themselves under different names, one of which was "Tehrique-Khilafat". Ex.P-75 contains a list of 48 cases registered against SIMI activists under the Unlawful Activities (Prevention) Act, 1967 after the

imposition of ban on SIMI. In his cross-examination, he stated that he had information about some persons, who were controlling/running "Tehrique-Khilafat" but in public interest, he was not willing to disclose their names. In the list Exhibit P-75 filed by him, there was one FIR registered in January, 2003 and the cases mentioned therein were the only cases registered in the state of Madhya Pradesh after the imposition of first ban on SIMI. He also stated that the cases against SIMI activists were registered only after satisfaction that they were SIMI activists.

No witness was produced by SIMI at Bhopal also, nor anybody from public came forward to make a statement.

Another sitting of the Tribunal was held at Pune, Maharashtra, for recording the statements of the witnesses from the State of Maharashtra. PW-34 Dr.Dhyaneshwar Sadashiv Chavan, Assistant Commissioner of Police, Crime Branch and Sepcial Branch, Aurangabad, Maharashtra proved his affidavit Ex.P-76 and the documents Ex.P-77. He also tendered in evidence the affidavit Ex.P-77 of Shri Vikram, Inspector of Police, P.S. City Chowk, Aurangabad and Ex.P-79 of Mr.Ambadas B.Pote, Assstt. Commissioner of Police, Mumbai. He also placed on record the documents Exs.P-78 and P-80(colly). In Ex.P-76, P-77 and P-79, the three Police Officers have given details of the cases registered against SIMI activists after imposition of ban. They also stated about the activities of SIMI members, who were trying to create hatred

between Hindus and Muslims and create law and order problems. The CR.No.153/2002 registered at Jinsi P.S. was under Sections 153-A, 120-B IPC read with Section 10 of the Unlawful Activities (Prevention) Act, 1967. This case was merged with CR.No.156/2002, which was in connection with a bomb blast on 2.12.2002 in which two persons were killed and 49 persons were injured. On 27.12.2002, accused Dr.Mohammed Abdul Matin Abdul Basit was arrested. POTA was invoked. In the course of interrogations, he disclosed that he was a partner of M/s. Pragma Soft Technologies, Aurangabad and he and his partners were running this Company for SIMI activists. The office of M/s.Pragma Soft Technologies was raided on 28.12.2002. Computer sets, CDs, floppies, hard disks, photographs etc. were recovered, which revealed pictures of Godhara incident/riots and included appeal to Muslims to come together and declare "Jehad" against Hindus and India. The accused arrested in this case were activists of SIMI, who were advocating Islamic fundamentalism and creating hatred between Hindus and Muslims. The details of the articles seized from M/s. Pragma Soft Technologies are contained in Panchnama, which is on page 141 of Ex.P-80 (colly). Floppy No.12, which was recovered, contained scenes of the blowing of World Trade Centre at U.S.A. and out of 30 CDs, CDs No.22, 23 and 24 contained material for creating hatred in the minds of Muslim youth against Hindus. In his cross-examination by learned counsel for

the SIMI, he stated that prior to imposition of ban in the year 2001, SIMI was having its office at Murmura Masjid, Chilipura, Aurangabad. They had no official list of SIMI members. The cases registered at P.S. Aurangabad were still pending. He had no document in regard to the illegal transfer of funds to SIMI but this information was received by him through sources and interrogations of the accused. He denied that he was deposing falsely.

PW-35 Shri S.S.Deshmukh, Inspector of Police, Crime Branch, Amrawati, Maharashtra proved his affidavit Ex.P-81 and the documents Ex.P-82 (colly). In his affidavit, he stated that after the ban imposed on 27.9.2001, they had asked their staffers to keep secret watch on the activities of the accused Mujahid Sadiqui and Anish Ahmed Shafiullah Khan, both of whom were active members of SIMI. The reports came that they were still creating communal disharmony. Cases were registered against them. Newspaper articles supporting Osama Bin Laden as well as SIMI were published in an Urdu daily newspaper and accordingly, the printer and publisher thereof were challaned. He added that SIMI activists propagated self determination in Punjab and Kashmir and they also propagated "Jehad". In his cross-examination, he stated that by right of self-determination as mentioned in his affidavit, he meant that SIMI activists do not consider Kashmir as part of India. In answer to a question by learned counsel for SIMI, he stated that SIMI activists

propagate break up of Kashmir from India and in that sense, they use the word "self-determination" or "secession". He denied the suggestion that he was deposing falsely with a view to support the Central Government. No other question was put to him. PW-36 Shri Motilal Nagesh Chavan, Asstt. Inspector of Police, Special Branch-I, CID, Sholapur City, Maharashtra proved his own affidavit Ex.P-83 and the affidavits Ex.P-84, P-86, P-88, P-90, P-92, P-94 of other Police Officers, who were his colleagues. He identified the signatures of those Officers on their respective affidavits. He also proved on record the true copies of the documents attached with those affidavits. In these affidavits, details of the cases registered under Unlawful Activities (Prevention) Act, 1967 after 27.9.2001, were given. PW-36 specifically stated that the SIMI activists keep close touch with different militant Organizations and obtain funds also from illegal sources. In his cross-examination, he stated that he was not an Investigating Officer in any of the cases against SIMI activists as he was a Nodal Officer only. He had not maintained any record of the SIMI activists/members in his area. He denied that he was deposing falsely with a view to support Central Government.

PW-37 Shri Achyut Shamrao Pawal, Superintendent of Police, Camp Division, Malegaon, Nasik, Maharashtra proved his own affidavit Ex.P-100 and the affidavits Ex.P-101, P-102, P-105, P-107, P-109, P-111 and P-112, which were signed and verified by his colleagues.

He identified their signatures on their respective affidavits. He also proved on record the documents attached with affidavits, which were true copies of the official documents. This witness was controlling and supervising the communal affairs in Malegaon City. He stated that after imposition of ban, several cases were registered against the activists of SIMI and gave details thereof. He also stated that because of the control and regular surveillance, the activities of SIMI were comparatively under control but added that SIMI activists were still in touch with different militant Organizations and were propagating right of self determination in Punjab and Kashmir. In his cross-examination, he stated that SIMI had no office in the area of P.S. Malegaon but added that after the imposition of ban, SIMI activists had gone underground. He admitted that along with this affidavit, copies of seized posters had not been filed. Learned Additional Solicitor General, however, pointed out that the copies of these posters were produced before the Tribunal in the first Inquiry and the same have been produced with the charge sheet. He denied that he was deposing falsely with a view to support Central Government. PW-38 Shri Devidas Gajanan Kale, Asstt. Police Inspector, P.S. Bhingar Camp, Ahmed Nagar, Maharashtra proved his affidavit Ex.P-115 and the documents Ex.P-116(colly). In his affidavit, he also gave details of the activities of SIMI. In his cross-examination, he stated that he had never seen the list of members of SIMI and he did

not know as to whether there was or not any office of SIMI in Ahmed Nagar prior to the imposition of ban. PW-39 Shri Tejbahadur, Sub-Divisional Police Officer, Chalisgaon, Dist. Jalgaon, Maharashtra proved his own affidavit Ex.P-117 and the affidavits of his colleagues Exhibits P-118, P-120, P-122, P-125, P-127 and P-129. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In all these affidavits, the Police Officers have deposed about the cases against SIMI activists and their continuing unlawful activities. They have also stated that had the ban not been there, the SIMI activists would have created more problems in country. In his cross-examination, he stated that he had a list of activists of SIMI and he knew them also. He had, however, not filed that list before the Tribunal. He denied that he was deposing falsely with a view to support Central Government. PW-40 Shri Chhagan, Inspector of Police, P.S. Shirpur, Maharashtra proved his affidavit Ex.P-131 in which, he referred to CR.NO.103/2001 under Unlawful Activities (Prevention) Act, 1967 registered on 28<sup>th</sup> September, 2001 with Shirpur Police Station. In the said case, two receipts of the Maharashtra Zone of SIMI from the personal search of the accused Sheikh Rafik Shaikh Rashid and one post card with a remark of SIMI and agenda of SIMI written in Urdu from the personal search of accused Abdul Kayyum Husein Shah, were recovered. The case was still pending. However, the receipts recovered from the



accused were of the year 1997 and September, 2000, i.e., before the imposition of ban. He stated that he had never come across a list maintained by SIMI regarding its members.

PW-41 Shri Dattatreya, Asstt. Commissioner of Police, Crime Branch, Sholapur City, Maharashtra proved his affidavit Ex.P-133 and P-134 and the documents Ex.P-135 (colly) and P-136(colly). In his affidavit Ex.P-133, he had stated that a case under Section 4,5 & 6 of the Explosives Act, 1908 was registered at Solapur City on 8.8.2003 and on 18.8.2003, Sections 3,4, & 5 of POTA were also added. He gave details of the case as to how three accused were found designing "Sutli Bombs" and were found in possession of 8 "Sutli Bombs" and material for manufacturing bombs. He also gave details of case CR.NO.3142/2003 under different Sections of the Explosive Substances Act, 1908 and stated that on 14.8.2003, from the house of accused Anwar Hussain Gulab Hussain Sheikh, one "Aawaan form" was seized, which contained a pledge of SIMI Organization. The accused made confessions under Section 32 of Prevention of Terrorism Act, 2002 and admitted that they were SIMI activists and their ultimate aim was spread of terrorism. CDs were also recovered containing provocative speeches of Maulana Azhar Masood, the terrorist leader of Jaish-E-Mohammed. When it was clear that these persons were SIMI activists, Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 were also added. In his

cross-examination, he stated that he was the Investigating Officer in CR.No.3142/2003 and had found that the accused involved in this case were SIMI activists. He added that they had seized membership forms of accused Ibrahim Momin in regard to his admission to SIMI, which was on page 57 of Ex.P-135. It contained the name and address of accused Mohammad Ibrahim Momin and contained his signatures on the pledge to join SIMI. He admitted that this document was not bearing the signatures of the President or any office bearer of SIMI. He, however, added that this form was seized by them from the house of main accused Anwar Hussain Sheikh.

PW-42 Shri Uttam, Inspector of Police, Vigilance Cell, Cast Certificate Verification, Arurangabad, Maharashtra proved his affidavit Ex.P-137 and the documents Ex.P-138. He was a Police Inspector attached with Ambajogai Police Station, Maharashtra and was Investigating Officer in CR.No.71/2001 under Section 10 of the Unlawful Activities (Prevention) Act, 1967 registered on 28.9.2001. He admitted in his cross-examination that after September, 2003, no fresh case had been registered against any SIMI activist but stated that SIMI activists were indulging in their activities secretly and people were afraid of them. He also stated that the earlier cases registered against the accused were still pending and no trial had so far ended in conviction.

PW-43 S. [redacted] hesh, Sub-Divisional Police Officer, Nanded (Rural), Distt. Nanded, Maharashtra proved on record his affidavit Ex.P-139 and the affidavits of his colleagues Exhibits P-140, P-142 and P-144. He identified the signatures on their respective affidavits as he had seen them signing many times. He also placed on record the documents attached with the affidavits. In his affidavit Ex.P-139, this witness gave details of the cases registered after the imposition of first ban on SIMI and stated that SIMI activists were still continuing with illegal activities secretly. In his cross-examination, he stated that he had not read the Constitution of SIMI as they had none. He also admitted that no case had been registered after September, 2003 against any SIMI activist. He, however, added that they were under control because of surveillance.

PW-44 Shri Gangadhar, Police Inspector, Distt. Spl.Branch, Maharashtra, proved his own affidavit Ex.P-146 and the affidavits of his colleagues Exhibits P-147 & P-149. In his affidavit, he also stated that SIMI activists were still indulging in unlawful activities and were operating secretly. In his cross-examination, he admitted that no case had been registered against SIMI activists after September, 2003 and added that they were indulging in their activities secretly. He stated that the cases mentioned in his affidavit were still pending trial.

PW-45 Shri Kashinath Laxmanrao Marwalikar, S.D.P.O. of Police, Basmat Division, Distt. Hingoli, Maharashtra placed on record his own affidavit Ex.P-151

and the affidavit of his colleague Ex.P-157. In these affidavits, it was stated that SIMI activists were still indulging in unlawful activities. However, in his cross-examination, this witness stated that no case had been registered against any SIMI activist after September, 2003.

PW-46 Shri Nitin Prabhakar Lohar, Sub-Divisional Police Officer, City Division Akola, Maharashtra, proved his affidavit Ex.P-154 and the affidavits of his colleagues Exhibits P-155, P-157, P-158, P-159, P-163 & P-165. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In all these affidavits, PW-46 and his colleagues had given details of the cases registered against different accused after the imposition of first ban on SIMI on 27<sup>th</sup> September, 2001. PW-46 specifically referred to an accused Amin Rana, who was arrested in Crime No.3177/2001 dated 17.12.2001 and stated that he was an active member of SIMI and has assaulted two Hindus saying that call for "Jehad" was being given and had been making provocative speeches, which were capable of breaking riots between Hindus and Muslims. The criminal case was still pending against him. PW-46 gave details of some more cases in which SIMI activists were involved. He also stated that these SIMI activists propagate self determination in Punjab and Kashmir and advocate Pan Islamic Fundamentalism. He also stated that they were obtaining funds from illegal sources and were in close touch with different militant

organizations. It is worth mentioning that hardly any cross-examination was carried out to show that he was deposing falsely. A bald suggestion was given to him that he was deposing falsely with a view to support the Central Government. The only other question put to him was that no case had been registered against SIMI activists after September, 2003. PW-47 Shri Martand Nanarao Patil, Inspector of Police, attached to Wasim Police Station, distt. Wasim, Maharashtra, proved his affidavit Ex.P-167 and the documents Ex.P-168(colly). He also gave details of a case registered on 28<sup>th</sup> September, 2001 against a SIMI worker and deposed that even after imposition of the first ban, the SIMI activists are propagating right of self-determination in Punjab and Kashmir and tried to spread hatred between Hindus and Muslims. He admitted that no case had been registered after September, 2003 against any SIMI activist but stated that they have been recording secret informations in the dossiers, which are confidential.

PW-48 Shri Sunil Devidas Kadasne, Sub-Divisional Police Officer, City Division Malkapur, Distt. Buldana, Maharashtra, proved his own affidavit Ex.P-169 and the affidavits of some of his colleagues Exhibits P-170, P-172, P-174, P-176, P-178, P-180 and P-182. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. He proved on record the documents attached with those affidavits. In his own affidavit Ex.P-169,

he gave details of different cases registered against SIMI activists after the imposition of first ban and added that SIMI activists propagate right of self-determination in Punjab & Kashmir and they call non-Muslims "Kafirs". He stated that even after the initial ban imposed on 27.9.2001, the SIMI activists were indulging in activities, which create communal disharmony, communal hatred and a threat to national integrity. In his cross-examination, he admitted that no case had been registered against any SIMI activist after September, 2003 but stated that it was mainly on account of their surveillance. He denied the suggestion that he was deposing falsely with a view to support the ban on SIMI.

PW-49 Shri Dayaram Bal Singh Chavan, Sub-Divisional Police Officer, Vani Distt. Yavatmal City, Maharashtra proved his affidavit Ex.P-184 and the affidavits of his colleagues Exhibits P-185, P-187, P-189, P-191, P-192 and P-195. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. He proved on record the documents attached with the affidavits. He admitted in his cross-examination that after September, 2003, no case had been registered against any SIMI activist. He, however, stated that it was on account of their surveillance and also added that they have been recording secret informations regarding them in their dossiers. PW-50 Shri Manish Vithal Ajinkya, Assistant Commissioner of Police, Kalwa Division, Thane, Maharashtra, proved

his affidavit Ex.P-187 and the affidavits of his colleagues Exhibits P-198, P-201, P-203 and P-205. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In his cross-examination, he admitted that no case had been registered against any SIMI activist after September, 2003. He denied that both the cases registered at Thane had ended in acquittal. He stated that he had read the Constitution of SIMI according to which the membership of a person comes to an end when he attains the age of 38. He, however, volunteered that such persons continue to work for SIMI thereafter also. He admitted that the age of accused Mohd. Aziz Mohd. Baksh Qureshi, who was in CR.No.211/2001, was about 60 years.

PW-51 Shri Waman Mahaduji Turukmane, Under Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai, proved his affidavit Ex.P-207 and the public notice issued regarding sitting of the Tribunal Ex.P-208 (colly). PW-52 Shri Chandrakant, Police Inspector, attached to Wardha City Police Station, Wardha, Maharashtra proved his affidavit Ex.P-209 and the documents Ex.P-210 (colly). In his affidavit, he stated that after the first ban on SIMI on 27.9.2001, they had asked their staffers to keep secret watch on the activities of the accused mentioned in his affidavit and it was found that they were still indulging in illegal activities and were members of SIMI. A raid was conducted. In the house search of accused Sayyad Mushtaq

Ali, flag of SIMI, Banner of SIMI, Pamphlets, Books, Poster of Osama Bin Laden came to be seized. He also stated that these accused propagate self determination in Punjab and Kashmir and also propagate "Jehad". Their object is to create hatred between Hindus and Muslims and destroy national integrity. In his cross-examination, he admitted that after September, 2003, no case had been registered against any SIMI activist.

PW-53 Shri Vasant Champatrao Sayam, Police Inspector attached to Police Station Hinganghat, Maharashtra, proved his affidavit Ex.P-211 and P-212 in which, details of the cases against SIMI activists were given. He also admitted that after September, 2003, no case had been registered against any SIMI activist but stated that the SIMI activists were under control due to their surveillance. PW-54 Shri Suraj Ashor Ramshankar Choubey, Police Sub-Inspector, attached to Crime Branch, Amravati, Maharashtra, PW-55 Shri Sudam Sadhu Rakhapasare, Police Inspector, attached to Kalyan Railway Police Station, Mumbai Railway, PW-56 Shri Nivrutti Kushabhau Murade, Padgha Police Station, Thane, Maharashtra and PW-57 Shri Sudhir Anantrao Beknalkar, Assistant Inspector of Police, attached to Kurla Police Station, Mumbai, Maharashtra, deposed on the lines of PW-53 Shri Vasant Champatrao Sayam and proved their affidavits. Their examination-in-chief and cross-examination was almost identical to that of PW-53.



PW-58 Mrs. Supriya Patil Yadav, Deputy Commissioner of Police (Security), SID, Mumbai, Maharashtra, proved her affidavit Ex.P-223 and stated that after taking over as DCP (Security) in September, 2003, she had found that the activities of SIMI were still continuing secretly and causing lot of Law and order problems. She stated that they try to disturb communal harmony and were still distributing pamphlets surreptitiously. She had found that SIMI had connections with terrorist groups like Lashkar-E-Toeba and Al-Qaeda and were collecting funds from foreign countries. She added that if ban on SIMI is lifted, they would come out openly and threaten national integrity. In her affidavit, she had given details of various cases registered against SIMI activists after September, 2003 and stated that some of the SIMI activists were making statements that Osama Bin Laden should send his forces to India to teach a lesson to Indians. They were also saying that Osama Bin Laden will destroy all non-Muslim countries and bring Muslim regime all over the world and green flags would be hoisted all over. She also referred to a CR case No.3010/2003, which was registered at Thane Nagar P.S. under Sections 10, 13 & 15 of Unlawful Activities (Prevention) Act, 1967. She stated that from the search of accused Sahid Ismail Narekar and Anis Ismail Narekar, a map of India was recovered in which Kashmir was shown as part of Pakistan. Receipts of SIMI membership and other documents were also recovered.

In the Tribunal's sitting at Udaipur, Rajasthan, PW-59 to PW-69 were examined. PW-59 Shri Vinod Singh, A.S.I., P.S. City Kotwali, Bikaner, Rajasthan tendered his affidavit Ex.P-224 as his examination-in-chief and the documents Ex.P-225 (colly). In his affidavit Ex.P-224, he mentioned about an FIR registered on 29.9.2001 at Bikaner, Rajasthan, under Section 10 of the Unlawful Activities (Prevention) Act, 1967. This FIR was registered against one Mohd. Rasid Shekh, President of SIMI at Bikaner. He also stated that SIMI activists propagate self determination in Punjab and Kashmir and create hatred between Hindus and Muslims to damage the secular fabric of society and destroy national integration. In his cross-examination, he admitted that the investigation of this case was handed over to him at a later stage and he was not present at the time of the recovery from the accused. He also could not say as to whether the pamphlets recovered from the said accused was printed prior to 27.9.2001 or thereafter. He had not taken into possession any records to show that Mohd. Rasid Shekh was the President of Bikaner Unit of SIMI. He also stated that there was no record regarding secret informations and surveillance as these are secret matters.

PW-60 Shri Naresh Chita, Deputy S.P., RAC II Bat., Distt. Kota, Rajasthan proved his affidavit Ex.P-226 and the documents Ex.P-227 (colly). He deposed about a case registered at District Jhalawar,

Rajasthan on 28.9.2001 under Section 10/13 of the Act as well as 153-A IPC against one Zakir Raza, who had distributed certain pamphlets/posters of SIMI. Some pamphlets were also recovered from him. He also stated that the SIMI activists propagate right of self determination in Punjab and Kashmir. The pamphlet recovered from the pocket of the accused is on Page-135 of Ex.P-227 (colly) which was calling people to join SIMI in spite of the fact that it had been banned. In his cross-examination, this witness admitted that they could not seize any record to show that accused Zakir Raza Qureshi was a member of SIMI and they also could not find out as to who had got these pamphlets printed and on what date. However, the posters mentioned in his affidavit were found pasted on the walls of Tek-Wali Masjid. He stated that by 27.9.2001, they have received a copy of the Gazette Notification. He also stated that the pamphlets recovered from the accused showed that the accused was propagating right of self determination in Punjab and Kashmir and was also advocating "Jehad".

PW-61 Shri Om Prakash, Inspector of Police, P.S.Sewar, Distt. Bharatpur, Rajasthan also proved his affidavit Ex.P-228 and the documents Ex.P-229 (colly). He deposed about a case registered under Section 10/13 of the Act on 5.10.2001 against accused Harun Rashid and Anwar Ahmad, who were activists/office bearers of SIMI. These accused were arrested while they were addressing a meeting at Jama

Masjid, Wazirpur in which, they were advocating and propagating Pan Islamic Fundamentalism and using derogative language for Hindu Deities. In his cross-examination, he, however, stated that he had not seen the accused making speeches or propagating Pro-Islamic Fundamentalism as investigation of this case was handed over to him at a subsequent stage. He had sworn this affidavit on the basis of the records of the case. He could not seize any documents to show that the accused were members of SIMI. However, a perusal of the FIR and other documents, which are on page 143 to 149 of the file, regarding this case, show that the accused were making speeches against ban on SIMI and asking for funds for it. This witness denied the suggestion that he was deposing falsely under the pressure of Central Government.

PW-62 Shri Ram Gopal, A.S.I., Police Lines, Distt. Baran, Rajasthan proved his affidavit Ex.P-230 and the documents Ex.P-231 (colly). He deposed about a case registered on 5.10.2001 at P.S. Siswali, Distt. Baran in which one Mohammed Sharif was arrested while he was explaining to gathering, the principles and objects of banned organization SIMI and was provoking the people against the ban. In his cross-examination, he stated that no such meeting had come to his notice after 5.10.2001 as such meetings are held secretly. He stated that the speech of Mohd. Sharif was not tape recorded or video recorded. He had

not seen the records to show that accused Mohd. Sharif was a member of SIML.

PW-63 Shri Banshidhar, S.I. of Police, Dausa Police Lines, Distt. Dausa, Rajasthan proved his affidavit Ex.P-232 and the documents Ex.P-233 (colly). He deposed about a case registered on 28.9.2001 when the office of SIMI at Talab Para, within the jurisdiction of Kotwali Baran was raided and it was found that Abdul Matin, President and Mohd. Ilias, Secretary of the banned organization SIMI were propagating principles of SIMI. In his cross-examination, he stated that he had investigated the case subsequently and he was not present at the time of raid. He also stated that he has no records to show that Abdul Matin and Mohd. Ilias were the office bearers of SIMI. He denied that he was making a false statement. PW-64 Shri Bhagat Singh, S.I., Police Lines Baran, Distt. Baran, Rajasthan proved his affidavit Ex.P-234 and the documents Ex.P-235 (colly). He deposed about a case registered on 2.10.2001 at P.S. Chabra, Distt. Baran in which Shekh Ikbal Kaji, an active member of SIMI was arrested while he was propagating the aims and objects of SIMI. He stated that SIMI activists propagate self determination in Punjab and Kashmir and call non-Muslims "Kafirs" and say that they have no right to exist. He had also not joined the raiding party and investigated the case subsequently. He had not seized any records to shown that Shekh Ikbal Kaji was a member of SIMI. PW-65 Shri

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Rajendra Ojha, P.S. Sardarpura, Jodhpur, Rajasthan proved his affidavit Ex.P-236 and the documents Ex.P-237 (colly). He deposed about an FIR registered at P.S. Udyog Nagar, Distt. Kota Rajasthan on 18.10.2001 in which accused Sabirudeen was arrested while displaying a poster of SIMI on the wall of his shop. In the search, more posters were found from his shop in which two guns crossing each other and some other objectionable material was recovered. This witness had partly investigated the case. He stated that SIMI activists were comparatively under control because of the ban and surveillance on them. He also stated that they were in touch with certain militant organizations. The copy of the poster recovered in this case has been placed on Page-397 of Ex.P-237 (colly) and its translation is on Page-399. In his cross-examination, this witness admitted that he could not find out as to when and by whom this poster was printed. He also could not find out as to on what date and on what time this poster had been pasted.

PW-66 Shri Jeet Ram, S.I., P.S. Panchauri, Distt. Nagaur, Rajasthan proved his affidavit Ex.P-238 and the documents Ex.P-239 (colly). He deposed about an FIR registered on 29.9.2001 at P.S. Kote Gate, Bikaner. In this case, one Niyamat Ali, a President of SIMI at Bikaner was arrested and from him, some unlawful literature and pamphlets of SIMI were recovered. This witness had investigated the case after the registration of the case. The copies of the documents

recovered from the accused consisted of one admission form and a proforma of receipt for receiving donations, which are on Page-451 and Page-453. In his cross-examination, this witness stated that the papers recovered from the accused showed that he was an activist of SIMI. However, no other record could be found to show that he was an enrolled member of SIMI. He also could not say as to whether the pamphlets recovered from the accused were printed prior to September, 2001 or thereafter.

PW-67 Shri Manish Agarwal, Deputy S.P., Circle Girwa, Distt. Udaipur, Rajasthan, proved his affidavit Ex.P-240 and the documents Ex.P-241 (colly). He deposed about a case registered on 29.9.2001 against Dr.Mohammed Hasan, who was actively participating in the activities of SIMI as its Zonal President. He also stated that SIMI propagates self determination in Punjab & Kashmir and obtains funds from illegal sources. They spread communal hatred. In his cross-examination, he admitted that nothing incriminating was recovered from personal search of Dr. Mohammad Hasan but incriminating material was recovered from his residential houses at Saran and Jodhpur. He also stated that prior to 27.9.2001, this accused was on official duty but after 27.9.2001, he left his headquarter without any sanctioned leave. He did not know that this accused had been reinstated under the orders of High Court. He, however, admitted that the trial of the case had been stayed

by the High Court. He stated that the facts mentioned in para 5 of his affidavit were on the basis of intelligence reports and secret sources. He stated that they do not make entries in regard to such informations in the daily diary as they are secret and sensitive in nature and recording thereof is not in public interest.

PW-68 Shri Khema Ram, S.I. of Police, P.s. Nasirabad Sadar, Distt. Azmer, Rajasthan, proved his affidavit Ex.P-242 in which he deposed about case FIR No.102/2001 registered at Bapawar Kalan P.S., Kota Rural District on 28.9.2001. This case was registered when this witness had seen a pink colour pamphlet stuck on a wall of Mazjid in which provocative remarks were made against Hindus and it had been issued by SIML. On enquiry, it was found that accused Yunus had pasted this pamphlet on the wall. A photocopy of this pamphlet is on Page -635 and Page-637 of Ex.P-243 (colly). In his cross-examination, this witness stated that the seizure as well as investigations were conducted by him. He did not know as to when this pamphlet was printed or published. He also could not say as to whether it was printed prior to 27.9.2001 or thereafter. He could not find out as to when and by whom it was printed as the activities of SIMI were secret. He stated that accused Yunus was not a recorded member of SIMI but was a follower of SIMI. He denied the suggestion that he was deposing falsely at the instance of Central Government.



PW-69 Shri Pyare Lal, Dy. Superintendent, Special Branch, CID Headquarter, Jaipur proved his affidavit Ex.P-244 in which he stated that after the first ban on 27.9.2001 against SIMI, several cases were registered against the office bearers/activists of SIMI. He gave particulars of these case in his affidavit and added that SIMI activists propagate right of self determination in Punjab and Kashmir and call all non-Muslims "Kafirs", who had no right to exist. They also use derogatory language against Hindu Deities and their aim is to establish Pan Islamic Order in the world. In his cross-examination, he stated that in none of the cases, final judgement had come so far and all these cases were registered up to 18.10.2001. He admitted that no case had been registered thereafter but added that it was for the reason that they were keeping strict surveillance over SIMI activists. He denied the suggestion that he was deposing falsely. The affidavit of Shri Abhay Kumar, District Magistrate, Udaipur, was tendered in evidence to show that a public notice was issued in regard to the sittings of the Tribunal at Udaipur.

In the sitting of the Tribunal at Ahmedabad, PW-70 Shri P.S.Parmar, Inspector of Police, Khambhat City P.S., Distt. Anand, Gujrat proved his affidavit Ex.P-247 and the documents Ex.P-248 (colly). In his affidavit Ex.P-247, this witness gave details of a case registered at Karanj P.S. On 30.9.2001 under Unlawful Activities (Prevention) Act,

1967 when 25-30 persons connected with SIMI had gathered at Old Jama Masjid with banners etc. Asif Mustafa Husen Shaikh was giving a speech in which, he was condemning U.S.A. for attack on Osama Bin Laden and was also criticising the ban imposed by Central Government on SIMI. He was inciting people to oppose the ban and even the banners were to this effect. 11 persons were arrested as others managed to escape. They admitted that accused Asif Mustafa Husen Shaikh was a members of SIMI since 1990. An old card of SIMI was found from accused Javed Akhtar Munaf Shaikh. This witness stated that had there been no ban, the SIMI activists would have caused grave and serious consequences to the secular fabric and the security of the country. This witness was not cross-examined as none was present on behalf of SIMI.

PW-71 Shri M.J.Pancholi, Police Inspector, Pollice Headquarters, Anti-Corruption Bureau, G.S., Ahmedabad, proved his affidavit Ex.P-249 and the documents Ex.P-250 (colly). In his affidavit, he stated that on 27.12.2001, a secret information was received that SIMI activists were planning to conduct a secret meeting at Surat at Rajshree Hall on the topic of "Promotion of constitutional educational provision for minorities". Rajshree Hall was booked in the name of Alif Sajid Mansuri from 27.12.2001 to 29.12.2001 and inquiries revealed that he was a national level worker of SIMI. Inquiries from Delhi further revealed that no organization under the name of All India Minorities

Board exists at the given address in Delhi and as such, a search was conducted at the Hall on 28.12.2001. 123 persons were found present there. On search of these persons, literature, pamphlets relating to SIMI were recovered, some of which were poems eulogising Osama Bin Laden and praising him for his heroic actions in U.S.A. An FIR under Sections 3, 10, 13 & 15 of the Act was registered and in the course of investigations, evidence revealed that they were SIMI activists but were organising a meeting under the cover of All India Minorities Education Board. It was also revealed that these activists do not consider Kashmir to be a part of India and they describe militant activities there as freedom struggle. They do not believe in the Constitution of India and consider non-believers of Islam as "Kafirs". This witness was also not cross-examined as none was present on behalf of SIMI.

PW-72 Shri Jashvantsinh R.Vaghela, Sub-Inspector of Police, Karelibaug P.S., Vadodara City, Gujrat proved his affidavit Ex.P-251 and the documents Ex.P-252 (colly). He deposed about the case CR.No.27/2002 registered at P.S. Sayajigunj on 4.1.2002. SIMI literature was recovered from the accused, who were encouraging others to join SIMI, which was already a banned organization. The names of the arrested accused were found in the list of members of SIMI found at Kin out post of Surat District. Thereafter, literature was recovered including a magazine, which was to cause hatred between Hindus and

Muslims. He also stated that SIMI activists do not consider Kashmir to be a part of India. This witness was also not cross-examined as none was present on behalf of SIMI.

PW-73 Shri Ramanbhai Singaji Bhagora, Asstt. Commissioner of Police, I/C, Deputy Comm. Int. CID, I.B., Gujrat proved his affidavits Exhibits P-253 & P-254 and the public notice Ex.P-255. PW-74 Shri A.K.Jain, Joint Secretary, Ministry of Home Affairs, Government of India proved his affidavit Ex.P-256 along with its annexures. He also proved on record the letter Ex.P-257 signed by Shri Jag Ram, Deputy Secretary, Ministry of Home Affairs, Government of India, and the background note Ex.P-258, which was prepared on the basis of inputs received from the State Governments as well as intelligence agencies in regard to the activities of SIMI. He stated that on the basis of the information received from States and the inputs from intelligence agencies, the Central Government was of the opinion that SIMI, against whom a ban was already operating, should be banned for a further period of two years as the unlawful activities of this Association had not abated and it had shown strong propensities to continue to commit unlawful activities covered under the Act. He proved on record the documents Ex.P-259 (colly). He had brought with him the file containing secret intelligence reports and inputs which he was willing to

place before the Tribunal for perusal. This witness was also not cross-examined on behalf of SIMI as none was present on its behalf.

PW-75 Shri Hukam Chand, Sub-Inspector of Police, Special Cell, Lodi Colony, New Delhi proved his affidavit Ex.P-260 and the documents Ex.P-261 (colly). In his affidavit Ex.P-260, he stated that he was an Investigating Officer of case FIR No.13/2002 registered at P.S. Special Cell, (S.B.), Lodi Colony, New Delhi, registered on 27.5.2002 under Sections 3,10 & 13 of the Unlawful Activities (Prevention) Act, 1967 and 120-B, 124-A IPC. He also stated that in the course of investigations when evidence in respect of Prevention of Terrorism Act came on record, the investigations were handed over to Shri L.N.Rao, Assistant Commissioner of Police. He deposed that on 27.5.2002, Inspector C.B.Sharma of Special Cell, received information that two SIMI activists/members were pasting stickers on the eastern wall of Jamia Millia Islamia Urdu Library upon which DD entry was made and thereafter, in the raid, accused Mohd. Yasin Patel alias Falahi and Mohd. Ashraf Zafri were arrested. Copies of the stickers were found from their possession also and it was found that these stickers were containing anti-nation slogans. Some of these stickers were found from the house also of accused Mohd. Yasin Patel and during their disclosure statements, they admitted their connections with SIMI. They were tried by the designated Court and were convicted under Section 20 of POTA and 124-A IPC,

which offences fall within the meaning of unlawful activities. Copy of the stickers in question has been placed on record and is on page 39 of Ex.P-261 (colly). This sticker gives a call for destroying nationalism and establishing Kilafah. It has been issued by SIMI and the pictures thereon show a fist in which certain missiles are shown to suggest mutiny. In his cross-examination, he admitted that both the accused were convicted under POFA but not under Unlawful Activities (Prevention) Act, 1967. He also admitted that he had not come across any list of SIMI members.

PW-76 Shri C.B.Sharma, Inspector of Police, Special Cell, Lodi Colony, New Delhi proved his affidavit Ex.P-262 and the documents Ex.P-263 (colly). In his cross-examination, he admitted that he was examined before the first Tribunal and in that statement also, he had referred to FIR No.532/2001, which he had referred to in his affidavit Ex.P-262. He, however, volunteered that at that time, the case was under investigation but now, a challan had been filed. He, however, was made to admit that challan was filed in the Court on 20.12.2001 and he was examined before the Tribunal in January, 2002. He admitted that he had never seen any list or register of the membership of SIMI. He denied the suggestion that he was deposing falsely with a view to support the Central Government.

After the close of evidence by Central Government, the respondent-Association examined RW- 1 Shri Shahid Badar, its erstwhile

President. He proved on record his affidavit Ex.R/A and stated that this affidavit along with schedules may be read as his examination-in-chief. He stated that the reply filed to the show cause notice was filed under his instructions and Annexure A to the said reply was a photocopy of the Constitution of SIMI.

In his affidavit, he has stated that the appeal filed against the order of the Tribunal regarding first ban was pending in the Supreme Court. He has stated that the notification issued by the Central Government is in violation of the decision of the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* reported in (1995) 1 SCC P-428. The background note and the notification issued by the Central Government suffer from suppression of material facts and are based on false statements. According to him, SIMI, which was established on 25.2.1977, was a social, cultural and religious organization for the welfare of all persona in India. After re-producing the Constitution, he has stated that the SIMI's policy has never been to challenge the territorial integrity of the country nor it has ever incited communal violence in the country. It has undertaken several social service programmes in the country including providing relief to the victims of earthquake in Gujrat. Even on Babri Masjid issue, its role has been very constructive as it has been saying that since the matter is sub-judice, the structure and status quo should be maintained. According to him, SIMI

has faith in the Constitution of India. He has stated that between 27.9.2001 and 26.9.2003, SIMI has ceased to exist and, therefore, there was no activity to attract fresh notification under the Act of 1967. Raising various legal pleas, it is stated that the notification issued by the Central Government is mechanical, without application of mind and without there being any sufficient cause to issue the same immediately. He also says that in the last over two years, there has been no incident by SIMI or its erstwhile members, which may fall within the mischief of Section 2(g) or 2(f) of the Act. Many SIMI members have been acquitted by the Courts and after the crackdown on SIMI and its members after the notification of 2001, the work of SIMI has come to a standstill and there has been no activity. Regarding case FIR No.13/2002 registered at P.S. Lodi Colony, New Delhi, he says that the accused have been acquitted of the charges of Unlawful Activities (Prevention) Act, 1967. He has also given details of some other cases in which the SIMI activists have been acquitted. He has stated that while issuing the fresh notification on 26.9.2003, the Central Government has just repeated the grounds/reasons, which were used for issuing earlier notification dated 27.9.2001 and as such, the subsequent notification is mala fide exercise of powers. No hearing was given to SIMI before issuing the notification in question and it was issued with ulterior motive and in an arbitrary manner. It is stated that there is no material or unlawful act under



Section 2(f) and 2(g) of the Act to bring the Association within the ambit of the Act and as such, the notification in question cannot be sustained. He has denied that SIMI was in any manner associated with organizations like Jamaat-E-Islami Hind, Students Islamic Association or World Association of Muslim Youth. The meaning of "Jihad" is stated to be war against evil and nothing else. It is denied that SIMI is having connections with Hizbul Mujahidin, Lashkar-E-Toeba or other Muslim terrorist Organizations or that it had ever advocated self-determination in Kashmir. It is also stated that SIMI believes in the Constitution of India and has never eugolized Osama Bin Laden, Sheikh Mohd. Yasin or Gulbudin Hikmatyar. SIMI's involvement in the bomb blasts is also disputed and it is stated that there is no material on record to connect the involvement of Abdul Momin in the blast in U.P. It is stated that SIMI had never issued any pamphlet showing Kashmir not to be part of India or calling Muslims to fight against Hinduism. It is emphasized that the Central Government has failed to bring forth any ground to show that there has been continuity in the alleged unlawful activities of SIMI. Along with the affidavit, schedules are filed to show the status of cases in which the accused have been acquitted or have died, the list of cases in which the Government of India has not given prior sanction for prosecution, the list of cases which are pending, the list of cases which were dealt with by the previous Tribunal.

In his cross-examination by learned ASG he has admitted that he had appeared as a witness before the previous Tribunal also. He is unable to say anything about the seizure of books of accounts and records of SIMI by the Police pleading that all their offices have been sealed. He does not know as to whether their bank accounts have been attached or not. He admits that he has not issued any press release to say that after the ban, SIMI has been dissolved or its activities have been suspended. He volunteered to say that he has been saying so but his statement was never printed anywhere since he was in custody soon after the imposition of first ban. He admits that they have not made any application to the Central Government under sub-Clause(2) of Section 6 of the Act for cancelling the notification under Section 3 of the Act on the ground that they have suspended their activities. He has denied the suggestion that even after the ban, he has been running SIMI and trying to increase the propensity of its activities. He has denied that they were receiving any donations or gifts from a foreign country. However, he could not tell the name of any person, friend or relation who had given him financial support for fighting the litigation. He is not in a position to produce any literature or pamphlet or magazine in which he had condemned the terrorism or cessionist demands in Kashmir. He is not in a position to give the date or month of the magazine in which he had issued an article suggesting that the solution to Babri Masjid dispute

could be through peaceful talks. He could not give the dates or exact places where relief camps were held in Gujrat after the earthquake nor could he produce any document to show that such relief camps were held. About Yasin Patel, Abdul Mobin, Mohd. Kaleen Akhtar, Hasan Ahmed, Mohd. Shamshuddin, Shah Alam Mehboob Bashi, Ahmed Akhtar, Abdul Muneed and Shamim Ul Islam Manzoor, he is not in a position to say with certainty as to whether they are SIMI members or not. He does not know that these persons are facing prosecutions as members of SIMI for being engaged in unlawful activities. He has denied the suggestion that the unlawful activities of SIMI are still continuing.

I have heard Shri K.K.Sud, learned Additional Solicitor General of India and Shri Siddharth Luthra for the respondent-Association. I have gone through their written submissions as well as records. The documents/records copies of which were not supplied to Association in public interest were also requisitioned and perused by me.

The gazette notification No.S.O.1113(E) dated 26.9.2003 issued by the Central Government under Section 3 of the Unlawful Activities (Prevention) Act, 1967 reads as under :

*"S.O.1113(E) – Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities which are prejudicial to the security of the country*

*and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;*

*And whereas the Central Government is of the opinion that :*

*(i) SIMI is in close touch with militant outfits and is supporting extremism and militancy in Punjab, Jammu and Kashmir and elsewhere;*

*(ii) SIMI supports claims for the secession of a part of the Indian territory from the Union, supports groups fighting for this purpose, and is thus questioning the territorial integrity of India;*

*(iii) SIMI is working for an International Islamic Order;*

*(iv) during Ikhwan conferences, the anti-national and militant postures of the SIMI were clearly manifest in the speeches of the leaders who glorified Pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jihad;*

*(v) SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India;*

*(vi) SIMI is involved in engineering communal riots and disruptive activities in various parts of the country;*

*And whereas the Central Government is also of the opinion that for the aforesaid reasons, the activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association;*

*Now, therefore, in exercise of the powers conferred by sub-section(1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;*

*And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity of -*

*(i) escalating secessionism and supporting militancy;*

*(ii) instigating communal violence in different parts of the country and thereby disrupting the secular fabric of the country.*

*And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI mentioned above, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section(3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said*

*Act, have effect from the date of its publication in the Official Gazette."*

Before adverting to the question as to whether or not there is sufficient cause for declaring the respondent-Association unlawful, it would be relevant to notice important provisions of the Act so that this Tribunal is able to focus its attention to the questions raised and consider the material placed before it to make an objective assessment thereof.

Section 2(a) of the Act, which defines the "Association", reads as under :

*"2(a) "association" means any combination or body of individuals;"*

Section 2(b) of the Act defines the "cession of a part of the territory of India" as under :

*"2(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;"*

Section 2(f) gives the definition of "unlawful activity" as under :

*"2(f) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), -*

*(i) which is intended, or supports any claim to bring about on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;*

*(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;"*

Section 3, which empowers the Central Government to declare an Association unlawful, reads as under :

*"3. Declaration of an association as unlawful.-(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*

*(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:*

*Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.*

*(3) No such notification shall have effect until the Tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette:*

*Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that*

*Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.*

*(4) Every such notification shall, in addition to its publication in the official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely :-*

*(a) by affixing a copy of the notification to some conspicuous part of the office, if any of the association; or*

*(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any of the association; or*

*(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or*

*(d) in such other manner as may be prescribed."*

Sections 4 and 5 of the Act, which provide for the constitution of the Tribunal and a reference read as under:

**"4. Reference to Tribunal-(1)** *Where any association has been declared lawful by a notification issued under sub-*



*section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub -section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.*

*(2) On receipt of a reference under sub-section(1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.*

*(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.*

*(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.*

**5. Tribunal.**-(1) *The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a Tribunal to be known as the "Unlawful*

*Activities (Prevention) Tribunal” consisting of one person, to be appointed by the Central Government:*

*Provided that no person shall be so appointed unless he is a Judge of a High Court.*

*(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.*

*(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.*

*(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.*

*(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.*

*(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908) while trying a suit, in respect of the following matters, namely:-*

*(a) the summoning and enforcing the attendance of any witness and examining him on oath;*

*(b) the discovery and production of any document or other material object producible as evidence;*

*(c) the reception of evidence on affidavits;*

*(d) the requisitioning of any public record from any court or office;*

*(e) the issuing of any commission for the examination of witnesses.*

*(7) Any proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)."*

Section 9 of the Act, which prescribes the procedure to be followed by the Tribunal in holding an inquiry under Section 4 of the Act reads as under :

*"9. Procedure to be followed in the disposal of applications under this Act. -Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section(3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908); for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final."*

After going through the aforesaid provisions of the Act and keeping in mind the law laid down by the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* reported in (1995) 1 SCC page-428, this Tribunal is of the considered view that the adjudication to be made by the Tribunal under Section 4 of the Act is judicial in nature and has to be on the basis of material placed before it by both the parties. Going by the ipse dixit of the Central Government and putting its stamp of approval on the declaration made by the Central Government would tantamount to abdication of its functions. In the case of *Jamaat-E-Islami Hind Vs. Union of India* (supra), the Apex Court, while examining Sections 3 & 4 of the Act, has clearly held that the words used in sub-section (1) of Section 4 "adjudication" and "sufficient cause" are significant and the nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the Notification under sub-Section (1) of Section 3 is issued by the Central Government, cause shown by the Association in reply to the notice and take into consideration such further information, which it may call to decide the existence of sufficient cause for declaring the Association to be unlawful. It was held that the entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides. It was also held that such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it. The

test of greater probability was held to be the pragmatic test applicable in the context. In para 22 of the judgement, while discussing the question of the non-disclosure of the sensitive information and evidence to the Association, whenever justified in public interest, it was further observed that the material that may be considered by the Tribunal need not be legal evidence in the strict sense. It was also held that if Tribunal scrutinizes such material the procedure would satisfy the requirements of natural justice. It was reiterated that the adjudication through judicial scrutiny of material placed before Tribunal would satisfy the minimum requirements of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on material placed before it by parties and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government.

The Supreme Court of India in the case of *Jamaat-E-Islami Hind (supra)* discussed an argument in regard to impingement of Article 19(1)(c) of the Constitution of India and the restrictions saved by Article 19(4). The Supreme Court quoted a case of United States Supreme Court on the subject in para 23 of the judgement, which reads as under :

*“23. In John J. Morrissey and G. Donald Booher V.*

*Lou B. Brewer the United States Supreme Court, in a case of*

*parole revocation, indicated the minimum requirements to be followed, as under : (L Ed pp.498-99)*

*"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."*

In para 26 of the judgement, the Supreme Court further held:

*"26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision*

*is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny after a show-cause notice of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."*

In view of the provisions of the Act and the law laid down by the Apex Court, it can be safely said that the proceedings before the Tribunal are not at par with a criminal trial, which is adversarial in nature and in which, the prosecution is required to prove its allegations against an accused beyond shadow of doubt. The proceedings before the Tribunal are inquisitorial in nature to enable it to form an opinion as to whether there is sufficient cause for declaring the Association unlawful. For this purpose, the material that may be considered by the Tribunal need not be strictly legal evidence. For example, in a criminal trial, statements recorded under Section 161 Cr.PC, case diaries under Section 172 of the Cr.PC, confessions made by the accused and any material proved on record cannot be taken note of but in an inquiry like the present one, the Tribunal may take into consideration even such material for adjudicating as to whether or not there is sufficient cause for declaring the Association unlawful. A reference made to the Tribunal under Section 4 of the Act can not be converted into a trial of those, who are facing prosecutions under the Act or other penal provisions. It is not possible for the Tribunal to adjudicate as to whether the criminal cases relied upon by the Central Government are false or true. Even the Central Government may not be in a position to do so at the time of making a declaration. The Tribunal is, therefore, merely enjoined to adjudicate by forming an opinion as to whether there is some material,



which is credible enough to make a declaration that the Association is unlawful. Neither sufficiency of material considered by the Central Government nor satisfaction of Central Government can be subjected to judicial review. Material collected by Intelligence Agencies, case diaries of Police, material seized from the accused, secret informations received by Officers entrusted with surveillance, statements and declarations made by Office bearers of an Association and the involvement of its members/activists in unlawful activities are relevant material which can be acted upon by the Central Government and considered by the Tribunal holding inquiry.

In the case of "Union of India Vs. Tulsiram Patel" reported in AIR 1985 SC P-1416, a Constitution Bench of the Court had the occasion of considering the expressions "law and order", "public order", "security of the State", which are used in different Acts. In para 140 of the judgement, their Lordships observed as under :

*" 140. The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of those situations those which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the*

*State” does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine.”*

Considerations of maintaining law and order, and protection of sovereignty and integrity of country may justify a declaration without a deep probe into the truth or falsity of material. The Act which is aimed at prevention of unlawful activities of individuals and associations gives justifiable latitude to Government in the matter of making a declaration and leaves it to the subjective satisfaction of Central Government to declare an Association unlawful if it appears to be involved in unlawful activities. Adjudication by the Tribunal is a safeguard against malafide exercise of powers by the Central Government and warrants interference only when there is total absence of material against an Association. However, the Tribunal has no right to substitute its own opinion to the subjective satisfaction of Central Government in regard to the sufficiency of material.

Before coming to the factual matrix of the matter, it would be proper to deal with certain legal submissions made by learned counsel for the Association. The first and foremost contention of learned counsel for the Association is that this Tribunal has not followed the procedure prescribed by Code of Civil Procedure for holding the inquiry and as such, the entire proceedings are vitiated. Learned ASG has countered this submission by contending that the provisions of Code of Civil Procedure or the Evidence Act are not strictly applicable to the proceedings being conducted by this Tribunal and as such, there is no substance in the submission made by learned counsel for the Association in this regard. After hearing learned counsel for the parties, this Tribunal finds that the procedure to be followed by the Tribunal is prescribed in Section 9, Section 5(5) of the Act and Rule 3 of the Unlawful Activities (Prevention) Rules, 1967. Section 9 of the Act clearly says that, so far as may be, the procedure to be followed by the Tribunal in holding an inquiry under sub-Section (3) of Section 4 of the Act shall be the procedure laid down in the Code of Civil Procedure for the investigations of the claims. Section 5 sub-Clause (5) provides that subject to the provisions of Section 9, the Tribunal shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings. Rule 3 further clarifies the position by saying that as far as practicable, the Rules

of evidence laid down in the Indian Evidence Act, 1872 shall be followed. All these provisions, when read conjointly, in the light of the judgement of the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* (supra), make it clear that the Tribunal is neither strictly bound by the provisions of Code of Civil Procedure nor by the Indian Evidence Act, 1872 and is only required to follow the basic principles thereof and that too as far as practicable.

In the present case, the procedure adopted by the Tribunal was in conformity with the Code of Civil Procedure as well as rules of evidence inasmuch as the examination-in-chief of the witnesses was received on affidavits and thereafter, opportunity was given to respondent-Association to cross-examine those witnesses. The true copies of the official documents, which were sought to be produced before the Tribunal were allowed to be placed on record on the strength of the affidavits of the witnesses. The plea of learned counsel for the respondent-Association that only certified copies thereof could have been placed on record cannot be sustained for the reason that it was not practicable for the Central Government or the State Governments to obtain certified copies of such voluminous documents and place them on record within the period the proceedings of the Tribunal were required to be completed. Moreover, all these documents were merely corroborative to the statements of the witnesses and were placed on record to show that

a large number of criminal cases had been registered throughout the country against SIMI members/activists, in which statements of the witnesses had been recorded, seizure Memos had been prepared for seizing various documents and other material. These proceedings cannot be equated with a criminal trial in which a Court is bound by strict rules of evidence. The material and evidence produced before the Tribunal by the parties is only in order to enable the Tribunal to form its opinion in regard to the satisfaction arrived at by the Central Government for making a declaration under Section 3(1) of the Act. The Tribunal has followed the procedure prescribed by Code of Civil Procedure as well as rules of evidence to the extent practicable. Therefore, it cannot be said that the procedure followed by the Tribunal was contrary to the provisions of the Act and as such, the proceedings are vitiated.

The plea that the copies of all the documents, material and affidavits were not supplied to the respondent-Association in order to enable it to challenge the declaration made by the Central Government is also devoid of merit inasmuch as except the material which the Central Government did not wish to disclose in public interest, all other material was supplied to the respondent-Association before it filed reply to the notice. The copies of documents and affidavits of the witnesses examined by the Tribunal, were also supplied to learned counsel for the

respondent-Association before the examination of the witnesses by the Tribunal and proper opportunity was given to learned counsel for the respondent-Association for cross-examining the witnesses produced by the Central Government. As stated earlier also, this inquiry is not adversarial in nature and is inquisitorial only and as such, the requirements of natural justice stood met by following this procedure as the parties were required only to assist the Tribunal in forming its opinion in terms of sub-Clause (3) of Section 4 of the Act.

Learned counsel for the respondent-Association has made a grievance about the absence of the cross-examination of some witnesses examined by the Central Government at Ahmedabad but the blame squarely lies upon the respondent-Association itself inasmuch as PWs-70 to PW-74, who were examined at Ahmedabad and could not be cross-examined on behalf of the respondent-Association, were not examined suddenly to spring a surprise upon the respondent-Association. The sittings of the Tribunal at Ahmedabad were held on 28<sup>th</sup> & 29<sup>th</sup> February, 2004 and 1<sup>st</sup> March, 2004 in terms of the schedule declared by this Tribunal on 13.1.2004 in the presence of learned counsel for the respondent-Association. Not only this, on 15.2.2004 also, while concluding evidence at Udaimur, it was once again announced, in the presence of learned counsel for the parties, that the next sittings of the Tribunal were scheduled to be held at Ahmedabad on the aforesaid dates.

Therefore, the absence of the cross-examination of these witnesses was only on account of the lapse of the respondent-Association. The plea as to why PW-74 Shri A.K.Jain, Joint Secretary, Ministry of Home Affairs, Government of India was examined at Ahmedabad is also without any merit inasmuch as in the course of the recording of the evidence by the Tribunal, the Central Government could produce its witnesses wherever it liked. The Central Government could not even think that at Ahmedabad, none would be appearing for the respondent-Association inasmuch as in all earlier sittings of the Tribunal, one or the other counsel had been appearing for the Association. Moreover, PW-74 Shri A.K.Jain, Joint Secretary, Government of India has deposed nothing from his personal knowledge and has made a statement only on the basis of records. He was involved in the ministerial act of preparing a note only on the basis of the intelligence reports, IB inputs and the reports of the State Governments for the issuance of a notification under Section 3(1) of the Act. He has deposed in regard to the preparation of the background note and issuance of the notification in question and as such, unnecessary issue is being raised in regard to his examination at Ahmedabad and the absence of his cross-examination on behalf of the Association.

Learned counsel for the respondent-Association has also submitted that this Tribunal ought not to have held sittings outside Delhi inasmuch as it was not possible for the respondent-Association to

effectively participate in the proceedings. This submission is also without any substance as the purpose of holding sittings outside Delhi was to expedite the proceedings. The Tribunal was left with about four months only to complete the inquiry from the date of expiry of notice period issued to Association. Had the witnesses from all over India been summoned to Delhi, there was every possibility of not meeting the deadline and thereby lapse of the notification issued by the Central Government under Section 3(1) of the Act. Moreover, the Central Government as well as State Governments considered it more convenient to examine their witnesses in their own States as they had to produce voluminous official documents. In the sittings held in their own States, the production of the witnesses as well as documents was more convenient to the Government. This Tribunal was also of the view that the sittings in different States, in which activities of the Association were being allegedly carried on, was necessary from the point of view of general public also as some witness from the public also could appear for or against the declaration. Public notices were issued in every State where the sittings of the Tribunal were held inviting members of general public to appear before the Tribunal and make statements. Learned ASG submits that non-appearance of any public witness in any of the States clearly demonstrates as to how scared people are of the respondent-Association. Section 5(5) of the Act clearly empowers the Tribunal to



regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it would hold its sittings and as such, there was nothing wrong in holding sittings outside Delhi. The plea that respondent-Association was prejudiced is without any substance inasmuch as in all the the sittings of the Tribunal except the sittings at Ahmedabad, the respondent-Association was duly represented by a number of counsel.

Learned counsel for the Association has vehemently argued that the Act confers no power on the Central Government to renew a ban and as such, the present notification dated 26.9.2003 is illegal and unwarranted. This contention cannot be sustained firstly for the reason that there is nothing in the Act to say that the Central Government has no power to issue successive notifications under Section 3(1) of the Act. If this submission is sustained, the result would be alarming as an unlawful Association, after a ban for a period of two years, may revive and re-start its unlawful activities with impunity and without any check. This would be not only against the interests of the country but also contrary to the aims and objects of the Act which intends to control and curb the activities of unlawful Associations. The contention that a hearing was required to be given to the Association by the Central Government before making declaration under Section 3(1) of the Act cannot be sustained for the reason that neither there is any such requirement in the Act nor it

appears to be practicable. Such a course may defeat the very purpose of the Act. The argument that there were no circumstances warranting immediate issuance of the declaration under proviso to Section 3(3) of the Act is devoid of force for the reason that in view of the earlier ban and fresh inputs that the Association was still continuing with its unlawful activities, the Central Government had justification to impose the ban with immediate effect.

The plea that the proof of affidavits of so many Police Officers by one witness was not proper and does not constitute legal evidence against the Association is also devoid of force inasmuch as the witnesses whose affidavits were proved by other officers were making depositions on the basis of the records, true copies of which had been attached with their affidavits and placed before the Tribunal for perusal. Even if the Tribunal does not consider those averments contained in such affidavits, which were based on the personal knowledge of the deponents the Tribunal is left with other evidence on record as well as documents to form its opinion in regard to the sufficiency of cause for declaring the Association to be unlawful. Therefore, on this ground also, it cannot be said that the declaration made by the Central Government is liable to be cancelled.

Learned counsel for the Association submits that the notification dated 26.9.2003 issued by the Central Government is liable

to be cancelled for the reason that it has been passed mechanically, without application of mind and for malafide reasons to gain political mileage. He submits that a comparison of the notification in question and the first notification issued by the Central Government on 27.9.2001 shows that both are based on absolutely identical grounds. He also points out that the background notes in regard to both the notifications contain identical grounds and are couched in identical language. After hearing learned counsel for the parties, this Tribunal is of the considered view that merely for the reason that the two notifications are based on similar grounds or are drafted in identical language cannot be made a ground to hold that the notification has been issued mechanically and without application of mind. If the allegations in regard to the activities of the Association remain identical and the grounds for issuing a notification also are same the ministerial act of drafting the background note as well as notification in a similar language does not ipso facto establish that the declaration has been made without application of mind or is malafide to gain political mileage. A perusal of the records, which were summoned by this Tribunal shows that the present declaration was in consequence of fresh inputs by intelligence agencies and the material brought to the notice of the Central Government by different State Governments. The mere use of identical language by the Officers of the Central Government, therefore, cannot be made a ground for holding that the

declaration was made mechanically or without any application of mind. It is well known that the ministerial staff usually follows previous precedents and initiates proposals in the language and tenor used and approved earlier.

Coming to the question as to whether or not there is sufficient cause for declaring the respondent-Association unlawful, this Court finds the evidence of the witnesses produced by the Central Government and the material placed on record quite revealing. This Tribunal would like to highlight the depositions made by some of the witnesses before considering the question of confirming or cancelling the declaration made by the Central Government.

The Tribunal straightaway adverts to the statement made by PW-2 Mohd. Jameeluddin, Inspector of Police, P.S. Kalapathar, Hyderabad. He deposed on oath that two accused, who were arrested, in Criminal Case No.51/2001 registered on 30.9.2001 under Section 153-B read with Section 10 of the Act, were found sitting in a room and criticising the Government for banning SIMI. They were supporting Kashmiri militants and condemning the Government for supporting the Americans against Taliban. In the course of their interrogations, these accused gave details of the activities of SIMI and their support to the demand for cession of Kashmir to Pakistan. From their possession, Constitution of SIMI, unused membership forms of SIMI, subscription

forms, receipts of SIMI and various books, posters etc. were recovered. Two audio cassettes were also recovered in which Ilias Khan, regional Secretary of SIMI was making anti-Hindu and anti-India remarks. He was also indulging in glorifying Mujahidins. He also referred to another case registered on 30.9.2001 in which four persons were arrested, who were also condemning the Government for banning the SIMI and were supporting Kashmiri militants demand for separate Jammu & Kashmir. They were praising Osama Bin Laden. In the course of their interrogations, they admitted that they were SIMI activists. He also referred to the cases registered on 2<sup>nd</sup> and 3<sup>rd</sup> October, 2001 in which certain SIMI activists were arrested, who also, in the course of their interrogations, confessed that they were SIMI activists and were supporting demand for cession of Kashmir to Pakistan. This witness stated that he was dealing with SIMI activists in the State of Andhra Pradesh and had found that the office bearers and members of SIMI were misguiding and misleading Muslim youth by telling them that "Jihad" was their path and "Shahadat" was their desire. They have also been telling these youths that Kashmir is not a part of India and Muslim terrorists in the State of Jammu & Kashmir are not militants but freedom fighters. According to him, they were calling upon their workers to make efforts to convert Hindus into Muslims and if they killed a Kafir, they would attain heaven. Only two suggestions were put to this witness

which he denied. It was suggested to him that he was deposing falsely to support the Central Government. No other question was put to this witness and as such, there are no grounds for disbelieving the statement made by this witness on oath, which clearly shows that even after first ban, the SIMI activists were active in the State of Andhra Pradesh and were supporting demand of cession of Jammu & Kashmir to Pakistan and were supporting the militants in Kashmir. SIMI activists were also spreading hatred against Hinduism.

PW-3 Shri B.Prakash, Inspector of Police, P.S. Narsapur, Hyderabad also deposed about a case registered on 2.10.2001 and stated that the accused were propagating the ideology of SIMI among Muslim youth for raising funds for the activities of SIMI and achieving their goal of establishing Islamic rule in India. He also stated that SIMI members did not believe in the Constitution of India and say that Kashmir is not a part of India and the Muslim activists in the State of Jammu & Kashmir are not militants but freedom fighters. In his cross-examination, he admitted that after 3.10.2001, no FIR had been registered under the said Act but added that they were keeping strict surveillance to prevent such crimes. He also stated that some of the SIMI activists had gone underground.

PW-6 Shri Ravindra Naik, D.S.P., General Offences Wing of CID, Hyderabad stated that the persons mentioned in Ex.P-12, were

members of SIMI as well as an Organization known as "Indian Muslim Mohammad Mujahidin", which was having links with ISI of Pakistan. He deposed about a conference organized by SIMI at Aurangabad in September, 1999 and stated that after attending that conference, the aforesaid accused had started indulging in serious offences including Section 153-A of IPC. PW-8 Shri Gansyamsingh T.Padwal, Inspector of Police, P.S.Kurla, Mumbai, also deposed and proved on record a photograph in which the SIMI activists were shown to be holding a meeting. He also added that the SIMI activists, who were arrested on 27<sup>th</sup> & 28<sup>th</sup> September, 2001, had raised anti-India slogans and eugolized Osama Bin Laden when they came out of the Court. Nothing could be brought out in their cross-examinations to show that they were deposing falsely.

PW-9 Shri Shrikant K.Ramdass, Sub-Inspector of Police, Detection Crime Branch, CID, Unit-VI, Mumbai, was one of the investigating officers in the bomb blast cases which which took place in Mumbai resulting in death of a large number of persons. He stated that out of arrested accused, some were having connections with SIMI. One accused C.A.M.Basheer, who was a Proclaimed Offender, was All India President of SIMI and accused Saquib Abdul Hamid Nachan was All India General Secretary of SIMI. A telephonic conversation between the two had disclosed that accused Nachan had given shelter to a Pakistani



terrorist named Faizal Khan of Lashkar-E-Toeba. Said Faizal Khan was later killed in Police operation at Goregaon, Mumbai. The accused, who were SIMI activists, had a meeting with Faizal Khan at Pune before these bomb blasts in which they decided to give training to Muslim youth for carrying out "Jehad". Thereafter, they had actually given training to some Muslim youth regarding use of weapons at Mobali Hills as well as Karvi Hills in District Thane, Mumbai. The confessions made by these accused, which were recorded under Section 32 of the Prevention of Terrorism Act disclosed that they were SIMI activists and were involved in aforesaid bomb blasts. They also admitted having inter-State connections with several Pakistan based terrorist Organizations. One accused Noor Abdul Malik Ansari had undergone three months' training given by Laskhar-E-Toeba in Pakistan. Accused Saquib Abdul Hamid Nachan had earlier been convicted in a TADA case and was awarded 10 years' sentence but after his release, he came back to Maharashtra and got involved in unlawful activities. This witness also stated that their investigations had revealed that SIMI activists were declaring that Kashmir is not a part of India and were propagating that those Muslims who kill non-Muslims, would go to heaven. In his cross-examination, he admitted that they were not having complete list/details of SIMI members/activists. He denied that he was making a false statement. Nothing else could be elicited in his cross-examination to show that he



was deposing falsely.

PW-14 Shri Anur Prabhkar, Inspector, also deposed about the involvement of SIMI activists in bomb blast cases in December, 2002, January, 2003 and March, 2003. 11 accused out of 19 were found to be SIMI members or having connections with SIMI. They were also having links with Pakistani terrorist outfits as well as Muslim Defence Force, which was having its roots in Madras. This Muslim Defence Force was found to be funded by Abu Hamza, staying at Saudi Arabia and wanted in Ghatkopar bomb blast case. He was stated to be the present Chairman of Lashkar-E-Toiba in Saudi Arabia. One of the accused Imran Rehman Khan was also found to be a member of Lashkar-E-Toiba. From the custody of the accused Sheikh Mohammad Muzzammi Jameel Ahmed, some CDs were recovered, which contained an appeal by Maulana Azhar, a terrorist, who was involved in the hijacking of IC-814 from Nepal to Kandahar and later released by the Government of India. These CDs contained the clippings of Godhara riots in Gujarat, interviews of victims, demolition of Babri Masjid and a Mosque in Palestine. It also contained an Al-Qaeda manual, which outfit was being run by Osama Bin Laden. In his cross-examination, he admitted that the CDs seized by him did not contain the name of SIMI but it could be linked with SIMI because these were being viewed and used by SIMI members. The cross-examination of PW-14 did not show

that this witness was making false statement or that he had no material in support of his statement. Therefore, on the basis of the statement of this witness, it can be safely said that SIMI activists were involved in three bomb blast cases in Mumbai and were in close contact with some terrorist outfits based in Pakistan and were supporting the demand of cession of Kashmir with Pakistan and were eugolising Osama Bin Laden. They were thus, clearly trying to disrupt the sovereignty and territorial integrity of India.

PWs-19 and 20, who were examined at Kerala, deposed about the activities of SIMI activists after the first ban. PW-20 proved on record a photocopy of a leaflet published by "Muslim Ikya Samithi", an Organization which had been formed by some of the SIMI activists. In the leaflet issued by this Organization, the Muslims were called upon to stand against Shiv Sena, Vishwa Hindu Parishad terrorists. By referring to Godhara incident, Gujarat riots, Babri Masjid, Bombay riots and some other incidents, a message was sought to be conveyed to the Muslims that with the support of the Government, criminals were coming to behead the Muslims and the only way to face them was strong retaliation. Even the newspaper "The Hindu" dated 3.9.2003 had carried a report, a copy of which is Ex.P-49 in which it was stated that SIMI activists were regrouping in the State of Kerala. There is nothing to controvert the

statements of these witnesses which show the propensity of activities of SIMI even after first ban.

PWs-21, 22, 28, 31 & 33 examined at Bhopal disclosed in no uncertain terms that in spite of the ban, SIMI activists were still indulging in unlawful activities secretly and were trying to disturb communal harmony. These PWs stated that SIMI activists were supporting terrorism in Jammu & Kashmir by saying that the same was a freedom movement. PW-22 categorically stated in his cross-examination that his affidavit was based on his personal knowledge as well as documents and he had obtained information from intelligence sources that SIMI was having close connections with terrorist groups. PW-28 Shri I.B.Singh, Dy.Superintendent of Police gave details of the literature and material recovered from some of the accused, which included SIMI literature as well as a photo in which Babri Masjid structure was shown to be shedding tears. He admitted that they had not succeeded in tracing out the printers/publishers of the said pamphlet but the recovery of such material from the accused is sufficient to convey that even after ban, SIMI activists were trying to create communal disharmony in country.

PW-31 Shri Ravi Shankar Shukla, D.S.P., gave details of various cases registered against SIMI activists, some of which were registered in the month of October, 2001 to show that SIMI activists were continuing with unlawful activities. One of the pamphlets on page 1071

of Ex.P-71 (copy) was cogolising Talibans. PW-33 Shri Aditya Dubey, Asstt. Inspector General of Police, proved a list of case registered in the State of Madhya Pradesh against SIMI activists/members after the imposition of ban on 27.9.2001 and stated that SIMI activists do not consider Kashmir to be part of India and stated that SIMI is a threat to national integrity and communal harmony of the country. He also stated that the SIMI activists were somewhat under control because of the ban and continuous surveillance but still, they were carrying on their activities in a clandestine manner. He also stated that they were trying to re-group themselves under different names, one of which was "Tehrique-Khilafat". In his cross-examination, he stated that he had information about some persons, who were controlling/running "Tehrique-Khilafat" but in public interest, he was not willing to disclose their names.

At Pune, some witnesses were produced by Central Government, who fully supported the case of the Central Government that SIMI was continuing with its unlawful activities in spite of ban.

PW-34 Dr.Dhyaneshwar Sadashiv Chavan, Assistant Commissioner of Police, Crime Branch, Aurangabad, Maharashtra proved his affidavit Ex.P-76 and the documents Ex.P-77. He deposed about the CR.No:156/2002, which was registered in connection with a bomb blast on 2.12.2002. On 27.12.2002, accused Dr.Mohammed Abdul Matin Abdul Basit was arrested who, in the course of interrogations, disclosed

that he was a partner of M/s. Pragma Soft Technologies, Aurangabad and he and his partners were running this Company for SIMI activists. The office of this Firm was raided on 28.12.2002 and Computer sets, CDs, floppies, hard disks, photographs, etc. were recovered, which revealed pictures of Godhara incident/riots and included appeal to Muslims to come together and declare "Jehad" against Hindus and India. He stated that the accused arrested in this case were SIMI activists. Floppy No.12, which was recovered, contained scenes of the blowing of World Trade Centre at U.S.A. Nothing material could be brought out in his cross-examination to show that he was making a false statement before this Tribunal.

PW-35 Shri S.S.Deshmukh, Inspector of Police, Crime Branch, Amrawati, Maharashtra stated that after the ban also, SIMI activists were continuing with their unlawful activities and even Newspaper articles were printed in an Urdu daily supporting Osama Bin Laden and SIMI. In his cross-examination, he stated that by right of self-determination as mentioned in his affidavit, he meant that SIMI activists do not consider Kashmir as part of India and they propagate break up of Kashmir from India.

PW-41 Shri Dattatreya, Asstt. Commissioner of Police, Crime Branch, Sholapur City, Maharashtra deposed about cases registered on 8.8.2003 and 18.8.2003 under Sections 4,5 & 6 of the

Explosives Act, 1908 to which various provisions of POTA were also added. The three accused, who were found designing "Sutli Bombs" and having 8 "Sutli Bombs", were arrested. From the house of accused Anwar Hussain Gulab Hussain Sheikh, one "Aawaan form" was seized, which contained a pledge of SIMI Organization. The accused made confessions under Section 32 of Prevention of Terrorism Act, 2002 and admitted that they were SIMI activists and their ultimate aim was spread of terrorism. CDs were also recovered containing provocative speeches of Maulana Azhar Masood, the terrorist leader of Jaish-E-Mohammed. In his cross-examination, he also stated that they had seized membership forms of accused Ibrahim Momin in regard to his admission to SIMI, which was on page 57 of Ex.P-135. It contained the name and address of accused Mohammad Ibrahim Momin and contained his signatures on the pledge to join SIMI. It is true that this document was not bearing the signatures of the President or any office bearer of SIMI but the presence of these documents shows that SIMI activists/members/sympathisers were involved in offences punishable under the Explosive Act as well as POTA.

PW-46 Shri Nitin Prabhakar Lohar, Sub-Divisional Police Officer, City Division Akola, Maharashtra, referred to an accused Amin Rana, who was arrested on 17.12.2001. He was an active member of SIMI and had assaulted two Hindus saying that call for "Jehad" was

being given. He also stated that SIMI activists were propagating Pan Islamic Fundamentalism and were obtaining funds from illegal sources. This witness was hardly put any question in his cross-examination to show that he was deposing falsely.

PW-52 Shri Chandrakant, Police Inspector, attached to Wardha City Police Station, Wardha, Maharashtra, deposed about a raid conducted in the house of accused Sayyad Mushtaq Ali from where, flag of SIMI, Banner of SIMI and some literature of SIMI was recovered. In his cross-examination, he admitted that after September, 2003, no case had been registered against any SIMI activist. PW-58 Mrs. Supriya Patil Yadav, Deputy Commissioner of Police (Security), SID, Mumbai, Maharashtra, proved her affidavit Ex.P-223 and stated that after taking over as DCP (Security) in September, 2003, she had found that the activities of SIMI were still continuing secretly. She had also found that SIMI had connections with terrorist groups like Lashkar-E-Toeba and Al-Qaeda and were collecting funds from foreign countries. She stated that if ban was lifted, SIMI would come out openly and threaten national integrity. She stated that they were eugolising Osama Bin Laden and saying that he should send his forces to India to teach a lesson to Indians. She referred to case registered at Thane Nagar P.S. In the year 2003. In the search of accused in the said case, a map of India was recovered in which Kashmir was shown as part of Pakistan. Receipts of SIMI



membership and other documents were also recovered. It may be mentioned that nothing material could be brought out in the cross-examination of this witness to show that she was deposing falsely. The statement of this witness clearly shows that up to 2003 also, SIMI activists were indulging in unlawful activities and they had the courage to show Kashmir as part of Pakistan.

PWs-59 to 69 were examined at Udaipur. All these witnesses categorically stated that SIMI activists were still indulging in unlawful activities. PW-62 Shri Ram Gopal, A.S.I., Police Lines, Distt. Baran, Rajasthan, deposed about a case registered on 5.10.2001 in which one Mohammed Sharif was arrested while he was explaining to a gathering, the principles and objects of banned organization SIMI and was provoking them against the ban. He, however, in his cross-examination, admitted that after 5.10.2001, no such meeting had come to his notice. He stated that he had not seen the records to show that accused Mohd. Sharif was a member of SIMI but his testimony clearly shows that accused Mohd. Sharif was a sympathiser of SIMI and even after imposition of ban, was explaining to the people the objects of SIMI. PW-63 Shri Banshidhar, S.I. of Police, Dausa Police Lines, Distt. Dausa, Rajasthan also deposed about a case registered on 28.9.2001 when the office of SIMI at Talab Para, within the jurisdiction of Kotwali Baran was raided and it was found that Abdul Matin, President and Mohd. Ilias,



Secretary of the banned organization SIMI were propagating principles of SIMI. He, however, admitted that he was not present at the time of raid inasmuch as he had taken over the investigations subsequently.

PW-68 Shri Khema Ram, S.I. of Police, P.S. Nasirabad Sadar, Distt. Azmer, Rajasthan, deposed about a case registered on 28.9.2001 when a pamphlet was found stuck on a wall of Masjid in which provocative remarks were made against Hindus. It had been issued by SIMI. Investigations showed that one Yunus had pasted this pamphlet on the wall. He could not find out as to whether this poster was printed prior to 27.9.2001 or thereafter. He admitted that accused Yunus was not a recorded member of SIMI but was a follower of SIMI.

PW-71 Shri M.J.Pancholi, Police Inspector, Police Headquarters, Anti-Corruption Bureau, G.S., Ahmedabad, deposed about a secret information received on 27.10.2001 that SIMI activists were planning to conduct a secret meeting at Surat at Rajshree Hall. The Hall was booked for All India Minorities Board but inquiries from Delhi revealed that no organization under such name was existing. A search was conducted at the said Hall on 28.12.2001. 123 persons were found present there and from their search, literature, pamphlets relating to SIMI were recovered in which Osama Bin Laden had been eugolized for his heroic actions in U.S.A. Investigations revealed that they were SIMI activists but were organizing a meeting under the banner of All India

Minorities Education Board which was non-existent. This witness was not cross-examined. The statement of this witness clearly shows that after the ban even, SIMI activists were trying to organize themselves under fictitious names and banners with a view to carry out the aims and objects of SIMI.

PW-72 Shri Jashvantsinh R.Vaghela, Sub-Inspector of Police, Karelibaug P.S., Vadodara City, Gujrat deposed about a case registered on 4.1.2002 in which literature was recovered from the accused, who were encouraging others to join SIMI. PW-75 Shri Hukam Chand, Sub-Inspector of Police, Special Cell, Lodi Colony, New Delhi deposed about a case FIR No.13/2002 registered at P.S. Special Cell, (S.B.), Lodi Colony, New Delhi, on 27.5.2002 when two SIMI activists/members were found pasting stickers on the eastern wall of Jamia Millia Islamia Urdu Library. Some of these stickers were found from the house of accused Mohd. Yasin Patel also. These accused were tried and convicted under Section 20 of POTA and 124-A IPC. He stated that the poster showed a picture of a fist containing missiles, which suggest mutiny. PW-76 Shri C.B.Sharma, Inspector of Police, Special Cell, Lodi Colony, New Delhi deposed about a case FIR No.532/2001.

Shri Shahid Badar, the erstwhile President of SIMI examined himself as RW-1 and proved his affidavit Ex.R/A on record. The thrust of his statement is that the SIMI has never involved itself in

any unlawful activity and it is a social, cultural and religious organization. According to him, SIMI has never challenged the integrity or sovereignty of India and has full faith in the Constitution of India. According to him, it has never supported cession of Kashmir nor it has supported any terrorist outfit of Osama Bin Laden and others. He has also stated that after the first ban, SIMI has become totally non-functional and there has been no activity by its members or workers and as such, there were no good grounds for issuing a second notification. In his cross-examination by learned ASG, he stated that he was unable to say anything about the seizure of books of accounts and records of SIMI by the Police as their offices have been sealed. He did not know as to whether its bank accounts have been attached or not. He admitted that he had not issued any press release to say that after the ban, SIMI had been dissolved or its activities had been suspended. He had not made any application to the Central Government under sub-Clause (2) of Section 6 of the Act for cancelling the notification on the ground that SIMI had become non-functional or its activities had been suspended. He denied that in spite of ban, SIMI was being run and the propensity of its activities was increasing. He also denied that SIMI had been receiving donations or gifts from foreign countries. He could not give the name of any person, friend or relation, who had given him financial assistance for fighting the litigation. He was also not in a position to produce any

literature, pamphlet or magazine in which he had condemned terrorism in Kashmir or the secessionist demand. He was also not in a position to give details of relief camps held in Gujrat.

The scrutiny of the material with the Central Government, material placed before this Tribunal and the statements of witnesses produced by parties, establish on record by preponderance of probability, that in spite of first ban imposed on SIMI on 27.9.2001, its members/activists have been indulging in unlawful activities in terms of Section 2(f) of the Act. They are involved in other heinous offences like bomb blasts etc. also. The involvement of SIMI activists in the bomb blasts in Mumbai in 2002 and 2003 in pursuance of a criminal conspiracy between SIMI activists and a foreign terrorist demonstrates their desire to disrupt the sovereignty and territorial integrity of India. The material on record shows not only that SIMI activists were in conspiracy with a foreign terrorist for the purpose of bomb blasts, they were also planning to train Muslim youth in India for the use of fire arms so that they could indulge in terrorist activities and create communal disharmony. It is also established on record that SIMI activists were openly demanding secession of Kashmir to Pakistan and one of them was found in possession of a map, in which Kashmir had been shown as part of Pakistan. After first ban, large number of cases were registered against

SIMI activists/members all over the country, which shows that even after the ban, SIMI activists have been indulging in unlawful activities.

The self-serving statement of RW-1 Shahid Badar that their Organization does not support cession of Kashmir or communal tension between Hindus and Muslims and it is meant for social service only, cannot be accepted in the face of overwhelming evidence led by the Central Government to show that the real goal of SIMI is to support cession of Kashmir to Pakistan, create communal tension between Hindus and Muslims and establish Islamic rule in India. The cross-examination of RW-1 shows that he has not come out with truth as his statement that after the first ban, the SIMI has become non-functional flies in the face of the above discussed unlawful activities of the SIMI members and activists. RW-1 was not in a position to explain as to where from they were getting funds to run the SIMI network and fight litigation. To the contrary, the inputs received by the Central Government, which have been withheld from the Association in public interest, have provided definite information to the Central Government that SIMI activists were collecting funds in U.S.A. even after the ban and were contemplating to set up new offices all over the country. It is fallacious to contend that after the first ban, SIMI ceased to exist by operation of law. It is also proved on record that SIMI activists/sympathisers eulogize Osama Bin Laden and Taliban and some

of them have been even saying that Osama Bin Laden should attack India. Their links with foreign terrorist outfits like Lashkar-E-Toeba, ISI etc. are also proved on record. They call Hindus "Kafirs" and proclaim that a Muslim, who kills a "Kafir", goes to heaven. They also call for "Jehad" which actually conveys a bloody revolution. It has come in evidence that SIMI activists openly say that they do not believe in the Constitution of India and they want to establish Islamic rule not only in India but all over world. Material has been recovered from SIMI activists to show that they were supporting blast of Twin Towers at USA and had admiration for the terrorists, who had carried out the said barbaric act against humanity.

It has also come in evidence of the Police Officers that after first ban, SIMI activists have gone underground but are continuing with their activities surreptitiously. The Officers have repeatedly stated that but for the ban, the SIMI activists would have played havoc in the country. These statements cannot be brushed aside in view of the fact that these are based on intelligence inputs and surveillance by Police. The fact that the Central Government or the Police was unable to lay its hands on any authenticated list of SIMI members is immaterial for the reason that this list could be within the knowledge and custody of respondent-Association only and it was for it only to place it on record, if it wanted to show that the accused arrested in different cases in the

country were not SIMI members. RW-1 has not placed on record any Register or List of its members and it appears that the respondent-Association is deliberately holding it back so that its members can continue with their unlawful activities undetected and unnoticed. It is shown on record that after first ban, SIMI activists have been trying to re-group under different banners with a view to carry out their activities. The constitution of SIMI may be containing lofty ideals but these appear to be on paper only. In reality, its aim is nothing but to ensure cession of Kashmir to Pakistan and disrupt the sovereignty and territorial integrity of India.

There is nothing on record to show that SIMI has been serving the citizens of the country or that after the first ban, all its activities have come to a standstill. Had it been so, SIMI could have moved the Central Government under Section 6(2) of the Act for cancelling the notification. There is no explanation as to why so many inputs and intelligence reports have come and why so many cases against SIMI activists have been registered all over India if SIMI members are not involved in any unlawful activity. The inputs received by the Central Government show that a SIMI activist had gone to U.S.A. for collecting funds for SIMI. E-mail messages were intercepted to show that after the ban, the SIMI activists were planning to set up new offices and were thinking of providing financial assistance to the families of

those SIMI members, who had been arrested. It is thus, shown on record that even after the ban imposed in 2001, SIMI, its members, activists and sympathisers have been indulging in unlawful activities, endangering to the sovereignty and integrity of India. Their actions are capable of breeding communal disharmony in the country as they do not believe in the Constitution of India and want to establish Islamic rule in India. The acquittals of the accused in some of the cases is immaterial for the reason that in a criminal trial, prosecution is under an onerous duty to prove its case beyond any shadow of doubt and as such, an acquittal can take place for a variety of reasons. There is nothing on record to show that SIMI has ever disassociated itself with the accused arrested all over the country on the ground that they are not SIMI activists nor it has ever issued any press release, public notice or a statement to say that SIMI considers Kashmir an integral part of India and does not advocate its cession. SIMI has never declared that it condemns terrorism by Islamic terrorist Organizations. It has never declared or given a call to its members/activists/sympathisers in the country to promote brotherhood between Hindus and Muslims and have faith in the Constitution of India and the Government established by law.

This Tribunal is satisfied that the activities of SIMI, its members, activists, sympathisers are disruptive in nature. The SIMI members/activists are in close contact with militant outfits and support



demand of cession of Kashmir. They support extremism and militancy in Jammu & Kashmir and as such, question the territorial integrity and sovereignty of India. They work for Islamization of world and advocate Islamic rule in India as well as other countries. They use derogatory language against Hindu Gods and deities and exhort Muslims for Jihad. The SIMI activists have been publishing objectionable posters with a view to create hatred between Hindus and Muslims.

This Tribunal, therefore, has no hesitation in concluding that there is sufficient cause for declaring SIMI to be unlawful and as such, the notification No. SO-1113-E dated 26.9.2003 issued by the Central Government under Section 3(1) of the Act stands confirmed.

The reference stands answered.

March 23, 2004  
RK

  
R.C.CHOPRA, J.  
Unlawful Activities (Prevention) Tribunal

[F. No. 14017/1/2004-NI-III]

A. K. JAIN, Jt. Secy.



# भारत का राजपत्र

## The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 125]  
No. 125]

नई दिल्ली, बुधवार, फरवरी 8, 2006/माघ 19, 1927  
NEW DELHI, WEDNESDAY, FEBRUARY 8, 2006/MAGHA 19, 1927

गृह मंत्रालय  
अधिसूचना  
नई दिल्ली, 8 फरवरी, 2006

का.आ. 191(अ).— स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (जिसे इसमें इसके पश्चात् सिमी कहा गया है) ऐसे क्रियाकलापों में संलिप्त रहा है जो देश की सुरक्षा पर प्रतिकूल प्रभाव डालने वाले हैं और जिनसे देश की शांति और सांप्रदायिक सामंजस्य के विक्षुब्ध और देश के पंथनिरपेक्ष ताने-बाने के छिन्न-भिन्न होने की संभावना है ;

केन्द्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना संख्या का.आ. 960(अ), तारीख 27.9.2001 द्वारा सिमी को विधिविरुद्ध संगम घोषित किया था। सिमी को विधिविरुद्ध संगम घोषित करने के लिए विस्तृत आधार उक्त अधिसूचना में दिए गए थे। इस बारे में कि क्या सिमी को विधि-विरुद्ध संगम घोषित करने के लिए पर्याप्त कारण है अथवा नहीं, न्यायनिर्णयन करने के प्रयोजन के लिए विधि-विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया गया था और अधिकरण ने तारीख 26.3.2002 के आदेश द्वारा पाबंदी को वैध ठहराया था। सिमी ऐसे क्रियाकलापों में संलिप्त था जिसके लिए उसपर पूर्व में भी पाबंदी लगाई गई थी, सिमी पर अधिसूचना सं. का.आ. 1113(अ) तारीख 26.9.2003 के द्वारा नए सिरे से पाबंदी लगाई गई

थी । पाबंदी के संबंध में न्यायनिर्णयन करने के लिए विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया गया था और अधिकरण द्वारा तारीख 23.3.2004 के आदेश द्वारा उक्त पाबंदी को वैध ठहराया गया था ;

और अब केन्द्रीय सरकार की यह राय है कि सिमी के कार्यकर्ता अपने को उसी कारण से सांप्रदायिक और राष्ट्र विरोधी क्रियाकलापों में संलिप्त किए हुए हैं जिनके लिए संगठन पर पूर्व में पाबंदी लगाई गई थी । सिमी के क्रियाकलाप शांति, एकता तथा भारतीय समाज के पंथनिरपेक्ष ताने-बाने को हानि पहुंचाने वाले हैं ;

और केन्द्रीय सरकार की आगे भी यह राय है कि यदि सिमी के विधि-विरुद्ध क्रियाकलापों पर तत्काल अंकुश नहीं लगाया गया और नियंत्रण नहीं किया गया तो उसे -

(i) अपनी विध्वंसकारी गतिविधियां जारी रखने और अपने कार्यकर्ताओं, जो अभी भी फरार हैं, को पुनःसंगठित करने ;

(ii) सांप्रदायिक वैमनस्य पैदा करके लोगों के दिमाग को दूषित करके देश के पंथनिरपेक्ष ताने-बाने को विच्छिन्न करने ;

(iii) राष्ट्रविरोधी भावनाओं का प्रचार करने ; और

(iv) उग्रवाद का समर्थन करके अलगाववाद को बढ़ावा देने, का अवसर प्राप्त होगा ।

और केन्द्रीय सरकार की यह भी राय है कि, सिमी के क्रियाकलापों को ध्यान में रखते हुए, सिमी को तत्काल विधिविरुद्ध संगम घोषित करना आवश्यक है और तदनुसार केन्द्रीय सरकार, धारा 3 की उपधारा (3) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि यह अधिसूचना, ऐसे किसी आदेश के अधीन रहते हुए जो उक्त अधिनियम की धारा 4 के अधीन किया जाए, इस के राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी ।

[फा. सं. 14017/7/2005-एनआई-III]

बी. ए. कुटीनो, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

## NOTIFICATION

New Delhi, the 8th February, 2006

s.O. 191(E).— Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government declared the SIMI to be an unlawful association vide notification No. S.O.960 (E) dated 27.09.2001. The detailed grounds for declaring SIMI as unlawful association were given in the said notification. The Unlawful Activities (Prevention) Tribunal was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban vide Order dated 26.03.2002. As SIMI continued to be indulged in activities for which it was banned earlier a fresh ban was imposed on SIMI vide notification No. S.O. 1113 (E) dated 26.09.2003. The Unlawful Activities (Prevention) Tribunal constituted to adjudicate the ban and the ban was upheld by the Tribunal vide Order dated 23.03.2004;

And whereas, now the Central Government is of the opinion that the activists of SIMI are still indulging themselves in the communal and anti-national activities for the reason that the organization was banned earlier. The activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association.

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to -

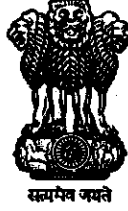
- (i) continue their subversive activities and re-organize its activists who are still absconding;

- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal dis-harmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy ;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F. No. 14017/7/2005-NI-III]

B. A. COUTINHO, Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित  
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सं. 900]

नई दिल्ली, शुक्रवार, अगस्त 11, 2006/श्रावण 20, 1928

No. 900]

NEW DELHI, FRIDAY, AUGUST 11, 2006/SRAVANA 20, 1928

गृह मंत्रालय  
अधिसूचना

नई दिल्ली, 11 अगस्त, 2006

का.आ. 1302(अ).—केन्द्रीय सरकार ने विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं. का.आ. 191 (अ), तारीख 8 फरवरी, 2006 द्वारा स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को तारीख 8 फरवरी, 2006 को विधि विरुद्ध संगम के रूप में घोषित किया था ;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं. का.आ. 291(अ), तारीख 7 मार्च, 2006 द्वारा, तारीख 7 मार्च, 2006 को विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायमूर्ति श्री बी. एन. चतुर्वेदी थे;

केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, 8 मार्च, 2006 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी ;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना सं. का.आ. 191(अ), तारीख 8 फरवरी, 2006 में की गई घोषणा की पुष्टि करते हुए, तारीख 7 अगस्त, 2006 को एक आदेश पारित किया था ।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात् :-

[अधिकरण के आदेश के लिए अंग्रेजी पाठ देखें]

[फा. सं. 14017/9/2006-एनई-III]

बी. ए. कुटीनी, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS  
NOTIFICATION

New Delhi, the 11th August, 2006

S.O. 1302(E).—Whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared on the 8th February, 2006, the Students Islamic Movement of India (SIMI) as an Unlawful Association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 191 (E), dated the 8th February, 2006;

And, whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 5 of the said Act constituted on the 7th March, 2006 the Unlawful Activities (Prevention) Tribunal consisting of Hon'ble Mr. Justice B. N. Chaturvedi, of the Hon'ble High Court of Delhi vide notification of Government of India in the Ministry of Home Affairs, number S.O. 291 (E), dated the 7th March, 2006;

And, whereas, the Central Government in exercise of the powers conferred by Sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 8th March, 2006, for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association unlawful;

And, whereas, the said Tribunal, in exercise of the powers conferred by Sub-section (3) of Section 4 of the said Act made an order on the 7th August, 2006, confirming the declaration made in the notification number S.O. 191 (E) dated the 8th February, 2006.

Now, therefore, in pursuance of Sub-section (4) of Section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

**BEFORE THE JUSTICE B. N. CHATURVEDI  
UNLAWFUL ACTIVITIES (PREVENTION)  
TRIBUNAL, NEW DELHI**

Date of Decision : 7th of August, 2006

**In Re :** Banning of Students Islamic Movements of India under the Unlawful Activities (Prevention) Act, 1967.

**In the matter of :—**

Union of India .....Petitioner,  
Through Mr. Sidharth Mridul,  
Senior Advocate, with  
Mr. Shailendra Sharma,  
Advocate

*versus*

Students Islamic  
Movements of India .....Respondent,  
Through Mr. Trideep Pais,  
Advocate. with  
Mr. Mobin Akhtar, &  
Mr. H.A. Siddiqui, Advocates

**Coram :**

Hon'ble Mr. Justice B. N. CHATURVEDI

**ORDER**

B. N. Chaturvedi, J.

1. Students Islamic Movement of India (SIMI) was declared as an unlawful association vide Notification No. S.O.191(E), dated 8-2-2006 by the Central Government. The Notification reads thus:

“S.O.191(E).—Whereas, the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country.

And, whereas, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government declared the SIMI to be an unlawful association vide notification No. S.O.960 (E) dated 27-09-2001. The detailed grounds for declaring SIMI as unlawful association were given in the said notification. The Unlawful Activities (Prevention) Tribunal was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban vide Order dated 26-03-2002. As SIMI contained to be indulged in activities for which it was banned earlier a fresh ban was imposed on SIMI vide notification No. S.O. 1113 (E), dated 26-09-2003. The Unlawful Activities (Prevention) Tribunal constituted to adjudicate the ban and the ban was upheld by the Tribunal vide Order dated 23-03-2004;

And, whereas, now the Central Government is of the opinion that the activists of SIMI are still indulging themselves in the communal and anti-national activities for the reason that the organisation was banned earlier. The activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association. And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not cured and controlled immediately, it will take the opportunity to—

- (i) continue their subversive activities and re-organise its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy;

And, whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to Sub-section (3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette.”

2. A Corrigendum No. S.O. 206(E) to the aforesaid ban notification was issued and published on 13th of February, 2006 to the following effect:

“S.O. 206(E).--In the notification of the Government of India in the Ministry of Home Affairs No. S.O.191(E) dated the 8th February, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8th February, 2006, at page 3—

- (i) in line 15, for the word “contained”, read “continued :”
- (ii) after line 24, insert the following namely :—

“Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;”.

3. By a letter dated 8-3-2006, pursuant to the aforesaid notification dated 8-2-2006 read with corrigendum dated 13-2-2006, declaring the Students Islamic Movement of India (SIMI) as an unlawful association under Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), (for short ‘the Act’) a reference was made to this Tribunal under Section 4 (1) for adjudication whether or not there is sufficient cause for declaring the association as unlawful. Together with the said letter, copies of the



notification dated 8-2-2006 and corrigendum dated 13-2-2006 along with a resume incorporating facts constituting basis for ban were forwarded.

4. After perusal of the resume so received, a notice under Section 4 (2) of the Act was issued to Students Islamic Movement of India (SIMI) to show cause within 30 days from the date of service of notice as to why the said organisation being declared as an unlawful association be not adjudicated to be for sufficient cause. The notice accompanied by copies of notification dated 8-2-2006, corrigendum dated 13-2-2006 and resume was directed to be served on the said organisation through Secretary, at its principal office at C-151/9, Zakir Nagar, New Delhi-110025 and also at its office/s, if any, at different place/s in the States of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamilnadu, Kerala, West Bengal, Jharkhand, Assam, Bihar, National Capital Territory of Delhi and Uttar Pradesh, through local office bearer/s as well as by affixation at some conspicuous part of the office/s of the association. Notice was, in addition, directed to be served by publication in two national newspapers (one in English and one in Hindi) and also in one vernacular newspaper of the respective States where the activities of the association are being ordinarily carried on. The notice was also required to be served on the association by way of broadcast/telecast on All India Radio and Doordarshan/DD Regional.

5. Consequent upon service of notice, the respondent-association caused its appearance on 5th of May, 2006 through S/Shri Mobin Akhtar and H.A. Siddiqui, Advocates, and, in the circumstances, service of notice was treated as sufficient.

Two weeks' time was sought on behalf of the respondent-association to file their objections. The association was, accordingly, required to file its objections on or before 18th of May, 2006. On 18th of May, 2006, however, instead of filing the objections, an application being IA.1/2006 was filed seeking extension of time to enable the respondent-association to file its objections. Though in the application a request for grant of 30 days' time from 2nd of May, 2006 to file its objections was made, keeping in view the time constraint, the learned counsel for the respondent-association, eventually agreed to file the same by 22nd of May, 2006. The objections were, thus, filed on behalf of respondent-association on 22nd of May, 2006, which were taken on record. On 18th of May, 2006 when time to file objections was extended up to 22nd of May, 2006, apart from IA. 1/2006, four more applications had been made being IAs.2-5/2006 on behalf of the respondent-association, which were directed to be posted on 22nd of May, 2006 for disposal. On 22nd of May, 2006, one more application bearing IA. No. 6/2006 was filed together with objections. All these applications being IAs. 2-6/2006 were disposed of *vide* order dated 22-5-2006.

6. Proceeding with the inquiry in order to record the statements of the witnesses who were to be produced on

behalf of the Central Government by different States, sittings of the Tribunal were held at Aurangabad, Trivendrum, Chennai, Hyderabad, Bangalore, Indore and Delhi. As many as 34 witnesses, including those produced by various States, were examined on behalf of the Central Government. The witnesses so examined were allowed to make their statement in examination-in-chief on affidavits, which they did before their cross-examination on behalf of the respondent-association. The respondent-association examined two witnesses, namely, Mr. Zafrul Islam, RW-1, and Mr. Shahid Badar, RW-2, in support of its objections.

7. The notification dated 8-2-2006 read with corrigendum dated 13-2-2006 simply sets out the grounds on which the respondent-association was banned. The facts which constitute the basis for ban are set out in the resume/background note, which was, in addition to copies of notification dated 8-2-2006 and corrigendum dated 13-2-2006, forwarded to this Tribunal along with letter of reference dated 8-3-2006.

#### FACTS:

8. Facts emanating from background note unfold that the Students Islamic Movement of India (SIMI) came into existence on 25th of April, 1977 as a front organisation of youth and students having faith in Jamait-e-Islamic-Hind (JEIH). In 1993, however, the respondent-organisation disassociated from Jamait-e-Islami-Hind (JEIH) and declared itself as an independent organisation. At world level, the respondent-organisation is stated to be affiliated to 'World Association of Muslim Youth (WAMY)'.

9. The stated objectives of the respondent-organisation are:

1. Governing of human life on the basis of Quran;
2. Propagation of Islam;
3. "Jehaad" (religious war) for the cause of Islam;
4. Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

10. The respondent-organisation, states the background note, aims to utilize students/youth in propagation of Islam religion and obtain support for Jehaad (for Islam). It emphasises on the formation of "Shariat" based Islamic Rule through "Islamic Inqalab". The note adds that respondent-organisation does not believe in the Nation State. It also does not believe in the Constitution or the secular order. Idol worship is regarded as a sin by it and it seeks to end such idol worship as part of its holy duty. The respondent-association, claims the background note, enjoys a sound financial position generated through donation, membership fee and financial assistance received from time to time from its supporters in Gulf Countries. The respondent-organisation, according to Note, is having contacts with Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Being a group of students and youth, states the Note, the respondent organisation is easily influenced by hard-core muslim terrorist organisations operating from Jammu & Kashmir and, thus, Hizb-ul-



Mujahideen and Lashkar-e-Toiba have successfully penetrated into the SIMI Cadres to achieve their goals.

11. The background note discloses that the respondent-organisation has its stronghold in the States of Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Kerala, West Bengal, Jharkhand, Assam, Bihar and National Capital Territory of Delhi. It further discloses that the respondent-organisation is known to have launched a country-wide campaign since November, 1996 to mobilise support for the Muslims and for the 'Caliphate' (Rule of Islam). It is stated to be against Indian Nationalism and is working to replace it with the International Islamic Order. Detailing the activities of the respondent-organisation till September, 2001, the background note mentions that the respondent-organisation advocated self-determination in Kashmir and was in close touch with Kashmir militant outfits, including pro-Pak Hizb-ul-Mujahideen (HUM) and Jammu & Kashmir Liberation Front and also extended full support to Punjab extremists and Jammu & Kashmir insurgents. The respondent-organisation was, in terms of Note, involved in various militant and disruptive activities details of which find mention in para 7.(b) thereof.

12. In view of unlawful activities of the respondent-organisation, it was declared as an unlawful association *vide* Notification No. S.O. 960(E) dated 27-9-2001 under Sub-section 1 of Section 3 of the Act. Hon'ble Mr. Justice S.K. Aggarwal, a sitting Judge of the Delhi High Court, as he then was, on a reference under Section 4.(1) *vide* his order dated 26-3-2002, which was published in the Gazette of India *vide* Notification No. S.O. 397(E) dated 9-4-2002, answered the same in affirmative finding that there was sufficient cause for banning the respondent organisation as an unlawful association. Notwithstanding the ban so imposed on the respondent organisation, states the background note, continued with its unlawful activities even during the ban period of two years. Consequently, on expiry of initial ban period of two years, a fresh ban was imposed on the respondent-organisation under Section 3.(1) of the Act, *vide* a Gazette Notification No. S.O. 1113(E) dated 26-9-2003. This ban, on a reference for adjudication under Section 4.(1) of the Act, was confirmed by the Unlawful Activities (Prevention) Tribunal consisting of Hon'ble Mr. Justice R.C. Chopra, a sitting Judge of the Delhi High Court, as he then was, *vide* notification No. S.O. 499(E) dated 16-4-2004.

13. The aforesaid two bans notwithstanding, the respondent-organisation managed to keep its network alive through clandestine activities. It was found to be re-grouping its cadres and reviving the organisation through pseudonymous/front organisations, clandestine meetings and circulation of leaflets, posters and magazines. In terms of Intelligence reports related to activities of the respondent-organisation in Uttar Pradesh, Shri Shahid Badar Falahi, erstwhile President of respondent-organisation, on his release from Azamgarh jail on 7th of April, 2004 started making efforts to revive and rejuvenate SIMI cadres. With

that end in view, Shri Falahi, while addressing a meeting in his native village Manchoba Kakarhatta (Azamgarh) expressed his resolve to continue his struggle for establishing Islamic Rule in India. Similarly, workshops and meetings were allegedly organised at Varanasi, Allahabad, Lucknow, Azamgarh, Bahraich and Moradabad. The Intelligence reports further revealed that Shri Rais Baig, President of Nanpara Unit of the respondent-organisation, while addressing a meeting of SIMI workers highlighted the importance of Jihad and asked the members to imbibe true Jihad spirit. The SIMI leaders, including Shahid Badar Falahi, are reported to have been touring different parts of India to motivate cadres, step up the recruitment process, raise funds and coordinate activities with other Muslim organisations. Training and motivational activities of SIMI have been going on in Maharashtra, Tamil Nadu, West Bengal, Uttar Pradesh and Kerala where drill with lathies and swords is being undertaken and training in *Judo* and *Karate* being imported. The activities of the respondent-organisation during the period May August, 2005 show that it continues to adhere to its ideological extremism, which rejects the basic tenets of the Indian Constitution, *viz.*, democracy and secularism. Imparting arms training, securing release of SIMI workers from jail, collecting funds and conducting tours to spread SIMI ideology are stated to be in pursuance of a resolve to revive the organisation and continue the struggle. According to the background note, the respondent-organisation has floated about five dozen fronts/pseudonymous organisations which find specific mention in paragraph 20 of the Note.

14. The background note says that the SIMI activists are engaged in raising funds through Zakat collections, donations from Muslims and sale of animal hides. It is added that Kunju Mohammed Pulavath (ex-President, SIMI Kerala, and Director, Karuna Foundation) and V. X. Saleem (ex-President, SIMI, Ernakulam and Director, Manas Jamait-ul-Ansar) are engaged in collecting funds and in that connection they are reported to have met the representatives of World Assembly of Muslim Youth (WAMY) and C.A.M. Basheer (absconding ex-President of SIMI) based in K.S.A. since 1993.

15. The Note proceeds to state that SIMI continues to have links with JEI-BD, a fundamentalist Muslim organisation active in Bangladesh. The leaders of JEIBD and its students wing Islamic Chhatra Shibir (ICS) regularly attend meetings of SIMI held in West Bengal. In June 2004, Abdul Karim Suja (a leader of ICS) allegedly handed over three CDs containing highly inflammatory and seditious matters designed at influencing young Muslim minds and asked for its circulation in different areas of the State.

16. In an article captioned 'National Democratic Secular State and Islamic View Point' published in February, 2004 issue of Millat-Al-Yaum, a monthly magazine stated to be published from Delhi by SIMI workers, it was mentioned that 'Secularism, is an uncivilised theory; polytheism is a curse; democracy is ineffectual and spurious and martyrdom is the goal of a Momin (true Muslim)'. It

also asserts that 'it does not matter for a Muslim whether India remains as one country or is divided into 10 pieces'. In another article published in May, 2004 issue of the same magazine alleged demerits of secularism, nationalism and democracy have been highlighted and it is asserted that these concepts are 'wrong' for the Islam followers'. The article emphasises on establishment of 'system of Allah'. The magazine eulogizes "Jihad" calling it 'Scheme of God'. Highlighting duties of mujahideen, another article urges the Muslims to boycott un-Islamic decisions of courts and exhorts them for 'Jihad'. The respondent-organisation, adds the background note, apart from continuing with its old publications, has started two new monthly magazines, namely, 'Millat Al-Yaum' (Delhi) and 'Istaqlal' (Lucknow) carrying provocative articles. The activists of the respondent-organisation are alleged to be instrumental in circulating a VCD titled 'Jihad-e-Hindustan' containing clippings of Babri Masjid and speeches by Maulana Masood Azhar (Chief, Jaish-e-Mohammed). In Kerala, SIMI activists are said to have circulated a booklet titled 'Thadkira' (reminder) showing similarities between Israel and India. In West Bengal, the respondent-organisation is publishing a quarterly 'Al Murshid'. In Bihar, pamphlets captioned, 'BJP KA ASLI CHEHRA - Gujarat and 'MERI AWAZ SUNO' were found in circulation. In Tamil Nadu, SIMI is publishing a Tamil bi-monthly, 'Meelaivu' (review). In Kerala, ex-SIMI activists brought out a calendar (2005) carrying photograph signifying Islamic resistance. In April, 2005 issue of Urdu monthly magazine 'Istaqlal' brought out by hardcore SIMI elements in an article captioned 'Secularism - the Enemy of India' by one Dr. Yusuf Al-Qarzawi, it has been asserted that secularism is entirely against Islam. It claims that secularism is not possible in Islam as Government and Allah are not two different identities in Islam. According to it, there is complete contradiction between Islam and secularism as Islam provides guidelines and laws for every aspect of life from birth to death and is 'Kalma' (word) of Allah, while secularism desired that Islam should become 'faithful'. It says that secularism itself is a problem and if the same is adopted, countless problems will arise without any solution. The article describes secularism as enemy of Shariat and of the existence of Islam.

17. It is stated that the SIMI has been maintaining a significant level of activity, despite continued ban on it. The acquittal of Shahid Badar Falahi (President, SIMI) by Delhi Court, the release of SIMI activists, accused in the Ghatkopar bomb blast, subsequent repeal of POTA and the recent acquittals on 11th June, 2005 of the remaining eight SIMI activists accused in the Ghatkopar case, have boosted the morale of SIMI cadres. Hoping that the ban on SIMI will be lifted sooner than later, they have been making concerted efforts to re-group their activities/sympathisers and revive their activities. A proposal is, in the meantime, under consideration of the SIMI to raise the retirement age of its members from 30 years to 40 years and also to form a new organisation to accommodate its ex-members. The

Note says that there is no change in the ideology of SIMI of achieving the objective of, 'Allah's pleasure through reconstruction of human life according to principles given by Allah and His messenger'. The ideology of the outfit considers constitutional pillars of secularism, democracy and nationalism as un-Islamic and antithetical to Quaranic teachings. SIMI's slogan 'Allah is our Lord, Mohammed is our Commander, Quran is our Constitution, Jihad is our path and Shahadat is our desire' is indicative of its militant mindset. The respondent-organisation continues to propagate their objectives of governing of human life on the basis of Quran, propagation of Islam, Jihad for the cause of Islam and of training their cadres to mobilise support for the Caliphate (Rule of Islam) with the objective of replacing Indian nationalism with an international Islamic order. Its leaders have links with militants of J & K and JEI-BD. It continues to eulogize "Jihad" and exhorts Muslims to prepare for "Jihad".

It is stated that though no violent incident involving SIMI has been reported during 2004-05, there is no indication that the outfit has given up the path of violence. It was in view of the aforesaid activities of the respondent-organisation that the Government of India declared the respondent-organisation as an unlawful association under the provisions of the Act.

18. The respondent-association, in its objections, terms the ban as violative of Fundamental Rights of its members and contrary to the provisions of the Act. According to it, the notification suffers from the vice of lack of particulars, vagueness, staleness, obvious brazen malice and asserts that no case for ban under the provisions of the Act, is made out against it. It is pleaded that paragraphs 1 to 14 of the background note pertain to the earlier two bans and bear no relevance to the present ban. It is only paragraphs 15 to 29 of the note which are said to pertain to the present ban and can be considered by this Tribunal in the present inquiry. It is asserted that paragraphs 15-29 of the note do not make out a case for ban because the same are so bereft of particulars that the respondent-organisation is not able to respond to the same. The same do not make out any nexus between the acts alleged and the respondent-association. It is pleaded that because of Central Government deliberately withholding material facts and records, 'there has been non-compliance of the provisions of the Act and Rules, as a result prejudice is caused to the association and other affected persons while showing cause and that the principles of natural justice have been violated and, thus, the proceedings before this Tribunal stand vitiated. The Central Government, it is complained, has withheld documents on grounds of public interest and has refused to disclose the same not only to the association as also to this Tribunal. It is pleaded that without adjudication by this Tribunal on the issue of privilege or suppression of documents on grounds of alleged public interest as also in the absence of the material relied upon by the Central Government for issue of the notification, grave prejudice is caused and right to show

cause effectively is violated. It is pleaded that it is mandatory under the Act for this Tribunal to adjudicate not only the existence of the sufficient cause for declaring an association as unlawful but also to examine and adjudicate upon the circumstances of such invocation and the sufficiency/adequacy of material forming the basis of issuance of the notification.

19. The respondent-association states that it ceased to exist as on 27th of September, 2001 when it was first banned and that it did not exist as an 'association' thereafter. It is now for the Central Government to show that the respondent -association exists as an organisation beyond first ban on 27th of September, 2001 and the subsequent ban on 27th of September, 2003. From the background note itself at para 26, it is clear that no violent incident involving SIMI members took place since the second ban on 27th of September, 2003. Further, there was a period between 27th of September, 2005 and 8th of February, 2006 when the ban was not even operative and even during that period no activity actionable under the Act or any other law, by the members/erstwhile members of SIMI was reported. It is stated that the allegations with regard to the acts by other persons made in the notification and background note do not make out any connection between those persons and the respondent -SIMI or that they acted on behalf of SIMI. It is pleaded that the notification has been issued without scrutinising the alleged material/documents and application of mind. The ban notification is pleaded to be based on background note containing false averments and concocted facts with respect to incidents that did not take place and by referring to organisations and persons as being sympathetic to the respondent-organisation or involved with it while such organisations in most cases do not exist or even if they do, they are not in any manner connected with the respondent. It is pleaded that the notification is nothing but an arbitrary and malafide act contrary to statute and in excess of the jurisdiction conferred on the Central Government under the Act. Setting out background facts, it is stated that the respondent association was established as a social, cultural and religious organisation for welfare of all persons in India (irrespective of religion, caste, economic background or region) -- its membership being open to all Indian citizens below the age of 30 years. It is claimed that the activities of respondent are a political and non communal besides being spiritual and religious. The respondent/SIMI is stated to believe in unity of God and unity of humankind. The aim of the respondent organisation, as spelt out in Article 4 of its Constitution, is to achieve Allah's pleasure through reconstruction of human life according to the guidance given by Allah and His messenger, the Prophet Mohammad. The organisational structure of SIMI/respondent is democratic and its working advisory in nature. Its activities have always been open and lawful and there is no iota of secrecy or unlawfulness in its activities. It is stated to have undertaken several programmes such as scholarships to the needy students, career guidance to students for admission in

higher courses and several other social events. It has served all classes of people irrespective of caste or creed and its contribution to alleviate human sufferings have always been noteworthy. It is added that the SIMI has full faith in the Indian judiciary and is law abiding and lawful association. On 26th January, 2001, on Gujarat being ravaged by an earthquake of severe intensity, the respondent association undertook extensive social work and provided relief to the victims of the earthquake in Gujarat without discrimination between people of various religions.

20. According to the respondent, in and around the year, 2000, the previous political establishment headed by the NDA (National Democratic Alliance) which was inimical to Muslim minority organisations such as the respondent-SIMI began an insidious campaign for vilification and persecution that ended in its eventual ban. The first two bans, according to it, were as a result of this.

21. The Central Government, it is stated, while issuing the impugned notification, nowhere mentions the fresh grounds or reasons for, declaring respondent/SIMI as an unlawful association. The notification, according to the respondent, has been issued in malafide and colourable exercise of powers under the statute. The notification suffers from lack of fresh or any relevant grounds justifying the existence of sufficient cause. The grounds or causes once used to exercise powers under Section 3 of the Act while imposing ban in 2001 or 2003, could not be used again to invoke the powers under the Act. After 2003, not a single case has been registered against any erstwhile members of the respondent-association. It is denied that the respondent-association is involved in any activity which could be prejudicial to the maintenance of communal harmony, hurt the religious sentiments of other communities incite religious fervour or question the territorial integrity of the country. It also denied that there has been publication of any materials attributable to it or that its activists have made speeches as alleged. It is stated that, no doubt, the respondent/SIMI believes in Holy Quran and propagation of Islam but at the same time, the said belief cannot be construed to be destruction of nationalism or establishment of the Islamic Rule or Caliphate. It is submitted that following the Holy Quaran and/or its teachings is a Fundamental Right of citizens of this country and, thus, the respondent association and/or its members are well within their right to follow the same. As far as "Jehaad" is concerned, "it is nothing but a war against evil and/or a war against malign desires". The respondent association denies that it emphasises on the formation of Shariat based Islamic Rule through Islamic Inqlab. It also denies that it does not believe in Nation State or in the Constitution or the secular order. As regards its views on idol worship, the respondent/SIMI follows the Holy Quran which is again neither prohibited nor barred under the law of land. It is submitted that since the ban of 2001 and 2003 and the sealing of its offices the respondent-organisation came to a standstill and there has been no generation of funds and



financial position of the organisation is not sound. Any financial assistance being provided by supporters from Gulf countries or any other country is denied. It also denies that it has any relations whatsoever with the organisations by the name of Hizb-ul-Mujahideen and Lashkar-e-Toiba or any other Muslim terrorist organisation. It is asserted that the Central Government could not rely upon alleged Intelligence reports to justify the imposition of ban without producing the same. Being involved in any sort of militant or subversive activity in any of the States in India is denied. In regard to the posters, calendar and audio cassettes, referred to in the background note, it is stated that the same cannot be looked into by this Tribunal as they do not pertain to the relevant period with which this Tribunal is concerned and as the same had been considered by the earlier Tribunals. The allegation that the members of the respondent organisation were associating themselves with other fundamentalist organisations is denied and it is added that the allegation is based on the presumption that the respondent-association is a fundamentalist organisation, which it is not. The allegation that the respondent was floating new frontal organisations and preparing handbills, CDs, Video Cassettes or mobilising Muslims on issues concerning the community is denied. The respondent specifically denied that two monthly magazines, namely, Millat-Al Yaum (Delhi) and Istaqlal (Lucknow) are being published and circulated by it. It is asserted that there can never be a change in the ideology of the respondent - association of achieving the objectives of Allah's pleasure through reconstruction of human life according to the principles given by 'Allah and His messenger' as this is in accordance with the Fundamental Rights guaranteed to every citizen under the Constitution to adopt the faith of his or her choice and to propagate the same. SIMI's slogans are in no way indicative of militant mindset as alleged. It is accordingly stated that the ban on the respondent organisation is unjustified and must be cancelled.

22. On conclusion of examination of witnesses from either side, learned counsel for respective sides, filed their written submissions and supplemented the same by advancing oral arguments.

23. In support of ban Notification dated 8.2.2006 read with corrigendum dated 13.2.2006, Shri Sidharth Mridul, learned senior counsel appearing for the Central Government, referring to the previous bans in 2001 and 2003, which were confirmed by respective Unlawful Activities (Prevention) Tribunals, argued that notwithstanding said bans the respondent-association continued to indulge in anti-national, anti-social and anti-secular activities and as inputs from Intelligence agencies indicate, it has managed to keep its network alive through clandestine activities and that it is re-grouping its cadres and reviving the organisation through pseudonymous/front organisations, clandestine meetings, circulation of leaflets, posters, magazines and intra organisational Islamic networking, etc. He argued that the Intelligence reports also indicate that provocative articles are being published

and circulated by ex-SIMI activists in different States and in order to avoid police action, the respondent-organisation has been carrying on its activities through cover/front organisations. Apart from Intelligence reports, inputs have also been received from various State Governments and Union Territories about unlawful activities of the respondent-organisation. He pointed out that there has been no change in the ideology of SIMI of achieving the objective of 'Allah's' pleasure through reconstruction of human life according to principles given by Allah and His messenger'. He added that the ideology of the outfit considers constitutional pillars of secularism, democracy and nationalism as un-Islamic and antithetical to Quaranic teachings. He submitted that the slogan, 'Allah is our Lord, Mohammed is our commander, Quaran is our Constitution, Jihad is our path and Shahadat is our desire' is indicative of respondent-organisation's militant mindset. The banned organisation continues to propagate its objectives of governing of human life on the basis of Quran, propagation of Islam, 'Jihad' for the cause of Islam and of training their cadres to mobilise support for the Caliphate (Rule of Islam) with the objective of replacing Indian nationalism with an international Islamic order. It was submitted that the outfit continues to eulogizes 'Jihad' and extorts Muslims to be prepared for 'Jihad' and aims at achieving the objectives of replacing Indian nationalism with the International Islamic order. He pointed out that the banned organisation is in close touch with militant outfits and is supporting militancy in Punjab, Jammu & Kashmir and elsewhere. It is contended that SIMI supports claim for the secession of part of the Territory from the Union. He pleaded that the objectionable posters and literature published by SIMI are calculated to incite communal feelings and that it has been involved in communal riots and disruptive activities in various parts of the country. Shri Mridul argued that viewed in the light of Intelligence inputs regarding unlawful activities of the respondent-organisation and the criminal cases registered against its members, there was sufficient justification to impose a fresh ban on the respondent-organisation.

24. Shri Trideep Pais, learned counsel appearing for the respondent-association, on the other hand, raised multifold pleas to question the sustainability of the ban. In the first instance, he contended that the reliance of the Central Government on Intelligence reports / secret material finds no mention in the background note or the notification which shows that the same was never in contemplation of the Government when the notification was issued. He pointed out that there is no nexus between the secret material and the notification. His plea was that since the evidence adduced in support of the ban was not good enough to sustain the same, the Central Government has fallen back on the secret material in support of the ban. Referring to the Statement of Shri B.A.Coutinho, PW-34, to the effect that the secret material was sufficient to ban the respondent *de hors* other evidence produced by the Central Government, Shri Pais sought to contend that

reliance on secret material is disproportionate and amounts to a ban without hearing. He questioned the reliance by the Central Government on secret material, neither copies whereof have been supplied to the respondent-association, nor inspection thereof allowed, without claiming privilege in respect thereto in accordance with relevant provisions of the Indian Evidence Act. According to him, in order to claim privilege, the Central Government was obliged to file an affidavit indicating with respect to each one of the document as to why privilege was being claimed in respect thereof and in what manner disclosure thereof would be injurious to public interest. He maintained that unless this Tribunal decided on the privilege in respect of such secret material in favour of the Central Government, the copies thereof to the respondent-organisation could not be withheld by it. Shri Pais contended that in the absence of privilege claimed by the Central Government in respect of secret material in accordance with prescribed procedure, the same could not be taken into consideration in finding the sufficiency of cause to confirm the ban. In support of his arguments, Shri Pais referred to a part of a Chapter on Fair Hearings— General Aspect from Administrative Law (Seventh Edition) by H. W.R. Wade and C.F. Forsyth, and three decisions of the Supreme Court in "*State of Punjab Vs. Sodhi Sukhdev Singh*, AIR 1961 SC 493; "*Harnam Das Vs. State of Uttar Pradesh*", 1962 2 SCR 487; AIR 1961 SC 1662; and "*Mohinder Singh Gill & Another Vs. The Chief Election Commissioner, New Delhi & Others*", AIR 1978 SC 851. Shri Pais also made a reference to an order dated 4-6-1993 passed by an Unlawful Activities (Prevention) Tribunal adjudicating ban on VHP, RSS and Bajrang Dal, where some confidential documents were relied upon by the Central Government in support of ban but the Tribunal refused to take the same into consideration in view of such confidential documents being not made available 'for scrutiny and for analysis' to the opposite counsel.

25. Shri Sidharth Mridul, appearing for the Central Government, on the other hand, maintained that by virtue of proviso to Section 3 (2) of the Act and the rules framed thereunder, the Central Government is within its rights to decline disclosure of any such material which it considers to be against the public interest to disclose. Shri Mridul, in support, relied upon a decision of Supreme Court in "*Jumat-e-Islami Hind Vs. Union of India*", 1995 1 SCC 428, and another decision of the Supreme Court in "*S.P. Gupta & Others Vs. President of India & Others*", AIR 1982 SC 149. He sought to draw a distinction on disclosure of secret material to the opposite party where such class of documents were vital to national security. In this regard, he also referred to Administrative Law by H. W.R. Wade and C.F. Forsyth at pages 571-572.

26. In Administrative Law by H. W.R. Wade and C.F. Forsyth under the head "Fair Hearings—General Aspects" at pages 531-535, based on various judicial decisions, broad principles of a fair hearing were spelt out. At page 531,

under the head 'the right to know the opposing case', it says:

"A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."

"In "*Kamla Vs. Government of Malaya*", (1962) AC 322, Lord Denning is quoted to have said:

If the right to be heard is to be a real right which is worth anything, it must carry with it a right on the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them (p. 531)

At the same time, at pages 535-536, under the head "Limits to the right to see adverse evidence", it was noted:

In some administrative situations there are limits to the broad principles stated above. The court must always consider the statutory framework within which natural justice is to operate, and a limit sometimes necessarily be implied. What is essential is substantial fairness to the person adversely affected. But this may sometimes be adequately achieved by telling him the substance of the case he has to meet, without disclosing the precise evidence or the source of information. The extent of the disclosure required by natural justice may have to be weighed against the prejudice to the scheme of the Act which disclosure may involve"

27. Shri Pais particularly referred to the principle set, out at page 536, as laid down in "*Canterbury Building Society Vs. Baker*", (1979) 2 NSWLR 265, which says:

"..... and if their information is so confidential that they cannot reveal it even in general terms, they should not use it."

While mentioning exceptions to the aforesaid broad principle, at page 571 under head "National Security", it is also added:

"The right to a fair hearing may have to yield to overriding considerations of national security....."

..... Since national security must be paramount natural justice must then give way.

28. In *Sodhi Sukhdev Singh* (supra), examining the issue relating to claim of privilege under Section 123 of the Evidence Act, where privilege was claimed in respect of documents embodying minutes of meetings of Council of Ministers and report of Public Service Commission tendered under Article 320 (3)(c) of the Constitution, per majority judgment, it was held that if the court on a preliminary inquiry held to determine the objections to production of the documents found that the document does not relate to affairs of state the claim of privilege is liable to be rejected. However, if the documents relate to affairs of state, it was to be left to the head of the department whether he should permit its production or not. In paras 15

and 16 of the majority judgement, on 'affairs of state' it was observed:

"At the time when the Evidence Act was enacted, 'affairs of state' may have had a comparatively narrow content. Having regard to the notion about governmental functions and duties which then obtained, 'affairs of state' would have meant matters of political or administrative character relating, for instance, the national defence, public peace and security and good neighbourly relations"

29. It was further observed:

"As the Legislature has advisedly refrained from defining the expression 'affairs of state' it would be inexpedient for judicial decisions to attempt to put the state expression into a straight jacket of a definition judicially evolved. The question as to whether any particular document or a class of documents answers the description must be determined in each case on the relevant facts and circumstances adduced before the Court."

30. In *S.P. Gupta (supra)*, where immunity from disclosure in respect of correspondence between the Chief Justice of High Court, Chief Justice of India and the Law Minister was claimed, it was held:

"There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or inviolable in all circumstances. It is not a rule of law to be applied Mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to anyone by withholding relevant evidence. This is a balancing task which has to be performed by the court in all cases".

In the context of claim put forward on behalf of the Union of India that the correspondence between the Law Minister, the Chief Justice of Delhi High Court and the Chief Justice of India belong to a class contents of which were such that their disclosure would harm the national interest or the interest of public service and as such, such documents were entitled to immunity from disclosure, noting with approval, a decision in "*The State of Uttar Pradesh Vs. Raj Narain & Others*", AIR 1975 SC 865 recognising that there could be classes of documents which in the public interest required not to be disclosed, no matter what the individual documents in those classes may contain, it was laid down that the law recognises that there may be classes of documents which in the public interest should be immune from disclosure. A class consisting of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure was stated to be one such class of documents

which for years has been recognised by law as entitled in the public interest to be protected from disclosure. It was held that the documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. Taking note of different classes of documents which were held to be immune from disclosure in the public interest, it was concluded:

"It is not necessary for us for the purpose of this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contained. But it does appear that Cabinet papers, minutes of discussions of Heads of Departments and level documents relating to the inner working of the Government machine are concerned with the framing of Government policies dealing to this class which in the public interest must be regarded as protected against disclosure."

The argument advanced by Shri Pais that in the absence of a claim for privilege with respect to secret material produced for perusal of this Tribunal, such documents could not be taken into consideration for finding if there was sufficient cause for imposition of ban is based on the premise that claim for privilege or immunity from disclosure of the secret material being relied upon by the Central Government should have been made by filing proper affidavit in that respect as contemplated under Section 123 of the Indian Evidence Act.

31. The argument so raised, however, appears to be unacceptable for the simple reason that the Central Government is seeking to withhold the secret material in view of proviso to Section 3(2) of the Act and not by virtue of claim for privilege or immunity from disclosure of the contents of the confidential files by invoking Section 123 of the Indian Evidence Act. The proviso to Section 3(2) of the Act, which by virtue of Section 48 of the Act overrides any other Law inconsistent with the provisions of the Act, does provide that the Central Government would not be required to disclose any fact which it considers to be against the public interest to disclose. Emphasising on observance of minimum requirement of natural justice while embarking on adjudication of the controversy relating to ban, the Supreme Court in *Jamat-e-Islami Hind (supra)* held thus:

"...No doubt, the requirement of natural justice in the case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to Sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the Government considers against the public



interest to disclose. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show-cause against the same. Rule 3 also indicates that as far as practicable the rules of evidence laid down in the Indian Evidence Act, 1872 must be followed. A departure has to be made only when the public interest so requires. *Thus, subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal making adjudication under the Act.*" (Emphasis supplied)

32. The aforesaid observations of the Supreme Court in *Jamat-e-Islami Hind* (supra) clearly recognise that where the Central Government considers the disclosure of a particular fact/facts against the public interest, it is authorised to withhold disclosure thereof to the banned organisation. This apart, it is noteworthy that the confidential records which have been placed for perusal by this Tribunal apart from official notings eventually leading to decision for a fresh ban on respondent-organisation and issue of notification in that regard, contain inputs from different Intelligence agencies, including the concerned State Governments. The background note itself makes mention of the facts which are based on Intelligence reports. The substance of material collected through Intelligence network has, thus, already been set out in the background note. The respondent -organisation, therefore, cannot complain that it is being kept totally in dark in so far as contents of Intelligence inputs are concerned. Being related to the security of the Nation, element of secrecy inherent in Intelligence networking has to be maintained and if keeping that view in mind the Central Government decided to withhold the disclosure of contents of the confidential files from the respondent-organisation or its counsel, minimum requirement of natural justice cannot be held to have been breached in the adjudicatory process.

Intelligence reports emanating from Central and State intelligence agencies which have been made available for perusal of this Tribunal, are already disclosed in substance in terms of contents thereof and the respondent-association had a fair and reasonable opportunity of meeting or contradicting the facts emerging out of such reports. In the given situation, thus, it would be difficult to accept the contention of Shri Pais that non-disclosure of the contents of the confidential files to the respondent-organisation amounts to non-compliance with the minimum requirement of natural justice and that the material contained in such files cannot be taken into consideration for purpose of adjudication with respect to the ban.

33. Shri Pais further argued that it is not only on account of non-disclosure of the secret materials being relied upon by the Central Government to the respondent-organisation, even otherwise on account of vagueness of the notification and holding of Tribunal's sittings in quick succession for paucity of time, there was denial of a fair and reasonable opportunity to the respondent-organisation to effectively plead its case against the ban. In this connection, it may be noticed that the grounds of ban are specified in the notification and the facts which constituted the basis on the part of Central Government to form an opinion for a fresh ban on the respondent-organisation have been set out in the back ground note, a copy whereof was supplied to the respondent -organisation with the notice that was served on it. Of course the grounds for ban mentioned in the notification are bereft of factual content, such deficiency is made good by reference to the background Note. The notification viewed in the light of facts supplied by the background Note leaves no room to complain that the grounds still continue to suffer from lack of clarity or intelligibility and thereby incapacitating the respondent -organization in presenting an effective defence against the ban.

34. It may be noticed in the context of plea concerning paucity of time that after issue of ban notification on 8th of February, 2006 followed by a corrigendum published on 13th of February, 2006, the reference, which was required to be made within 30 days of the issue of notification, was made by the Central Government within the time so prescribed and thereafter on receipt of reference, a show-cause notice, as required under Section 4(2) of the Act had to be issued and served on the respondent-organisation. The respondent-organisation, upon service of such notice, caused its appearance through counsel on 5th of May, 2006. Reply / objections in response to show-cause notice were filed on 22nd of May, 2006 and immediately thereafter sittings of the Tribunal at different places with a view to record statements of the witnesses to be examined by the concerned State Governments on behalf of the Central Government began. Such sittings, of course, had to be held in quick succession due to shortage of time. The respondent-organisation was able to be present at every place of sitting held outside Delhi to cross-examine the witnesses produced by different States on behalf of the Central Government. On account of sittings at various places outside Delhi, no doubt, some inconvenience was caused to all concerned, including the respondent-organisation. However, as the record would indicate, on none of the occasions there was denial of a fair and reasonable opportunity of an effective hearing to the respondent-organisation and no prejudice could be held to have been caused to the banned organisation on that account. Since the reference had to be answered in any case within a period of six months, there was no way out but to expedite the hearing. At the same time, it was ensured that the respondent-organisation was not denied a fair and reasonable opportunity to defend itself against the ban.

As a matter of fact, keeping the time constraint in view, there should have been no complaint on the part of the respondent-organisation in expediting the adjudicatory process by holding sittings in quick succession. In any case, in spite of the fact that inquiry proceeded the way it did, no prejudice was occasioned to the respondent-organisation in availing a fair and reasonable opportunity of hearing and, thus, the plea that minimum requirement of natural justice has not been satisfied lacks conviction and cannot be accepted.

35. The next argument made by Shri Pais was that the present proceedings being in the nature of civil proceedings, the onus lies on the Central Government to prove that the ban imposed on the respondent-organisation was for sufficient cause. He referred to column 8148 of Parliamentary Debates on the Bill pertaining to the Act to support his contention that the present proceedings were not in the nature of an inquisitorial inquiry, as contended by Shri Mridul; appearing for the Central Government. Shri Pais further contended that the Central Government can not prove their case justifying the ban by relying on the testimony/evidence of the respondent organisation. The argument that the present proceedings were in the nature of civil proceedings and could not be termed as an inquisitorial inquiry was raised by Shri Pais in view of reliance sought to be placed by Shri Mridul on the report, related to previous ban of 2003, of the previous Unlawful Activities (Prevention) Tribunal, wherein it came to be observed that the proceedings before the Tribunal are inquisitorial in nature. Apart from the Parliamentary Debate, which Shri Pais referred to, Sub-section (3), Section 4 read with Section 9 make it evident that the procedure to be followed by the Tribunal in holding an inquiry under sub-Section 3 of Section 4, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the investigation of claims. Further, Sub-section (7) of Section 5 states that any proceeding before the Tribunal shall be deemed to be a judicial proceeding for the purpose specified therein and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code. There could, thus, be no reason for a contest on the point that in holding an inquiry of instant nature the Tribunal essentially acts and exercises powers necessary for adjudication, as a civil court, as contained in Code of Civil Procedure, 1908, for investigation of a claim. In regard to the plea that the onus of proving that decision for ban on respondent-organisation is based on sufficient material lies on the Central Government; Shri Mridul, as a matter of fact, raised no counter argument to dispute this legal proposition set forth by Shri Pais.

36. The ban on an organisation is, contended Shri Pais, in the nature of restriction on the Right to Freedom of Expression and Right to Form association guaranteed under Article 19(2) and Article 19(4) of the Constitution and to justify the ban there has to be sufficient material in support thereof. Relying upon a decision of Supreme Court in "*State of Madras Vs. V.G. Row*", 1952 (SCR) 597, Shri

Pais contended that in the present case the ban on the respondent-organisation is unjustified being not supported by sufficient material in that regard. In the same context, Shri Pais also referred to the decisions in *Harnam Das (supra)* and "*State of UP Vs Lalai Singh Yadav*", 1976 Page (4) SCC 213. In the present case, the ban on the respondent organisation being under the machinery provided under the Act, on a reference, the Central Government has undoubtedly to show that the ban on the respondent-organisation was for sufficient cause.

37. Shri Pais further argued that the validity of the ban notification and the background note must be judged by the reasons mentioned therein and no fresh reasons in the form of affidavits or other materials posterior to the ban order could be allowed to supplement the same as to permit to do so would mean that an order which was bad in the beginning, by the time it comes up for adjudication gets validated by additional grounds later brought. He contended that no justification on the material which was not in contemplation of the Central Government while issuing the notification can be taken into consideration while adjudicating the present ban. Reliance was placed on decisions in *Mohinder Singh Gill (supra)*, *Lalai Singh Yadav (supra)* and *Harnam Das (supra)*.

38. The argument advanced by Shri Pais necessarily raises a question relating to the nature and scope of inquiry by this Tribunal to adjudicate upon the reference under Section 4(3) of the Act. Section 9 of the Act provides that so far as may be, the procedure laid down in the Code of Civil Procedure, 1908 for the investigation of claims has to be followed which implies that the Central Government and the banned organisation which are before the Tribunal, would be required to produce relevant materials on which they seek to rely upon in support or against the imposition of ban. An important aspect which, however, needs to be noticed is that Sub-section (3) of Section 4 apart from providing that the inquiry shall be held in the manner specified in Section 9 also says that the decision on reference is to be made by the Tribunal by holding an inquiry in the manner specified in Section 9 and *after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association.* (Emphasis supplied). The expression 'after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association is of vital import in determining the nature and scope of inquiry and extent of material that could be taken into consideration for confirming the declaration or cancelling the same. Two views are possible on what meaning is to be assigned to the expression 'after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association'. One view may be that it simply empowers the Tribunal to seek informations from either side, which are necessarily of a clarificatory nature in relation to the material already placed before the Tribunal, for a better understanding of the grounds



on which the ban notification has been issued. The other view may suggest that apart from the material which is said to have constituted the basis for confirming an opinion on the part of Central Government in issuing ban notification, the Tribunal could also collect/allow some further material as well before making its decision on the reference. If the first view is to be accepted and for making an order, either confirming the declaration or cancelling the same, the objections filed by the banned organisation and material in support thereof as also further information from any office bearer or member of the banned organisation are to be taken into account, it would necessarily lead to taking into consideration in finding sufficiency of cause for the ban such material and in that event, the Tribunal would not be confining only to the material which would have been available to the Central Government while confirming its opinion to declare an association to be unlawful. If the second view is to be accepted, the Tribunal in adjudicating the reference would also be keeping in mind the additional material collected or allowed to be brought on record by it to decide whether or not there is sufficient cause for declaring an association to be unlawful. In any case, whichever view is accepted, some additional material would necessarily become available on record which will have to be taken into consideration to decide the reference. The very fact that apart from the material produced by the Central Government, also the material brought forth by the banned organisation, besides the material available as a result of Tribunal calling for any further information from either side is before the Tribunal, in finding whether or not there is sufficient cause for declaring the association to be unlawful, the tribunal would obviously be not confining itself only to the material which was available to the Central Government at the time of issue of ban notification. In that view of the matter, to argue that the Tribunal cannot take into consideration additional material beyond what constituted the basis for opinion on the part of Central Government to ban the organisation, to find sufficiency of cause for ban, cannot be accepted. Given the nature of inquiry which the Tribunal is required to hold and the material which can constitute the basis for adjudication whether or not there is sufficient cause for declaring the association to be unlawful, reliance by learned counsel for the respondent on the decisions in the above referred cases, which involved a distinct set of facts and different provisions of law, would be of no assistance to advance the argument set forth by him. To the extent the Tribunal is empowered to collect further information from either party, there is a departure from procedure to be followed by a civil court under the Code of Civil Procedure, 1908 and in that sense, the Tribunal even though holding the inquiry as a civil court would appear to be vested with additional power which is not available to a civil court.

39. Another argument raised by Shri Pais was that the offences contemplated under the Act, as it can be gathered from Parliamentary Debates, are that of cession and secession only and as no crime's attracting

prosecution for cession or secession, involving the respondent- organisation, has been shown for the period 27th of September, 2003 and 8th of February, 2006, the ban imposed by the Central Government could not be held justified. From Parliamentary Debates on the Unlawful Activities (Prevention) Bill, Shri Pais referred to the following part of an answer at Column 8156 by Shri Y.B. Chavan, the then Union Home Minister, in reply to the question from a Member of the House :

“SHRI Y.B. CHAVAN : I am coming to that.

This Bill is merely meant against the activities leading to cession or secession. These are the two things which are, really speaking, the threats to the integrity and the sovereignty of this country.”

40. To appreciate true purport of the above extracted statement, it would be appropriate to go back to few preceding questions and statements made by the Union Home Minister in reply thereto. The debate proceeded (at columns 8155 and 8156) thus :

“SHRI MANOHARAN (Madras North) : Is the Home Minister in a mood to drop the bill ?

SHRI Y.B. CHAVAN: No, not at all.

Sir, we had occasion to discuss this Bill twice; when this Bill was discussed before it was referred to the Joint Committee, we had a full-fledged debate here, and for the last five hours we have had also the advantage and the privilege of listening to the views of many hon. Members.

I do not want to enter into any arguments. I would reply to some of the arguments that the hon. Members have made and I would, really speaking, go step by step to justify the case that I have originally made in defence of the Bill. The basic question that was raised was whether this Bill is necessary at all. That was the first position taken by some hon. Members. For that, two types of arguments were made. One was which is the Party against which this Bill is going to be used and the second aspect of the argument was that there are enough legislations or there are enough provisions in the present statute book itself which can be made use of if there is any requirement. These were the two arguments that were made.

Dealing with the first aspect, I would like to make it clear that it would be very unfair for me and to the political parties to expect definite reply from me as to the Party against which it is made. I have myself said that it is only required against those who are likely to offend under the Act. I have not particular party in mind that against 'A' party or 'B' party or 'C' party it should be made use of. We are not defining the political parties against whom it is to be used. We are defining, certainly, some undesirable activity which is to be treated as unlawful activity. As I have said, in the beginning, I would be the happiest man if there is no opportunity to make use of this law. But the necessity is there. I was rather heartened to hear Member like Acharya Kripalani and the hon. Member, Mr. Bose, who are not present now that they concede that the

conditions in the country are such that there are real threats to the integrity and the sovereignty of this country.

SHRI KANWAR LAL GUPTA: what are those threats, for instance?

SHRI Y. B. CHAVAN: Therefore, it is necessary and I am advised and also I am convinced that there is no law in the statute book today which can meet this situation.

SHRI NAMBIAR : You must give examples as to against what sort of things you visualise it.

SHRI Y. B. CHAVAN: I am coming to that. This Bill is merely meant against the activities leading to cession or secession. These are the two things which are, really speaking, the threats to the integrity and the sovereignty of this country."

41. It is notable that while moving the Bill, the Union Home Minister in support of the Bill told :

"That the Bill was necessary because there were divisive forces in India and effective measures were necessary to counter them."

Thus, the main concern, at the time when the said Bill had to be moved, was that the Nation was faced with serious threat to its integrity and sovereignty and in a situation, where it was felt that there was no law to deal with activities leading to cession and secession it was imperative to provide for effective law to counter the unlawful activities of divisive forces which threatened the integrity and sovereignty of the country. The basic concern was obviously to protect the integrity and sovereignty of the country and it was in that context that the above quoted statement, as referred to by Shri Pais, was made by the Union Home Minister. May be that at the time when the said Bill was moved, a different kind of unlawful activities were posing threat to the integrity and sovereignty of the country, however, the fact remains that even in the present day context such threat continues to exist on account of terrorism and other kind of unlawful activities by various organisations/militant outfits. Reference to 'Cession and Secession' was particularly made in the course of debate, in the context of nature of questions the Union Home Minister was called upon to respond to. He was simply telling there was no law in the statute book to counter the unlawful activities which tended to put the integrity and sovereignty of the Nation at peril. The part of statement by Union Home Minister referred to by Sh. Pais, should not be read out of context as that is likely to lead to misconstruing the statement. Going by the definition of 'unlawful activity', as it stands in the statute, clearly, apart from activities leading to cession or secession, it also includes any action, (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India. Thus, it would not be right to contend that unlawful activity, as contemplated under the Act, can be held to have been committed only in case an action complained of intends or supports any claim to bring about the cession or secession of a part of the territory of India from the Union. Any action which

disclaims questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India is also of equal concern. Whether or not the respondent organisation has been guilty of committing unlawful activities, as contemplated under the Act, is a question of fact which is obviously to be adjudicated on the basis of material available before this Tribunal.

42. As held earlier, to find whether or not there is sufficient cause for declaring the association to be unlawful, the Tribunal is not simply to confine to the material that was available before the Central Government on the date the ban was imposed on the respondent organisation, apart from taking into consideration the material produced on behalf of respondent organisation, it cannot shut out from consideration additional material which is brought to its notice regarding subsequent developments, if any, after issue of ban notification dated 8-2-2006.

43. In support of declaring the respondent association as unlawful, the Central Government, apart from relying on Intelligence reports produced for perusal, seeks to rely upon the statements of witnesses deposing before the Tribunal. 34 witnesses, in all, appeared to testify in support of the ban notification. The material produced on behalf of the Central Government, in the form of deposition by the witnesses, can be classified under three categories. One set of evidence relates to the cases which pertain to the period prior to second ban on 27th September, 2003. The other set of evidence relates to cases registered during the period 27 of September, 2003 to 8th of February, 2006 and the evidence in the third category pertains to cases which were registered after the issue of ban notification on 8th of February, 2006.

44. In terms of statement of Shri B.A. Coutinho, PW34, the evidence in regard to the cases mentioned in paras 1-14 of the background note was irrelevant for the purpose of present ban. These include cases prior to second ban on 27-9-2003. The same could have, thus, formed no basis in reaching the decision for present ban. Shri Coutinho, as he so admitted in the course of his cross-examination, was the competent authority to take the decision regarding fresh ban on the respondent organisation. He was, thus, the best person to state what material was taken into consideration by him for declaring the respondent organisation as an unlawful association to impose a ban on it. Shri Coutinho made mention of five cases in all in para 8 of his affidavit vide Ex.PW 341, involving respondent organisation, which were registered during the period 27th of September, 2003 and 8th of February, 2006. The cases so registered included: (i) Cr.No. 882/04 of PS Saifabad, (Hyderabad, Andhra Pradesh) pertaining to the planned attack on the police escort party of Naseeruddin in a bid to release him, in which one Mohd. Mujahid an activist of SIMI was killed on 31-10-2004; (ii) Cr.No. 632/2004 of Narayanaguda PS (Hyderabad, Andhra Pradesh), regarding SIMI activists who brought 49 Muslim ladies in Burkha and tried to enter into the office of Commissioner to protest against the arrest of Naseeruddin by Gujarat Police; (iii) FIR No. 618 dated 29-8-2004 of CCS PS (Hyderabad, Andhra Pradesh) Maulana Naseeruddin,

President, Tehreek-Tehfeen-e-Shaire Islamia, (TTSI) along with others was arrested on 28-8-2004 for possession of explosive material. On 29-8-2004, a group of 100 people including burkha clad ladies, organized by SIMI and TTSI, went to Office of Police Commissioner to create nuisance. 53 members were arrested vide Cr. No. 623/2004 and released on bail; (iv). Cr.No.101/2005 of Charminar PS (Hyderabad, Andhra Pradesh), where the SIMI activists along with Darsga-e-Jahad-o-Shahadat (DJS) workers forcibly broke the police cordon and burnt the effigy of US President George W. Bush, and American Flag for disgracing the Holy Quran; and (v) FIR No.40/2005 of Police Station Special Cell, New Delhi. On 5-3-2005, Hamid who came from Kamal Side was riding the motor-cycle being driven by Mohd. Shariq near Mukarba Chowk. These Lashkar-e-Toiba (L-e-T) militants were intercepted and on search 10.560 Kg. of RDX was found in their possession. Based on their information, the hide out was raided in 'Uttam Nagar where three militants of L-e-T were killed and 3 AK-47 rifles, 6 magazines, 450 detonators, 100 kg. of dynamite, one Maruti Zen Car and one satellite phone were recovered. It was also revealed that Mohd. Haroon Rashid one of the accused, was inspired to join SIMI by one Ajmal who was his classmate.

45. A FIR in LAC No.3/2006 dated 10-5-2006 registered with Anti-Terrorist Squad (ATS) Police Station Mumbai also finds mention in para 8(v) of the affidavit Expower 34/1. In this case seizure of 16 AK 47 Rifles, 3200 Live Cartridges of AK-47, 16 Magazines of AK-47 16 Magazine Pouches, 43 Kg. Explosive Substance, 50 Hand Grenades, Mobile Phone, 16 Computer Server Cabinets, Packing materials, Sumo Motor, Indica Car, Two number plates, Keys and Documents of Indica Car were recovered. The accused arrayed in the case are SIMI and Lashkar-e Toiba activists.

46. Shri Pais, particularly, argued against taking this case into consideration on the plea that the same relates to a date after imposition of ban on 8th of February, 2006. The argument in this regard, however, stands negatived for the reasons already stated. It is to be kept in view that while imposing ban on the respondent-organisation by notification dated 8-2-2006 such ban was applied with immediate effect. The offence, as reflected in FIR in LAC No.3/2006, was allegedly committed while this Tribunal was in the process of holding the inquiry with a view to adjudicated whether or not there is sufficient cause to declare the respondent-organisation as unlawful-association. Certainly, this Tribunal could not be expected to keep aside such a case out of consideration wherein the members of the respondent-organisation had allegedly been involved and was/were named as co-accused. Shri Pais, referring to the statement of Shri B.A. Coutinho, PW-35, in his cross-examination that FIR in LAC No. 3/2006 dated 10-5-2006 was not relevant as it does not pertain to period from 27th of September, 2003 to 8th of February, 2006, contended that in view of such a statement by Shri Coutinho, the said Crime LAC No. 3/2006 cannot be taken

into consideration for the purpose of present adjudication. In this connection, it is also worthwhile to note that Shri Coutinho made a further statement that even though LAC No.3/2006 was not relevant for present ban as it relates to a period after 8-2-2006 but the same would be relevant to indicate the conduct of the respondent-organisation during the period 2004-2005 when no cases of violent incidents were registered/reported against it. In any case, Shri Coutinho could depose in respect of only such matters which were available for his consideration while making a decision on fresh ban. He could not have, of course, taken into consideration a crime which was allegedly committed after the date of ban. It is indeed for this tribunal alone to decide about such a case being taken into consideration for adjudication on sufficiency of cause for the ban in question.

47. Shri Coutinho, apart from mentioning the cases in para 8. (i)(ii)(iii)(iv) & (vi) in support of the respondent-organisation being declared as unlawful association, also stated that the decision was arrived at after taking into consideration the facts, circumstances, background of the base, prevailing conditions in the concerned States and the Country as a whole, and the material available, in particular, information received from various sources. Evidently, according to him, the ban on the respondent-organisation was not based simply on the cases registered against it during the period 27th of September, 2003 to 8th of February, 2006, as detailed in para 8. (i)(ii)(iii)(iv) & (vi) of his affidavit, Ex.PW-34/1. Among other materials, apart from Intelligence reports, he made mention of printed as well as visual material contained in a CD. He referred to three magazines, namely, Millat 'Al-Yaum'(Delhi), 'Istaqlal' (Lucknow) and 'Al. Murshid' (West Bengal) carrying objectionable articles, which I propose to advert to after dealing with the material relating to various criminal cases referred to by Sh. B.A. Coutinho, PW-34 as well as by other witnesses.

48. Before proceeding to examine the evidence relating to various criminal cases registered from time to time, which are used as part of material to support the ban, it would be appropriate to take note of certain other points raised by Shri Pais. Shri Pais argued that the criminal cases being referred to on behalf of the Central Government to justify fresh ban are being linked with the respondent-organisation on the basis of so-called confessional statements made by some of the accused with respect to being its members. Shri Pais contended that assuming, though not admitting, that such confessional statements were made by members/erstwhile members of the respondent-organisation, involvement of individual members in commission of crimes could not be taken to amount to the crimes being committed by the respondent-organisation. To lend support to his plea in this regard, Shri Pais made a reference to a reply by the then Union Home Minister during Parliamentary Debates on Unlawful Activities (Prevention) Bill. The relevant part of debate so referred reads at column 8220-8221 thus :



"SHRI INDRAJIT GUPTA: We must know the meaning of this before we give our opinion on this clause. Part (g) reads :

"Unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity."

This point has not been answered as to what is meant by members. Does it mean one member or two members? Does it mean that in an organisation if one or two members indulge in such activities, the whole association or organisation can be declared illegal? What is his reply to this?

SHRI NAMBIAR: Ten members can be planted.

SHRI Y.B.CHAVAN: When we say member, it means the generality of members, it is not one or two members, because there are organisations which take up one position officially, while their members start acting in a different way."

49. Shri Pais, relying on the above extracted reply from the then Union Home Minister, sought to contend that crimes, if any, committed by individual members could not be fastened on the respondent-organisation and such offences would not amount to be those committed by the respondent-organisation. Tenor of debate indicates that there was an air of suspicion in the minds of Members of certain political parties that the provisions contained in the Bill, which was eventually to become an Act, targeted and could perhaps be used against particular political parties simply on the basis of activities of some individual members thereof. It seems that to allay such apprehensions, the then Union Home Minister made a reply that the word 'members' occurring in definition of an 'unlawful association' meant the generality of members and not one or two members and the reason for so stating was that there are organisations which take up one position officially, while their members start acting in a different way. The reply does not necessarily imply that even where certain members of a particular organisation indulged into activities, which amounted to 'unlawful activities', in furtherance of aims and objectives or official stance taken by the organisation, the organisation concerned would still be not liable to be proceeded against. Thus, where individual members of the respondent-organisation are found to have been involved in 'unlawful activity' in furtherance of aims and objectives of the respondent organisation, it cannot escape from being held responsible for the acts of its individual members.

50. Yet another argument raised by Shri Pais was that the confessional statements, if any, made by certain accused disclosing their association with the respondent-organisation as members thereof being not admissible under Section 25 of the Indian Evidence Act, no finding against the respondent-organisation can be based on such in admissible evidence. Section 25 of the Indian Evidence

Act, no doubt, makes a confessional statement made by an accused before a police officer while in his custody inadmissible but in the present context, the confessional statements made in particular cases are not sought to be used against the persons making the same in the course of a criminal trial. The Central Government is rather seeking to make use of such confessional statements against the respondent-organisation for limited purpose that the persons making the confessional statements regarding their involvement in the commission of particular crimes were its members. It may be kept in mind that confessions are a species of which admission is the genus. Though all admissions are not confessions but all confessions amount to admission. Section 25 of the Indian Evidence Act makes a confessional statement inadmissible against the person making it and the same cannot be used against such person in a criminal trial. However, the law permits to make use of such confessional statement even against the person making it, in other proceedings as admission under Section 18 of the Indian Evidence Act. Such a confessional statement can be used as admission against the person making the same or even against a third person in certain circumstances provided the person making the admission had express or implied authorisation to make a statement in that regard. As an illustration, one of the situations could be where admission by an agent, who is expressly or impliedly authorised to make the admission, can be used against his principal. The relationship between respondent-organisation and its members being akin to that of a principal and agent admission of a fact by its individual member while making a confessional statement can, thus, be used against the respondent-organisation also. Where a particular person is member of an association/organisation, there is an implied authority from the association/organisation concerned not to keep the factum of its membership under a wrap. In this view of the matter, though a confessional statement made by an accused to a police officer while in his custody in a particular case is not admissible against the accused in the course of a criminal trial, the same can certainly be made use of against him and also against the association/organisation of which such a person is a member, as an admission under Section 18 of the Indian Evidence Act.

51. While advancing his oral arguments, apart from referring to the statement of Shri B.A.Coutinho, PW 34, Shri Sidharth Mridul, learned senior counsel, appearing for the Central Government made specific mention of depositions by Mr. Datta Sambhaji Dhawale, PW-3, Mr. Mohd. Tanveer Ahmed, PW-6, Mr. C. B. Sharma, PW-15, Mr. Sanjay Dutt, PW-16, Mr. Pravinsinh, PW-19, Mr. Girish Kumar, PW-20 and Mr. Manoj Kumar Rai, PW-24, whose testimony, according to him are relevant in adjudicating whether or not there is sufficient cause for declaring the respondent-organisation as unlawful association. His argument was that the respondent-organisation has been involved in commission of various crimes through its members, from time to time, with a view to disrupt or intended to disrupt the sovereignty and

territorial integrity of India.

52. Shri B.A. Coutinho in his affidavit, Ex. PW-34/1, referred to crime Nos. 882/04, 632/04, 618/04 and 101/05 besides two other cases being FIR No. 40/2005 PS Special Cell, New Delhi and LAC No. 3/2006 dated 10-5-2006 registered with Anti Terrorist Squad (ATS), PS Mumbai. The first four cases were registered at different police stations in Hyderabad, Andhra Pradesh.

53. One Maulana Naseeruddin, President, Tehreek Tehfeen-e-Shaire-Islamia, (TTSI) along with others was arrested on 28th of August, 2004 for unlawful possession of explosive material and a case FIR No. 618 dated 29-8-2004 was registered in that regard. To protest against his arrest, it is alleged, SIMI activists brought 49 Muslim ladies in burkha and tried to enter into the Office of Commissioner of Police. On 29th of August, 2004, a group of 100 persons, including burkha clad ladies, organized by SIMI and TTSI, went to the office of Police Commissioner to create nuisance and 53 members were arrested in that connection and a Crime No. 632/2004 was registered at PS Narayanaguda (Hyderabad, Andhra Pradesh) in that respect. According to the statement of Mohd. Tanveer Ahmed, Sub-Inspector, Saidabad Police Station, Hyderabad, Andhra Pradesh vide Ex. PW-6/I, and PW 11 Sh. Ashok Kumar vide Ex. PW 11/I, Maulana Naseeruddin, President, Tehreek-Tehfeen-e-Shaire-Islamia, (TTSI) was on bail in FIR No. 618 dated 29-8-2004, PS CCS, Hyderabad, Andhra Pradesh when Gujarat Police came to execute a non-bailable warrant of arrest against him. From the Statement of Shri Ashok Kumar, DSP, CID, Hyderabad, vide PW-11/I, it is gathered that Maulana Naseeruddin was arrested by the Gujarat Police in connection with murder case of Harain Pandya, ex Home Minister, Gujarat. A mob led by one Mohd. Mujahid Saleem, a SIMI activist and sympathiser of Maulana Naseeruddin attacked Gujarat Police to secure release of Maulana Naseeruddin from the custody of Gujarat Police. To ward off such attack, the police had to resort to firing resulting into death of said Mohd. Mujahid Saleem. A Crime No. 882/2004 was registered at PS Saifabad, Hyderabad in regard to the incident of attack on the Gujarat Police party and death of Mohd. Mujahid Saleem in the course of police firing. In regard to his statement that Mohd. Mujahid Saleem was a SIMI activist made by PW-6, Mohd. Tanveer Ahmed vide Ex. PW-6/I, there was no cross-examination on behalf of respondent-organisation implying thereby that the respondent-organisation did not dispute that Mohd. Mujahid Saleem was one of its active members on the relevant date. The fact that Mohd. Mujahid Saleem was leading a mob which resorted to attack on the escort party of Gujarat Police in a bid to release Maulana Naseeruddin of TTSI from their custody clearly indicates a close link of the deceased SIMI activists with TTSI. This also lends credence to the intelligence reports that the respondent-organisation has floated several front organisations to use their platform to carry out unlawful activities in furtherance of its aims and objects and that its members have been maintaining close association with such organisations operating in Hyderabad.

Though such Muslim organisations are not shown to be banned ones, one gets the impression that they are found to be sympathetic towards the members of respondent-organisation.

54. The cases registered in Hyderabad, Andhra Pradesh, during the period 2004-2005 may not appear to fall in the category of 'unlawful activity' as defined under the Act, the same are indicative of the fact that despite the ban imposed on 27th of September, 2003 the respondent-organisation, through its members, continued to operate and indulged into illegal activities contrary to the claim made by Shri Shahid Badar Falahi, RW-2 that respondent-organisation ceased after 2001 ban.

55. Another case sought to be relied upon against respondent-organisation is FIR No.40/2005 dated 5-3-2005 under Sections 121, 120-A, 122, 123, 120-B, IPC read with 25 Arms Act, 4/5 Explosive Substance Act and 18, 19, 20, 23 of Unlawful Activities (Prevention) (Amendment) Act, 2004, PS Special Cell, New Delhi. In terms of testimony of PW-16, Insp. Sanjay Dutt, vide Ex. PW-16-1, this was a case where on the basis of a secret information two persons, namely, Mohd. Sharik and Hamid, who worked for Laskhar-e-Toiba (L-e-T), were apprehended. On a search, two cardboard boxes were recovered from a bag which accused Hamid was carrying. Each card board contained 480 grams of RDX and the total weight of RDX so recovered was 10560 gms. Such recovery was effected in the presence of two public witnesses. The RDX so recovered was to be delivered to three other L-e-T operatives, including two Pakistani L-e-T Fidayeen living in Uttam Nagar, Delhi. On disclosure made by the said two persons, the hideout of said three operatives was raided by the police, whereupon, the L-e-T operatives opened fire and in return on police party also resorting to fire, three militants, including two Pakistani Nationals were killed. A case FIR No. 190/2005 dated 6-3-2005 under Sections 121, 121-A, 122, 123, 307, 186, 353, 120-B IPC, 4/5 Explosive Substance Act, 25/27 Arms Act, 18, 19, 20 Unlawful Activities (Prevention) Act, 2004 was registered in this regard at PS Uttam Nagar, New Delhi. 3 AK-47 rifles, 6 magazines, 450 detonators, 100 kg of dynamite, 4 hand grenades, and one satellite phone were recovered by police from the hideout. In the course of investigation, of case FIR No. 40/2005 one accused Mohd. Haroon Rashid @ Farooq was arrested. He was also working for L-e-T. In his confessional statement to the police, he disclosed that while doing his BE (Mechanical Engineering) course at Aligarh, he was inspired by one of his classmate, namely, Ajmal in 2001, to join SIMI. He further stated that he was introduced by said Ajmal to one Saleem @ Salar @ Doctor, a L-e-T operative and, thereafter, he started working for L-e-T. He further disclosed that in 2002, he along with other L-e-T operatives had been to Patna where he used to attend SIMI meetings and resolved to execute terrorist and disruptive activities in India. The statement of accused Mohd. Haroon Rashid, thus, shows that initially he was a member of the respondent organisation but later joined L-e-T. However, even after joining L-e-T, he continued to be associated with

the respondent-organisation and had been attending its meetings at Patna where it was resolved to execute terrorist and disruptive activities in India. His confessional statement clearly shows that the respondent-organisation had identity of purpose with L-e-T, a terrorist organisation and has been maintaining a close link with L-e-T.

56. The aforesaid cases related to the period 2004-2005. Subsequent to issue of present ban notification dated 8-2-2006, four more cases stand registered showing involvement of Members of the respondent-organisation in commission of various crimes mentioned therein. These cases include LAC No. 03/2006 registered with Anti Terrorist Squad (ATS) Police Station, Mumbai under Section 4/5 Explosive Substance Act, 1908 read with Sections 5, 6, 9(b) of Indian Explosive Act, 1984 read with Sections 3, 4, 25 of Indian Arms Act read with Sections 10, 13, 16, 18, 23 of Unlawful Activities (Prevention) Act, 1967; FIR 1/2006 of Anti Terrorist Squad (ATS) Police Station, Ahmedabad City, under Sections 120-B, 121, 121-A, 122, 123 of IPC, Section 4 of Explosive Substance Act, 1908, Sections 25 (1-A)/27/29 Arms Act and Sections 17, 18, 19, 20, 23(1), 38, 39, 40 of Unlawful Activities (Prevention) (Amendment) Act, 2004; Crime No. 2/2006 under Sections 120-B, 121, 121-A, 122, 123 of IPC, Sections 4/5 of Explosive Substance Act, 1908, and Sections 17, 18, 19, 20, 23(1), 38, 39, 40 of Unlawful Activities (Prevention) (Amendment) Act, 2004, and Crime No. 256 dated 16-4-2006 under Sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 registered at PS Kotwali of Khandwa District, Madhya Pradesh.

57. LAC No. 03/2006 was a case in which huge cache of illegal arms and ammunition and explosive substance etc. were recovered from a Sumo Jeep, which was based on an information, intercepted by the police near Ghrushanswar Temple, Tehsil Khultabad, District Aurangabad, on Verul-Aurangabad Road. There were three persons in that Jeep out of which one person was apprehended, who was identified to be one Mohd. Amir Shakeel Ahmed Sheikh. In the seizure, 10 AK-47 Rifles, 10 packets containing 40 Magazines, 10 packets containing 2000 live cartridges of AK-47, 10 Magazine Pouches, and 10 packets containing 30 Kg. explosive substance. A Reliance Mobile Phone, etc. were recovered from the Sumo Jeep. On interrogation, Mohd. Amir Shakeel Ahmed Sheikh disclosed that he was a member of the respondent-organisation. In addition, from ten khaki carton boxes lying in the Sumo Jeep, one AK-47 Rifle, one packet containing 4 Magazines, 1 packet containing 200 live cartridges of AK-47, 1 Magazine Pouch, and a packet containing 3 Kg. black colour sticky substance, which was later found to be explosive substance were also recovered along with a computer server cabinet. Subsequently, on further arrests being made, the accused so arrested led to recovery of one box concealed under a culvert containing computer server cabinet, 1 AK-47 Rifle, 1 packet containing 200 cartridges, 1 packet of two Magazines and one Pouch. In another wooden box, 50 live hand grenades concealed in thermocol

and cotton were found. On arrest of one Afjal Khan Nabeer, an accused in the case, on his disclosure, 5 similar khaki colour cotton boxes were recovered and each one of them were found to contain five computer server cabinets in which 5 AK-47 Rifles, 5 packets of 1000 cartridges, 5 packets of 20 magazines, 3 pouches and 5 packets of 30 kg. explosive substance were concealed. In all, the recoveries so effected led to seizure of 16 AK-47 Rifles, 3200 Live Cartridges of AK-47, 62 Magazines of AK-47 Rifles, 16 Magazine Pouches, 43 Kg. Explosive Substance, 50 Hand Grenades, Mobile Phone, 16 computer server Cabinets.

58. Accused, Mohd. Amir Shakeel Ahmed Sheikh, had, on an earlier occasion also been arrested in 2001 by the Aurangabad City Chowk Police Station in LAC-II No. 3071/2001 registered under Section 10 & 13 of the Unlawful Activities (Prevention) Act, 1969 and is facing trial before concerned Aurangabad Court. In the course of investigation of the case, the police invoked the provisions of MCOC Act, 1999 and, consequently, Sections 3(1)(ii), 3(2) of MCOC Act, 1999 were added. Para 5 of Ex.PW-3/2 discloses, "that since the members of SIMI organisation along with L-e-T are continuously engaged in unlawful activities so as to promote the organised gang in promoting insurgency, therefore, provisions of MOCO Act, 1999 have been applied to the present case and chargesheet will be filed on completion of investigation.....". Accused, Mohd. Amir Shakeel Ahmed Sheikh, made a confessional statement before Shri Santosh Rastogi, Deputy Commissioner of Police, (Zone-III), Mumbai, wherein, he admitted that he was a member of the respondent-organisation and had been working for it. His confessional statement is quite revealing and shows that he had also been in touch with L-e-T operatives and had visited Jammu & Kashmir and Kathmandu to meet them. Apart from accused, Mohd. Amir Shakeel Ahmed Sheikh, his co-accused, Javed Ahmed Abdul Majid, Riaz Ahmed Mohammad Ramzan @ Raju, and Syed Akib Syed Zafarudding, are also stated to be self confessed members of SIMI and are engaged in carrying out disruptive and anti-national activities. Accused, Javed Ahmed Abdul Majid, was arrested earlier also by Malegaon City Police Station in LAC-II No. 3052/2001 under Section 10 of Unlawful Activities (Prevention) Act.

59. It was argued on behalf of the respondent organisation that when Mohd. Amir Shakeel Ahmed Sheikh was arrested earlier in LAC-II No. 3071/2001 under Sections 10 & 13 of Unlawful Activities (Prevention) Act, 1967, PS Aurangabad City Chowk and had made a statement claiming to be member of respondent-organisation, a denial was issued on behalf of the respondent-organisation, which was published in "Lokmat Times" on May 9, 2001, disowning him as its members. The statement from the news item in this regard, which has been placed on record by Shahid Badar Flahi, RW-2, with his affidavit vide Ex.RW-2/1, shows that the clarification appearing in 9th May, 2001 issue of "Lokmat Times" was based on a statement of one Mr. Asif Khan, Secretary of SIMI and it was, accordingly, contended that the confessional statement made by



accused Mohd. Amir Shakeel Ahmed Sheikh cannot form a basis to hold the respondent-organisation responsible for his activities. Issuing of a mere denial may not really be enough for the respondent-organisation to disassociate itself from its members where they are, at one point of time or the other, found to be indulging in illegal/unlawful activities, and particularly when Mohd. Amir Shakeel Ahmed Sheikh has made a statement, which is otherwise very much admissible in evidence, reiterating that he continues to be associated with the respondent - organisation.

60. In Crime Nos. 1/2006 and 2/2006 registered at Ahmedabad, Gujarat, some of the accused involved therein are claimed to have had made confessional statements admitting that they were members of the respondent - organisation. However, though PW-19, Shri Praveen Singh, and PW - 20, Shri Girish Kumar, in their respective statements on affidavit *vide* Ex. PW 19/1 and Ex. PW-20/1, made mention of confessional statements having been made by the accused, no copies of such confessional statements were filed with their affidavit or in the course of their cross-examination before this Tribunal. The charge-sheet in Crime No. 1/2006 does not make mention that the accused in the case were SIMI members. Similarly, in Crime No. 2/2006, though all the four accused are claimed to have had confessed to be members of respondent-organisation, no copy of charge sheet or confessional statements of the accused were filed with the affidavits of the said witnesses. Shri Praveen Singh, PW-19, in Para 12 of his affidavit, Ex. PW-19/1, states that accused Mohd. Ali had been arrested on earlier occasion also and a case was registered against SIMI. However, copy of charge-sheet of such case or confessional statement, if any, of accused Mohd. Ali admitting himself to be the member of the respondent organisation was not filed by him, either with his affidavit or in the course of his cross-examination before the Tribunal. In the circumstances, there is no basis to find that the accused in the aforesaid two cases are members of respondent-organisation.

61. Case FIR No. 256 dated 16-4-2006 under Section 3, 10 & 13 of the Act is a case where number of SIMI activists were arrested and pursuant to disclosure statements made by them, several incriminating papers pertaining to the respondent-organisation, including membership forms, Constitution of SIMI, other literature pertaining to the respondent-organisation and different issues of Magazine "Tehreek-e-Millat" and 'Tehreek' were recovered by the police at their instance. Membership receipts recovered from the accused and the literature related to SIMI, including its Constitution coupled with their activities connected with membership drive and propagation of aims and objects of SIMI etc. show their close association with the respondent-organisation. Accused M.A. Naim is shown to have made a disclosure statement that he was looking after the work of Magazine "Tehreek-e-Millat" and was getting the same published in his name. The magazine after publication used to be sent

to SIMI members. He disclosed that with a view to escape any legal action, being a banned organisation, the name of the Magazine "Tehreek-e-Millat" was got changed to "Tehreek". According to accused M.A. Naim, Shahid Badar Falahi from Azamgarh and one Shri Imran Ansari from Indore used to get the magazine "Tehreek" published in his name to dispatch/distribute the same to the members of SIMI in order to keep the organisation active and alive. Accused M.A. Naim disclosed the particular Press from where he was getting the said magazine published. The copies of magazines shown to have been recovered at the instance of different accused, on perusal, appear to carry anti-national, objectionable and provocative articles aimed at hurting the religious sentiments of a particular community. The material placed on record with the affidavit of PW-24, Shri Manoj Kumar Rai, *vide* Ex. PW-24/01, sufficiently establishes close link between the 12 accused arrested in the case with the respondent-organisation and clearly indicate that they were engaged in unlawful activities in furtherance of the aim and objects of the respondent-organisation. The printed material recovered from them demonstrates that in spite of being banned the respondent-organisation has been managing to continue with its unlawful activities surreptitiously. Cross-examination of the witness yielded certain facts which appear to bear relevance in respect of certain recoveries of a particular set of documents. However, such material brought out by way of cross-examination cannot be made a basis to comment on the merits of particular recoveries as any finding by this Tribunal in that respect may tend to interfere with process of a fair trial by the court concerned.

62. On behalf of respondent-organisation, it was pleaded on the strength of statement of Shri Shahid Badar Falahi, RW-2, that the respondent-organisation was established as a social, cultural and religious organisation for general welfare of the people and had been functioning in that capacity before its ban in the year 2001. Its activities, it is added, are a political and non-communal besides being spiritual and religious and that it believes in the unity of God and unity of humankind. Shri Shahid Badar Falahi in his affidavit *vide* Ex. RW-2/1, stated that the respondent association functions within the framework of the Constitution of India and reposes absolute faith in it. He stated that though it is not admitted that any case is has/have been registered against erstwhile members of SIMI, for the sake of argument even if any such case/s against erstwhile members exist, SIMI cannot be held responsible for actions, either of its erstwhile members or members, in their individual capacity being not in furtherance of the objectives of SIMI. According to Shri Shahid Badar Falahi, case No. 3/2006 (ATS) Mumbai registered on 9th of May, 2006 is the only case under the provisions of the Act after 2001 and the FIR in that case has no reference to SIMI. Having disowned Sheik Amir Sheikh Shakeel, accused in that case, as its member way back in the year 2001, even prior to the imposition of the first ban, the confessional statement of Sheik Amir Sheikh Shakeel carries no weight.



It is stated that other three crimes registered after ban on 8th of February, 2006, apart from the fact that the accused in such cases have no connection with SIMI, the same, in any case cannot form a basis for the ban being posterior to the notification dated 8-2-2006. In his affidavit, RW-2/1, Shri Shahid Badar Falahi, claims that in the year 2001, on a part of Gujarat being ravaged by an earthquake, SIMI workers undertook extensive social work and provided relief to the victims of the earthquake in Gujarat without discrimination between people of various religions. It is claimed that the respondent-organisation has made outstanding contribution in the field of social service and relief work and served all classes of people irrespective of their caste or creed. He further states that the respondent-organisation ceased after its ban in 2001 and there has been no activity of any kind thereafter. It was argued on behalf of the respondent-organisation that it is for the Central Government to prove that the respondent-organisation exists even after successive bans starting in the year 2001.

63. Shri Shahid Badar Falahi was subjected to extensive cross-examination to test the veracity of his statement on affidavit. Nature of his statement in the cross-examination gives an impression that he was evasive at times in giving proper answer to certain questions and also did not come out with whole truth. There appears no material to support the claim of Shri Shahid Badar Falahi that the respondent organisation is a social, cultural and religious organisation for the welfare of general public irrespective of their caste, creed or religion, or that it is a spiritual and religious body believing in oneness of God and universal brotherhood. No material has been produced, apart from bare statement of Shri Shahid Badar Falahi, that the respondent-organisation has actually rendered any social service to the general public as claimed. On the other hand, it had rather faced ban in 2001 and 2003 apart from the present ban for being involved in unlawful activities detrimental to integrity and sovereignty of India and prejudicial to communal harmony. Though the reports of the Unlawful Activities (Prevention) Tribunals adjudicating ban on the respondent-organisation in 2001 and 2003 and findings recorded therein are not otherwise relevant as present ban has to be justified on fresh material, historical background of the respondent-organisation regarding its activities in the past cannot be lost sight of in the context of its plea that it had ever since its inception been engaged only in the service of people at large without discriminating between them on the ground of religion.

64. The statement that the respondent-organisation cannot be held responsible for the actions of either its erstwhile members or members in their individual capacity, being not in furtherance of the objectives of SIMI, as a proposition of law it may sound correct. However, it does appear that in actual practice there is no class of erstwhile members as such. It is noticed that even though the Constitution of the respondent-organisation prescribes age limit of 30 years for its members, there are indications that

the persons once holding membership of the respondent-association appear to continue in that capacity even beyond the age of 30 years. The case of Shri Shahid Badar Falahi himself can be cited to illustrate the point. In terms of his age as disclosed by the witness in his affidavit, Ex. RW-2/1, presently he is 35 years old. He was President of the respondent-organisation on the date when ban was imposed on it, for the first time, on 27th of September, 2001. He told in his cross-examination that he was elected as All-India President of SIMI in February, 2000 for a term of two years. Going by his present age, he would have crossed 30 years sometime in the year 2001 and if one is to go by the Constitution of the respondent-organisation, he could not have continued to be the member or office bearer of the respondent-organisation thereafter. The ground reality, however, appears to be quite different. Shri Shahid Badar Falahi in his cross-examination stated that he took upon himself to contest the present ban in spite of having ceased to be its All-India President as the show-cause notice issued by this Tribunal was served on him. Of course, a notice was served on him at his address but it was not in his individual capacity. It was a notice issued to the respondent-association, which was to be got served through its office bearers, including Shri Shahid Badar Falahi, who happened to be its All-India President at the time of its first ban in 2001. If Shri Shahid Badar Falahi had ceased to be the member of the respondent-association by virtue of having crossed the age limit of 30 years, it was not obligatory on his part to have appeared to contest the present ban on behalf of the respondent-association. Not only that he decided to contest the present ban against the respondent-association in his individual capacity, he is also found to have been at pains to issue a Press Release on behalf of it. Such Press Release is Ex. RW-2/PB of 11th of July, 2006 issued in the context of Mumbai train blasts in which he, while condemning the blasts, sought to defend SIMI cadres in view of their suspected involvement in the blasts. If he had ceased to be the All-India President and could not continue even as a member of the respondent-organisation, in what capacity did he take upon himself to issue such a Press Release? In his cross examination, Shri Shahid Badar Falahi sought to maintain that on the date of very first ban in 2001, he had been arrested and remained confined in jail until he was released on bail on 7th of April, 2004 and even after his release on bail until his date of appearance before this Tribunal in July, 2006 he has been completely out of touch with SIMI cadres or its office bearers. If his such a statement is to be accepted at its face value, a person who was totally unaware of nature of activities of SIMI cadres ever since his arrest and detention in 2001, in July, 2006 how could he be sure that no SIMI member could be suspected of his involvement in the said blasts. Further, Shri Shahid Badar Falahi, in terms of his statement, is not having much of financial resources at his command and his earnings from medical practice in his village and agriculture is just sufficient to meet his personal and family expenses. He affirmed that to contest the present ban he had to seek financial help from his friends and

relatives. One really wonders if Shri Shahid Badar Falahi has ceased to have any connection with the respondent-association by virtue of his ceasing to be a member or office bearer thereof, why is he taking so much of interest in defending the respondent-organisation. From the statement of Shri Shahid Badar Falahi in the course of his cross-examination, it does appear that he continues to hold the reins of the respondent-organisation in spite of having crossed the age limit for its membership. This finding gets further support from the statement of M.A. Naim, an accused in case FIR No. 256/2006, PS Kotwali, Khandwa, wherein he had disclosed that Shri Shahid Badar Falahi was one of the persons who along with another person had arranged for publication and circulation of SIMI's magazine "Tehreek-e-Millat" by changing its name to "Tehreek" and getting the same published in his name. The magazine carrying anti-national, and provocative articles continues to be made available to the members of respondent-organisation to activate and keep the organisation alive in the face of ban imposed on it. Therefore, where a person in spite of having crossed the age of 30 years can continue to be in charge of its working, the other members could also be expected to continue with the association in the capacity of its members even beyond the age of 30 years. Therefore, the respondent-organisation cannot disown the illegal/unlawful activities of such persons who are shown to have been its members on the plea that they no longer continue to be its members. Similarly, the plea that even otherwise the respondent-organisation cannot be held responsible for the activities of its members in their individual capacity, which are not done in furtherance of its aims and objects also cannot be accepted. One cannot lose sight of the fact that the respondent-organisation carries a tag of being a terrorist organisation having been so declared vide Schedule to the Act. The declaration of respondent-organisation as a terrorist organisation implies that it has been following the path of terrorism contrary to its assertion that it is a social, cultural and religious organisation. Terrorism in any form is opposed to national interest. The confessional statements referred to earlier, made by accused that they belonged to the cadres of the respondent-organisation would clearly show that its members have been indulging in illegal/unlawful activities and committing crimes affecting integrity and sovereignty of the Nation in league with other terrorist organisations like Lashkar-e-Toiba. Thus, where the very object of the respondent-organisation is found to be commission of terrorist acts in association with the members of other terrorist-organisations, it is not open to plead that for any illegal/unlawful activity committed by its member it cannot be held responsible as involvement of its members in such activities in individual cases would obviously appear to be in furtherance of the aims and objects of respondent-organisation only.

65. Another plea advanced on behalf of respondent-organisation on the strength of statement of Shri Shahid Badar Falahi is that after the first ban in 2001 its activities have ceased and, in the circumstances, the alleged unlawful

activities cannot be attributed to it. However, it is difficult to accept such a plea in view of registration of quite a good number of cases after the first ban till date, wherein members of respondent-organisation are arrayed as accused/co-accused. The materials in regard to the criminal cases pertaining to the period from 27th of September, 2001 to 27th of September, 2003 were produced before the Unlawful Activities (Prevention) Tribunal adjudicating the second ban on the respondent-organisation which were duly noticed by the Tribunal in its order dated 23-3-2004. That apart, evidence in that regard has been adduced before this Tribunal as well. The criminal cases registered after the second ban in 2003 up to 8th of February, 2006 and also the ones relating to the period after 8th of February, 2006 and evidence in respect thereto in the form of depositions of witnesses have already been noticed in the course of discussion heretofore. Though in some of the cases registered after the first ban, the accused therein are stated to have been acquitted but majority of cases are still pending trial. In the face of registration of a large number of criminal cases, from time to time, throughout after the first ban involving members of the respondent-organisation, no further evidence is required to prove that its activities have never ceased. No doubt, during the period 27th of September, 2003 to 8th of February, 2006 not many cases of criminal activity on the part of members of respondent-organisation were reported or registered, that would not imply that it ceased to operate during that period. In a scenario where the office bearers and prominent activists of the respondent-organisation were confined in jail or had absconded or gone underground, the activities of the respondent-organisation at operational level was bound to slow down. This could be the period when as compared to past not many cases of illegal/unlawful activities on the part of members of respondent-organisation were reported. Intelligence reports show that Shri Shahid Badar Falahi after his release on bail on 7th of April, 2004 started addressing meetings at his native place and other parts of UP and also started undertaking journeys to different parts of the country in a bid to regroup and rejuvenate cadres of the respondent-organisation. The fact that no cases were registered against his such activities does not necessarily mean that such activities had actually not taken place. Non-registration of cases could be attributed to lack of coordination between the concerned Intelligence agencies and the local police or indifference or insensitivity to national interest on the part of local police administration and so on. Even Shri Shahid Badar Falahi admitted in the course of his cross-examination that after his release on bail he had been to Mumbai and Kerala apart from visiting his friends and relatives. He has visited Kerala twice. However, he maintained that he visited Mumbai and Kerala in connection with treatment of his ailment on account of Spondylosis. No material is placed on record to show that his visits to Mumbai and Kerala were in connection with his medical treatment only. Taking into account that Shri Shahid Badar Falahi is found to have been actively involved in different kinds of activities aimed at keeping the

respondent-organisation alive and functional at operational level, credibility of Intelligence reports relating to his activities cannot be doubted. There is, thus, sufficient material to negate the plea raised on behalf of the respondent-association that it ceased to be active after imposition of any of the bans. Such a finding also gets support from the fact that the respondent-organisation at no point of time after the second ban applied to the Central Government for cancellation of ban on the plea that it had ceased to be involved in any sort of illegal/unlawful activity. Though Shri Shahid Badar Falahi in his statement told that on his instructions, his counsel, Shri Sidharth Luthra, had made an application for cancellation of ban, no material has been placed before the Tribunal to substantiate such statement. On behalf of the Central Government Shri Sidharth Mridul categorically told that no such application was ever made on behalf of the respondent-organisation.

66. Article 4 of the Constitution of the respondent-organisation spells out its aim. It reads thus:

" Article: 4 The aim of SIM is to achieve Allah's pleasure through reconstruction of human life according to the principles given by Allah and His messenger Sallal Lahu Alaihi Wasallam".

67. There is no denial on the part of respondent organisation that its objectives include, 1. Governing of human life on the basis of Quran; 2. Propagation of Islam; and 3. "Jehad" for the cause of Islam. It was submitted that in believing in Holy Quran and its teachings and working for propagation of Islam, there was nothing wrong or illegal. It was asserted that following the Holy Quran and its teachings is a Fundamental Right guaranteed under the Constitution of India and, thus, the respondent-organisation and/or its members are well within their right in doing so. In respect of 'Jehad', it was claimed that it meant, 'a war against evil and/or a war against malign desires'. Undoubtedly, as far as believing in Holy Quran and its teachings and propagation of Islam are concerned, no fault can be found therewith. However, the problem arises when in the name of propagation of Islam, the same is sought to be thrust upon non-Muslims by resorting to violent means or use of force in any form or terrorising the people. According to the Central Government, by exhorting its cadres for 'Jehad', the respondent-organisation has been taking recourse to violence and unlawful activities. By seeking to establish Islamic Rule or Caliphate, it was argued, the respondent-organisation is working for destruction of nationalism. It was contended that by subscribing to the ideology of achieving the objective of 'Allah's pleasure through reconstruction of human life according to principles given by Allah and His messenger', the respondent-organisation is working against the concept of secularism enshrined in the Indian Constitution. It was submitted that respondent organisation's slogan 'Allah is our Lord, Mohammed is our commander, Quran is our Constitution, 'Jehad' is our path and Shahadat is our desire' is indicative of its militant mindset and by seeking to

establish Islamic rule, the respondent-organisation is working against democratic set-up of the Indian polity. The respondent does not contest the argument that 'Jehad' for the cause of Islam is one of its objectives. It is, however, sought to be made out that 'Jehad' finding mention in the Constitution of the respondent-organisation 'means nothing but a war against evil and/or a war against malign desires'. In support, reference is made to the statement of RW-1, Shri Zafrul Islam Khan, vide Ex. RW-1/I. According to him 'Jehad' is divided into greater Jihad (Al-Jihad, Al-Akber) and 'lesser Jihad' (Al-Jihad Al-Ashghar). He affirmed that the 'greater Jihad' is against one's own evils and shortcomings while the 'lesser Jihad' is trying to eradicate the evils of others which may take the form of fighting. There can be no controversy on a correct and true meaning of term 'Jihad'. The problem, however, arises when a distorted meaning is assigned to it. One can understand that believing in one's own religion/faith and propagation thereof is Fundamental Right of every citizen under the Indian Constitution. However, in practising one's religion/faith and propagating the same, respect for other religions/faiths has to be maintained. Right to practise one's own religion/faith and propagation thereof cannot extend to forcing people of other religions/faiths to embrace such religion/faith against their free will. To adopt any unlawful or illegal means by use of criminal force to achieve the object would certainly be not in conformity with the concept of secularism. By resorting to illegal/unlawful activities in order to make people of other faith believe in Islam can in no way be justified on the plea that the members of the respondent-organisation have a Fundamental Right to propagate their religion.

68. In the context as to what meaning is actually being assigned by the respondent-organisation to the term 'Jehad', a reference to 'Oath of Allegiance for Ansar' would be revealing. In this document what is particularly referable reads thus:

"I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be."

69. This oath of allegiance for membership clearly spells out the task given out to the members. One of these is to work for establishment of Islamic system in the country and the other is that while working for this cause even if one's life was to be put at stake, the member would not hesitate in doing so. If the term 'Jehad' is to be assigned a meaning that it is a war to fight against one's own evils, there can be no occasion where a person believing in Islam would be required to sacrifice his life. In case a meaning of 'lesser Jihad' as stated by RW-1, Shri Zafrul Islam Khan, is to be assigned where it means trying to eradicate the evils of others, which may take the form of fighting, it would imply that 'lesser Jihad' permits use of force also to achieve the objective of eradicating the evils of others. But the question is, who is to decide what is 'evil'? What standard



is to be applied to determine it? If anything that is not in conformity with Islam is treated as an 'evil' 'lessor Jihad' would permit the respondent-organisation even to use force against the people of other religions/faiths to make them conduct only in a way which is in accord with Islam. This would clearly lead to a situation where non-Muslims would not be allowed to practice their own religion/faith and would be made to surrender to Islamic faith. Allowing such a course of action to hold sway would clearly be against the concept of secularism and mutual respect for each other's religion/faith essential for peaceful co-existence of people practising different set of beliefs would be giving way to a civil war like situation where people of other religions/faiths would be fighting to protect their religions identity. Any act demeaning or debasing other religions, in the name of 'Jihad', by publishing and circulating objectionable and provocative literature would be fraught with danger of engineering communal clashes, thereby causing social tension risking communal harmony. If the objective of 'Jihad' by respondent-organisation is in the sense of 'lessor Jihad' as deposed by RW-1, Shri Zafrul Islam Khan, that would clearly be in clash with basic tenet of secularism under our Constitution and cannot be allowed to go on if the integrity and sovereignty of the nation is to be ensured and preserved. Reasonable restrictions against activities of the respondent-organisation in the name of 'Jihad' which tend to cause social tensions and communal disharmony between different religious sections of the society and endanger the secular character of the polity by imposing a ban on its activities would, thus, be the only way to deal with prevailing situation.

70. The very fact that 'oath of allegiance for Ansar, (Members) obligates to strive for establishment of Islamic Rule in the country and to do all that is required to achieve such object clearly shows that the respondent-organisation does not believe in present democratic set-up and aims at replacing it by Islamic Rule. A mere denial on its part that it is not opposed to present system of political dispensation is clearly in contradiction to what its own document, namely, 'oath of allegiance for Ansar' says.

71. Two magazines, namely, Millat Al-Yaum (Delhi) and 'Istaqlal' (Lucknow) were particularly referred to on behalf of Central Government by Shri Mridul to support the argument that the activities of the respondent-organisation are opposed to nationalism, secularism and democracy. He pointed out an article captioned 'National Democratic Secular State and Islamic View Point' appearing in February, 2004 issue of Millat-Al-Yaum, stating 'Secularism is an uncivilised theory; polytheism is a curse; democracy is ineffectual and spurious and martyrdom is the goal of a Momin (true Muslim)'. It also carries on with the assertion 'it does not matter for a Muslim whether India remains as one country or is divided into 10 pieces'. In another article appearing in May, 2004 issue of the same magazine alleged demerits of secularism, nationalism and

democracy have been highlighted and it is asserted that these concepts are 'wrong for the Islam followers'. The article supports claim for establishment of 'system of Allah' and eulogizes 'Jihad' by calling it 'Scheme of God'. Highlighting the duties of mujahideen, another article urges the Muslims to boycott un-Islamic decisions of courts and exhorts them for 'Jihad'. In April 2005 issue of Urdu monthly 'Istaqlal' published from Lucknow in an article captioned 'Secularism - the Enemy of India', it is asserted that secularism is entirely against Islam. It states that secularism is not possible in Islam as Government and Allah are not two different identities in Islam. According to the article, there is complete contradiction between Islam and secularism, as Islam provides guidelines and laws for every aspect of life from birth to death and is 'Kalma' (word) of Allah, while secularism desired that Islam should become 'faithful'. According to the Central Government both these magazines are being brought out by SIMI workers. Though there is no direct evidence in this regard and as a matter of fact there cannot be any such evidence for the reason that the respondent-organisation cannot publish such magazines in view of being under ban, going by the content and tenor of the articles, as pointed out by Shri Sidharth Mridul, there is a clear indication that it is the respondent-organisation which appears to be behind the publication of these magazines since the above referred articles simply seek to put forth and project the ideology which the respondent-organisation subscribes. The fact that the respondent is surreptitiously engaged in publication and circulation of anti-national, provocative and objectionable literature finds support from the disclosure made by accused M.A.Naim in Crime No.256/2006, wherein an old publication which used to be brought out by respondent-organisation was continued to be published and circulated to SIMI members by changing its name from "Tehreek -e-Millat" to "Tehreek" and by getting the same published in the name of accused M.A.Naim.

72. Viewed in the light of material available before this Tribunal as discussed hereinabove, it is concluded that the respondent-organisation is indulging in activities which are detrimental and prejudicial to national-interest and have the potential of posing a threat to the integrity and sovereignty of the nation and also to communal harmony. I, therefore, find that there is sufficient cause for declaring the respondent-organisation as unlawful association and, thus, confirm the ban on it as imposed by the Central Government by notification dated 8-2-2006 read with corrigendum dated 13-2-2006. The reference stands answered accordingly.

(B.N. CHATURVEDI)

Unlawful Activities (Prevention), Tribunal

August, 7, 2006.

[F.No. 14017/9/2006-NI-III]

B.A. COUTINHO, Jt. Secy.



# भारत का राजपत्र

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 7 फरवरी, 2008

**का.आ. 276(अ).**—जबकि, स्टूडेंट इस्लामिक मूवमेंट ऑफ इण्डिया (जिसका उल्लेख इसके बाद सिमी के रूप में किया गया है) ऐसी गतिविधियों में संलिप्त रहा है जो देश की सुरक्षा के प्रतिकूल हैं और जो शांति और साम्प्रदायिक सौहार्द को बिगाड़ने और देश के धर्मनिरपेक्ष ताने-बाने को छिन्न-भिन्न करने का माहा रखती हैं;

और जबकि, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने क्रमशः (i) दिनांक 27 सितम्बर, 2001 की अधिसूचना संख्या का. आ. 960(अ); (ii) दिनांक 26 सितम्बर, 2003 की अधिसूचना संख्या का.आ. 1113 (अ); और (iii) दिनांक 8 फरवरी, 2006 की अधिसूचना संख्या का. आ. 191 (अ); के तहत सिमी को एक विधि-विरुद्ध संगठन घोषित किया है;

और जबकि, विधि-विरुद्ध क्रियाकलाप (निवारण) न्यायाधिकरण का गठन यह न्यायनिर्णय देने के लिए किया गया है कि क्या सिमी को विधि-विरुद्ध संगठन घोषित करने के संबंध में पर्याप्त कारण हैं अथवा नहीं और न्यायाधिकरण ने अपने क्रमशः (i) दिनांक 8 अप्रैल, 2002 के आदेश संख्या का.आ. 397(अ); (ii) दिनांक 16 अप्रैल, 2004 के आदेश संख्या का. आ. 499 (अ); और (iii) दिनांक 11 अगस्त, 2006 के आदेश संख्या का.आ. 1302 (अ); के तहत प्रतिबंध को सही ठहराया है;

और जबकि, केन्द्र सरकार की यह राय है कि सिमी अब भी उन गतिविधियों में संलिप्त है, जिनके लिए इसे पहले प्रतिबंधित किया गया था और सिमी के कार्यकर्ता अब भी उन साम्प्रदायिक एवं राष्ट्रविरोधी गतिविधियों में संलिप्त हैं। सिमी की गतिविधियां भारतीय समाज की शान्ति, अखंडता और इसके धर्मनिरपेक्ष ताने-बाने को बनाये रखने के लिए हानिकारक हैं और यह कि यह एक विधि-विरुद्ध संगठन है;

अतः, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा स्टूडेंट इस्लामिक मूवमेंट ऑफ इण्डिया (सिमी) को एक "विधि-विरुद्ध संगठन" घोषित करती है;

और जबकि, केन्द्र सरकार की यह भी राय है कि यदि सिमी की विधि-विरुद्ध गतिविधियों पर तुरन्त अंकुश नहीं लगाया गया और उन्हें नियंत्रित नहीं किया गया तो उसे निम्नलिखित कार्य करने का मौका मिल जाएगा :-

- (i) अपनी विध्वंसक गतिविधियों को जारी रखना और अपने उन कार्यकर्ताओं को फिर से संगठित करना जो अभी तक फरार हैं;
- (ii) लोगों की मानसिकता को विकृत करके और साम्प्रदायिक सौहार्द को बिगाड़कर देश के ताने-बाने को छिन्न-भिन्न करना;
- (iii) देश विरोधी भावना भड़काना; और
- (iv) उग्रवाद का समर्थन करके अलगाववाद को बढ़ाना;

और जबकि, केन्द्र सरकार की यह भी राय है कि सिमी के कार्यकर्ताओं की गतिविधियों को देखते हुए सिमी को तत्काल प्रभाव से एक विधि विरुद्ध संगठन घोषित करना आवश्यक है, और तदनुसार, धारा 3 की उप-धारा (3) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा यह निदेश देती है कि यह अधिसूचना, उक्त अधिनियम की धारा 4 के अन्तर्गत किये गये किसी भी आदेश के अध्यक्षीन, सरकारी राजपत्र में इसके प्रकाशन की तारीख से लागू होगी।

[फा. सं. 14017/6/2007-एन आई-III]

बी. भामथी, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 7th February, 2008

**S.O. 276 (E).**—Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government declared the SIMI as an unlawful association *vide* notification numbers, (i) S.O. 960(E), dated the 27th September, 2001; (ii) S.O. 1113(E), dated the 26th September, 2003; and (iii) S.O. 191(E), dated the 8th February, 2006 respectively;

And whereas, the Unlawful Activities (Prevention) Tribunal was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban *vide* Order numbers, (i) S.O. 397 (E), dated 8th April, 2002; (ii) S.O. 499 (E), dated 16th April, 2004; and (iii) S.O. 1302 (E), dated the 11th August, 2006 respectively;

And whereas, the Central Government is of the opinion that the SIMI continue to indulge in activities for which it was banned earlier and the activists of SIMI are still indulging in communal and anti-national activities. The activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association";

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to —

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments; and
- (iv) escalate secessionism by supporting militancy;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to Sub-section (3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F.No. 14017/6/2007-NI-III]

B. BHAMATHI, Jt. Secy.



# भारत का राजपत्र

## The Gazette of India

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नई दिल्ली, 5 फरवरी, 2010

**का.आ. 260(अ).**—जबकि, स्टूडेंट्स इस्लामिक मूवमेन्ट ऑफ इण्डिया (जिसका उल्लेख इसके बाद 'सिमी' के रूप में किया गया है) ऐसी गतिविधियों में संलिप्त रहा है जो देश की सुरक्षा के प्रतिकूल हैं और जो शांति और साम्प्रदायिक सौहार्द को बिगाड़ने और देश के धर्म निरपेक्ष ताने-बाने को छिन्न-भिन्न करने का माद्दा रखती हैं;

और जबकि, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसका उल्लेख इसके बाद 'अधिनियम' के रूप में किया गया है) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने क्रमशः (i) दिनांक 27 सितम्बर, 2001 की अधिसूचना सं. का.आ. 960(अ); (ii) दिनांक 26 सितम्बर, 2003 की अधिसूचना सं. का.आ. 1113(अ), (iii) दिनांक 8 फरवरी, 2006 की अधिसूचना सं. का.आ. 191(अ), और (iv) दिनांक 7 फरवरी, 2008 की अधिसूचना सं. का.आ. 276(अ) के तहत सिमी को एक विधि-विरुद्ध संगठन घोषित किया है;

और जबकि, विधि-विरुद्ध क्रियाकलाप (निवारण) न्यायाधिकरण (जिसका उल्लेख इसके बाद 'न्यायाधिकरण' के रूप में किया गया है) का गठन यह न्यायनिर्णय देने के लिए किया गया था कि क्या सिमी को विधि-विरुद्ध संगठन घोषित करने के संबंध में पर्याप्त कारण हैं अथवा नहीं और न्यायाधिकरण ने अपने क्रमशः (i) दिनांक 8 अप्रैल, 2002 के आदेश संख्या का.आ. 397(अ); (ii) दिनांक 16 अप्रैल, 2004 के आदेश सं. का.आ. 499(अ); और (iii) दिनांक 11 अगस्त, 2006 के आदेश संख्या का.आ. 1302(अ); के तहत प्रतिबंध को सही ठहराया है;

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और जबकि, न्यायाधिकरण ने दिनांक 5 अगस्त, 2008 के अपने आदेश में यह निर्णय देते हुए कि दिनांक 7 फरवरी, 2008 की ऊपर उल्लिखित अधिसूचना संख्या का.आ. 276(अ) अधिनियम की धारा 3 की अपेक्षा को पूरा नहीं करती है और उसमें की गई घोषणा को निरस्त कर दिया;

और जबकि, केन्द्र सरकार ने, भारत के माननीय उच्चतम न्यायालय में विशेष अनुमति याचिका (सिविल) संख्या 2008 की संख्या 19845 दायर करके न्यायाधिकरण के उपर्युक्त आदेश को चुनौती दी;

और जबकि, माननीय उच्चतम न्यायालय ने दिनांक 6 अगस्त, 2008 को न्यायाधिकरण के उपर्युक्त आदेश पर अन्तरिम स्थगन आदेश दे दिया;

और जबकि, बाद में हुई सुनवाई में माननीय उच्चतम न्यायालय ने स्थगन आदेश की अवधि अगले आदेशों तक बढ़ा दी और मामले की सुनवाई एक बड़ी पीठ द्वारा किए जाने के आदेश दिए;

और जबकि, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा (6) की उप-धारा (1) के अनुसरण में जारी अधिसूचना की तारीख से 2 वर्ष की अवधि के लिए लगाया गया प्रतिबंध 6 फरवरी, 2010 को समाप्त हो जाएगा;

और जबकि, केन्द्र सरकार की यह राय है कि माननीय उच्चतम न्यायालय के समक्ष व्यक्त किए गए अपने आशय के प्रति पूर्वाग्रही हुए बिना, अति सर्तकता के लिए अधिनियम की धारा 3 के तहत उसे प्राप्त शक्तियों का प्रयोग करना आवश्यक है;

और जबकि, केन्द्र सरकार का यह विचार है कि अन्य बातों के साथ-साथ निम्नलिखित आधारों पर यह विश्वास किया जा सकता है कि सिमी ऐसी गतिविधियों में संलिप्त है जो देश की एकता और सुरक्षा के लिए हानिकारक हैं :—

(1)



- (क) पुलिस थाना पीथमपुर, धार, मध्य प्रदेश में दिनांक 27 मार्च, 2008 को दर्ज आपराधिक मामला संख्या 120/08 के अनुसार, सफदर हुसैन नागोरी सहित 13 फरार कुख्यात सिमी कार्यकर्ताओं को विभिन्न स्थानों पर विस्फोट की योजना बनाते हुए, आग्नेयास्त्रों और आपत्तिजनक साहित्य, सिमी के प्रशिक्षण की पुस्तकों सहित गिरफ्तार किया गया था।
- (ख) दिनांक 13 मई, 2008 को जयपुर में शृंखलाबद्ध विस्फोट हुए जिनमें 68 लोग मारे गए और 150 लोग जख्मी हुए और पुलिस द्वारा मामला दर्ज किया गया है।
- (ग) दिनांक 26 जुलाई, 2008 को अहमदाबाद शहर 18 विभिन्न स्थानों पर हुए 23 शृंखलाबद्ध विस्फोटों से थरा गया, जिनमें से दो कार बम विस्फोट दो अस्पतालों में हुए, इन विस्फोटों के परिणामस्वरूप 57 व्यक्तियों की मौत हो गई और 160 से अधिक लोग घायल हो गए। अहमदाबाद नगर पुलिस ने इन विस्फोटों के सिलसिले में 18 सिमी कार्यकर्ताओं को गिरफ्तार किया। इन कार्यकर्ताओं के विरुद्ध पुलिस द्वारा अद्वारह मामले दर्ज किए गए।
- (घ) दिनांक 13 सितम्बर, 2008 को दिल्ली के विभिन्न इलाकों में कई विस्फोट हुए जिनमें 24 व्यक्तियों की जानें गईं और 146 लोग घायल हो गए। दिल्ली पुलिस ने इन विस्फोटों के सिलसिले में 12 अभियुक्तों को गिरफ्तार किया जिनमें से तीन अभियुक्तों का सम्बन्ध सिमी से था। दिल्ली पुलिस ने इन तीन अभियुक्तों सहित 12 अभियुक्तों के विरुद्ध 5 मामले दर्ज किए हैं।
- (ङ) दिनांक 25 जुलाई, 2008 को बंगलौर शहर में विभिन्न स्थानों पर आठ शृंखलाबद्ध विस्फोट हुए। एक महिला की घटनास्थल पर ही मौत हो गई और 11 व्यक्ति घायल हो गए। कर्नाटक पुलिस ने 9 मामले दर्ज किए और 10 अभियुक्त व्यक्तियों को गिरफ्तार किया जिनमें से 3 सिमी के सक्रिय कार्यकर्ता हैं।
- (च) एस.आई.टी. हैदराबाद ने, देश के विरुद्ध युद्ध छेड़ने की साजिश के लिए सिमी के सात अभियुक्त कार्यकर्ताओं को गिरफ्तार किया। उनकी, आर.आर. जिले में अनन्तगिरी पर्वतीय वन क्षेत्र में एक प्रशिक्षण शिविर आयोजित करने की योजना थी।
- (छ) अवैध संगठनात्मक गतिविधियां चलाने के लिए सिमी के कार्यकर्ताओं को सिहोर, भोपाल, राजगढ़ और इन्दौर जिलों में फरवरी 2008 और अगस्त 2008 के बीच गिरफ्तार किया गया;
- (ज) अवैध संगठनात्मक गतिविधियां चलाने के लिए सिमी के कार्यकर्ताओं को हैदराबाद के गोपालपुरम और सैदाबाद में फरवरी 2008 और सितम्बर 2008 के बीच गिरफ्तार किया गया;
- (झ) विधि-विरुद्ध क्रियाकलापों के लिए सिमी के पांच कार्यकर्ताओं को ए.टी.एस. भोपाल द्वारा इन्दौर से दिनांक 29 अक्टूबर, 2009 को गिरफ्तार किया गया। ए.टी.एस. भोपाल द्वारा विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1969 की धारा 3, 10 एवं 13 के तहत और भारतीय दण्ड संहिता की धारा 153(क) और 153(ख) के तहत आपराधिक मामला संख्या 5/2009 दर्ज किया गया;
- (ञ) दिनांक 20 अक्टूबर, 2009 को इन्दौर से गिरफ्तार किए गए कार्यकर्ताओं द्वारा खुलासा किए जाने पर ए.टी.एस. भोपाल द्वारा दिनांक 4-11-2009 को जबलपुर से सिमी के चार अन्य कार्यकर्ताओं को गिरफ्तार किया गया। विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1969 की धारा 3, 10 एवं 13 के तहत और भारतीय दण्ड संहिता की धारा 153(क), 153(ख) और 120(ख) के तहत आपराधिक मामला संख्या 6/2009 दर्ज किया गया;
- (ट) गोकुल रोड, पुलिस थाना, हुबली सिटी द्वारा, दार्डिक मामला संख्या 14/2008 के तहत आतंकवादी गतिविधियों में संलिप्त होने के कारण सिमी के कार्यकर्ताओं के विरुद्ध भारतीय दण्ड संहिता की धारा 120(ख), 121, 121(क), 122, 124(क) 153(क)(1)(ख), 153(ख)(1)(क), विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 11 एवं 13 और विस्फोटक पदार्थ अधिनियम की धारा 3, 4 और 5 के तहत आपराधिक मामला दर्ज किया गया। इस मामले में कुल 18 सिमी कार्यकर्ताओं को अभियुक्त बनाया गया;
- (ठ) दिनांक 24 अप्रैल, 2009 को तीस हजारी न्यायालय द्वारा सिमी के एक अभियुक्त, जिसे दिल्ली पुलिस की विशेष शाखा द्वारा दिनांक 25 जनवरी, 2007 को विस्फोटक सामग्री सहित गिरफ्तार किया गया था, को 5 वर्ष के कठोर कारावास और 1,000 रुपये जुर्माने की सजा सुनाई गई;
- (ड) निचले न्यायालय द्वारा दिनांक 9 जुलाई, 2007 को, सिमी के 4 अभियुक्तों को, प्रत्येक को, भारतीय दण्ड संहिता की धारा 121/121क/122 के तहत 10 वर्ष के कठोर कारावास और 50,000 रुपये जुर्माने, जिसके अदा न किए जाने पर 6 माह की अतिरिक्त कारावास की सजा, विस्फोटक पदार्थ अधिनियम की धारा 4 के तहत 7 वर्ष के कठोर कारावास और 25,000 रुपये जुर्माने, जिसके अदा न किए जाने पर 3 माह की अतिरिक्त कारावास की सजा, विस्फोटक पदार्थ अधिनियम की धारा 5 के तहत 5 वर्ष के कठोर कारावास और 25,000 रुपये जुर्माने की सजा सुनाई गई, इस सजा के विरुद्ध दिल्ली उच्च न्यायालय में दायर अपील को दिनांक 28 जुलाई, 2008 को निरस्त कर दिया गया।
- और जबकि, उपर्युक्त आधारों पर केन्द्र सरकार को यह राय है कि यह विश्वास किया जा सकता है कि सिमी ऐसी गतिविधियों में संलिप्त है जो देश की एकता और सुरक्षा के लिए हानिकारक हैं।
- अतः, इसलिए, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा स्टूडेंट इस्लामिक मूवमेंट ऑफ इण्डिया (सिमी) को एक "विधि-विरुद्ध संगठन" घोषित करती है;

और जबकि, केन्द्र सरकार की यह भी राय है कि यदि सिमी की विधि विरुद्ध गतिविधियों पर तुरन्त अंकुश नहीं लगाया गया और उन्हें नियंत्रित नहीं किया गया तो उसे निम्नलिखित कार्य करने का मौका मिल जाएगा :—

- (i) अपनी विध्वंसक गतिविधियों को जारी रखना और अपने उन कार्यकर्ताओं को फिर से संगठित करना जो अभी तक फरार हैं;
- (ii) लोगों की मानसिकता को विकृत करके और साम्प्रदायिक सौहार्द को बिगाड़कर देश के धर्म-निरपेक्ष ताने-बाने को छिन्न-भिन्न करना;
- (iii) देश विरोधी भावना भड़काना; और
- (iv) उग्रवाद का समर्थन करके अलगाववाद को बढ़ाना;
- (v) ऐसी गतिविधियों को अन्जाम देना जो देश की एकता और सुरक्षा के लिए हानिकारक हैं;

और जबकि, केन्द्र सरकार की यह भी राय है कि सिमी के कार्यकर्ताओं की गतिविधियों को देखते हुए सिमी को तत्काल प्रभाव से एक विधि विरुद्ध संगठन घोषित करना आवश्यक है, और तदनुसार, धारा 3 की उप-धारा (3) के परतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा यह निदेश देती है कि यह अधिसूचना, उक्त अधिनियम की धारा 4 के अन्तर्गत किये गये किसी भी आदेश के अन्तर्गत, सरकारी राजपत्र में इसके प्रकाशन की तारीख से लागू होगी।

[ फा. सं. 14017/2/2009-एन आई-III ]

डॉ. कश्मीर सिंह, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 5th February, 2010

**S.O. 260(E).**—Whereas the Students Islamic Movement of India (hereinafter referred to as the 'SIMI') has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the 'Act') the Central Government declared the SIMI as an unlawful association *vide* notification numbers, (i) S.O. 960 (E), dated the 27th September, 2001; (ii) S.O. 1113 (E), dated the 26th September, 2003; and (iii) S.O. 191 (E), dated the 8th February, 2006; (iv) S.O. 276(E), dated the 7th February, 2008 respectively;

And whereas, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the 'Tribunal') was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban *vide* Order

numbers, (i) S.O. 397 (E), dated 8th April, 2002; (ii) S.O. 499 (E), dated 16th April, 2004; and (iii) S.O. 1302 (E), dated the 11th August, 2006 respectively;

And whereas, the Tribunal *vide* Order dated 5th August, 2008 held that the notification number S.O. 276(E), dated 7th February, 2008 mentioned above did not satisfy the requirement of Section 3 of the Act and cancelled the declaration made therein;

And whereas, the Central Government challenged the aforesaid Order of the Tribunal in the Hon'ble Supreme Court of India *vide* Special Leave Petition (Civil) No. 19845 of 2008;

And whereas, on 6th August, 2008, the Hon'ble Supreme Court was pleased to order interim stay of the aforesaid Order of the Tribunal;

And whereas, on subsequent hearing the Hon'ble Supreme Court extended the stay till further order and ordered that the matter be heard by a larger Bench;

And whereas that the duration of ban of 2 years from the date of notification conferred by sub-section (1) of Section (6) of Unlawful Activities (Prevention) Act, 1967 will cease on 6th February, 2010;

And whereas, the Central Government is of the opinion that without prejudice to its contentions before the Hon'ble Supreme Court, in abundant caution, it is necessary to exercise its powers under Section 3 of the Act;

And whereas the Central Government is of the opinion based, *inter alia*, on the following grounds that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country:

- (a) In case bearing Crime No. 120/08, March 27, 2008, in PS Pithampur, Dhar, Madhya Pradesh, 13 absconding hardcore SIMI activists including Safdar Hussain Nagori were arrested along with firearms and objectionable literature, training books of SIMI with the aim to cause explosions in different places;
- (b) On May 13, 2008, there were a series of blasts in Jaipur, in which 68 persons were killed and 150 were injured and a case has been registered by Police;
- (c) On July 26, 2008, Ahmedabad city was rocked by a series of 23 blasts at 18 different places, including two car bomb blasts at two hospital sites, resulting in the death of 57 persons and injuries to over 160 persons. Ahmedabad city police arrested 18 SIMI activists for these blasts. Eighteen cases have been registered by Police against these activists;
- (d) On September 13, 2008, there were several blasts in different localities in Delhi, in which 24 persons were killed and 146 were injured. The Delhi Police arrested 12 accused for these blasts out of those three accused belong to SIMI. Delhi Police have registered 5 cases against 12 accused including these three;

- (e) On 25th July, 2008, eight serial bomb blasts occurred at different places in Bangalore city. One woman died at the spot and 11 persons were injured. The Karnataka police have registered 9 cases and have arrested 10 accused persons of which 3 were active members of SIMI.
- (f) SIT, Hyderabad registered a case against seven accused activists of SIMI for conspiracy to wage war against the country. They had plans to organize a training camp in Anantagiri Hills Forest Range in RR Dist.
- (g) Between February 2008 and August 2008, SIMI activists were arrested in Sehore, Bhopal, Rajgarh and Indore districts for carrying on illegal organizational activities.
- (h) Between February 2008 and September 2008, SIMI activists were arrested in Gopalpuram and Saidabad in Hyderabad for carrying on illegal organizational activities.
- (i) Five SIMI activists were arrested on 20-10-2009 by ATS Bhopal from Indore for unlawful activities. A Case Cr. No. 5/2009 has been registered by ATS, Bhopal u/s 3,10,13 of UAP Act, 1969, and 153(A) 153(B)IPC.
- (j) Based on the revelations of the activists arrested from Indore on October 20, 2009, four more SIMI activists, were arrested from Jabalpur on 4-11-2009 by ATS, Bhopal. A case Cr. No. 6/2009 has been registered u/s 3,10,13 of UAP Act, 1969, and 153(A) 153(B) 120(B) of IPC.
- (k) A criminal case was registered against SIMI activists for their involvement in terrorist activities vide Cr. No. 14/2008 under sections 120 (B), 121, 121(A), 122, 124(A), 153(A)(1)(B), 153(B)(1)(A) of IPC, under Section 10, 11, and 13 of Unlawful Activities (Prevention) Act, 1967, and Sections 3, 4, and 5 of Explosives Substances Act of Gokul Road Police Station Hubli City. A total 18 SIMI activists have been made accused in the case.
- (l) On 24th April, 2009 one accused person of SIMI has been convicted for 5 years RI and fine of Rs. 1,000 by Tis Hazari Court who was arrested with explosive material by Special Cell, of Delhi Police on 25th January, 2007.
- (m) An appeal filed in Delhi High Court against the conviction of 4 accused of SIMI on 9th July, 2007 by Lower Court for 10 years RI and fine of Rs. 50,000 each in I/d 6 months u/s 121/121A/122 IPC, RI, 7 years under section 4 of ES Act, fine 25,000 I/d 3 months RI, 5 years u/s 5 ES Act, 5 fine 25,000, was disposed of on 28th July, 2008.

And whereas the Central Government, based on the aforesaid grounds, is of the opinion that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association";

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to –

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments; and
- (iv) escalate secessionism by supporting militancy;
- (v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F. No. 14017/2/2009-NI-III]

Dr. KASHMIR SINGH, Jt. Secy.



# भारत का राजपत्र

## The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 12 अगस्त, 2010

का.आ. 1990(अ).—जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 5 फरवरी, 2010 की अधिसूचना सं. का.आ. 260(अ) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है ;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 5 मार्च, 2010 की अधिसूचना सं. का.आ. 544(अ) के तहत विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायविद् श्री संजीव खन्ना थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 5 मार्च, 2010 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 5 फरवरी, 2010 की अधिसूचना सं. का.आ. 260(अ) में की गई घोषण की पुष्टि करते हुए दिनांक 4 अगस्त, 2010 को एक आदेश पारित किया था ।

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात् :—

(आदेश अंग्रेजी में छपा है ।)

[फा.सं. 14017/13/2010-एन.आई.-III]

अरुण कुमार यादव, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 12th August, 2010

S.O. 1990(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared the Students Islamic Movement of India (SIMI) to be unlawful association vide notification of the Government of India in the Ministry of Home Affairs number S.O. 260(E), dated the 5th February, 2010:

And whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act constituted vide notification of the Government of India in the Ministry of Home Affairs number S.O. 544(E), dated the 5th March, 2010, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice Sanjiv Khanna, Judge of the High Court of Delhi;

And whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 5th March, 2010 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of Section 4 of the said Act, made an order on the 4th August, 2010 confirming the declaration made in the notification number S.O. 260 (E), dated the 5th February, 2010.

Now therefore, in pursuance of sub-section (4) of Section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

[F.No. 14017/13/2010-NI-III]

ARUN KUMAR YADAV, Jt. Secy.

**UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL, NEW DELHI**

*Date of Decision* : 4th August, 2010.

In Re : **Banning of Students Islamic Movements of India under the Unlawful Activities (Prevention) Act, 1967.**

**UNION OF INDIA**

..... **Petitioner**

Through Mr. A.S. Chandhiok, Additional Solicitor General with Mr. Sachin Dutta, Standing Counsel, Mr. Sanjay Katyal, Dr. Shailendra Sharma, Mr. Aashish Gupta, advocates.

**Versus**

**STUDENTS ISLAMIC MOVEMENT**

**OF INDIA**

..... **Respondent**

Through Mr. Ashok Agarwal, Mr. Salar M. Khan, Mr. Mobin Akhtar, Ms. Sreedevi Panikker, advocates with Mr. Humam Ahmed Siddiqui in-person.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**SANJIV KHANNA, J.**

1. This Order answers reference under Section 3(3) read with Section 4(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the Act, for short) made to this Tribunal constituted vide Notification no. S.O.544(E) dated 5th March, 2010 under Section 5(1) of the Act made by Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring the Students Islamic Movement of India (SIMI for short) an "unlawful association".

2. Earlier the Central Government had published Notification no. S.O. 260(E) dated 5th February, 2010 in exercise of powers conferred under Section 3(1) of the Act and declared that SIMI had been indulging in activities which were prejudicial to the security of the country and had the potential of disturbing peace and communal harmony and disturbing secular fabric of the country.

3. Notification dated 5th February, 2010 refers to grounds (a) to (m) why the Central Government believes that SIMI is indulging in the aforesaid activities. The relevant extract of the notification is quoted below:

"And whereas, the Central Government is of the opinion that without prejudice to its contentions before the Hon'ble Supreme Court, in abundant caution, it is necessary to exercise its powers under section 3 of the Act;

And whereas the Central Government is of the opinion based, inter alia, on the following grounds that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country:



- (a) In case bearing Crime No. 120/08, March 27, 2008, in PS Pithampur, Dhar, Madhya Pradesh, 13 absconding hardcore SIMI activists including Safdar Hussain Nagori were arrested alongwith firearms and objectionable literature, training books of SIMI with the aim to cause explosions in different places;
- (b) On May 13, 2008 there were a series of blasts in Jaipur, in which 68 persons were killed and 150 were injured and a case has been registered by Police;
- (c) On July 26, 2008, Ahmedabad city was rocked by a series of 23 blasts at 18 different places, including two car bomb blasts at two hospital sites resulting in the death of 57 persons and injuries to over 160 persons. Ahmedabad city police arrested 18 SIMI activists for these blasts. Eighteen cases have been registered by Police against these activists;
- (d) On September 13, 2008, there were several blasts in different localities in Delhi in which 24 persons were killed and 146 were injured. The Delhi Police arrested 12 accused for these blasts out of those three accused belong to SIMI. Delhi Police have registered 5 cases against 12 accused including these three;
- (e) On 25th July, 2008, eight serial bomb blasts occurred at different places in Bangalore city. One woman died at the spot and 11 persons were injured. The Karnataka police have registered 9 cases and have arrested 10 accused persons of which 3 were active members of SIMI.
- (f) SIT, Hyderabad registered a case against seven accused activists of SIMI for conspiracy to wage war against the country. They had plans to organize a training camp in Anantagiri Hills Forest Range in RR Distt.
- (g) Between February 2008 and August 2008, SIMI activists were arrested in Sehore, Bhopal, Rajgarh and Indore districts for carrying on illegal organizational activities.
- (h) Between February 2008 and September 2008, SIMI activists were arrested in Gopalpuram and Saidabad in Hyderabad for carrying on illegal organizational activities.
- (i) Five SIMI activists were arrested on 20-10-2009 by ATS Bhopal from Indore for unlawful activities. A Case Cr. No. 5/2009 has been registered by ATS, Bhopal u/s 3, 10, 13 of UAP Act, 1969, and 153(A) 153(B) IPC.
- (j) Based on the revelations of the activists arrested from Indore on October 20, 2009, four more SIMI activists, were arrested from Jabalpur on 4-11-2009 by ATS, Bhopal. A case Cr. No. 6/2009 has been registered u/s 3, 10, 13 of UAP Act, 1969, and 153(A) 153 (B) 120(B) of IPC.
- (k) A criminal case was registered against SIMI activists for their involvement in terrorist activities vide Cr. No. 14/2008 under sections 120(B), 121, 121(A), 122, 124(A), 153(A) (1)(B), 153(B)(1)(A) of IPC, under Section 10, 11 and 13 of Unlawful Activities (Prevention) Act, 1967, and Section 3, 4 and 5 of Explosives Substances Act of Gokul Road Police Station, Hubli City. A total 18 SIMI activists have been made accused in the case.
- (l) On 24th April, 2009 one accused person of SIMI has been convicted for 5 years RI and fine of Rs. 1,000 by Tis Hazari Court who was arrested with explosive material by Special Cell of Delhi Police on 25th January, 2007.
- (m) An appeal filed in Delhi High Court against the conviction of 4 accused of SIMI on 9th July, 2007 by Lower Court for 10 years RI and fine of Rs. 50,000 each in I/d 6 months u/s 121/121A/122 IPC, RI, 7 years under section 4 of ES Act, fine 25,000 I/d 3 months RI, 5 years u/s 5 ES Act, 5 fine 25,000, was disposed of on 28th July, 2008.

And whereas the Central Government, based on the aforesaid grounds, is of the opinion that SIMI is believed to be indulging in the activities which are prejudicial to the integrity and security of the country.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association";

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to-

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments; and
- (iv) escalate secessionism by supporting militancy;
- (v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section(3) of Section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette."

#### Background Note

4. Along with the reference, the Central Government has enclosed and filed before this Tribunal a background note.

5. The background note states that SIMI came into existence on 25th April, 1977 in Aligarh Muslim University, Aligarh, Uttar Pradesh, as a front organization of youth and students having faith in Jamait-e-Islami Hind. It became "independent" of Jamait-e-Islami Hind in 1993 and is said to be affiliated to "World Association of Muslim Youth". As per the background note, the objective of SIMI includes Jihad (religious war) for the cause of Islam and destruction of nationalism and establishment of Islamic Rule or Caliphate. It is stated in the background note that the organization does not believe in nation state or the Constitution of India and propagates formation of Shariat based on Islamic rule by and under Islamic inqalab. SIMI is active in Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and the National Capital Territory of Delhi (Delhi for short). Its presence is also noticed in the States of Assam, Bihar, Jharkhand and Uttarakhand. Financial position of the association is sound and their primary sources are donation, membership fee and financial assistance provided by supporters even from the gulf countries. It is alleged that SIMI has been influenced by hard core Muslim terrorist organizations like the Hizbul Mujahideen and the Lashkar-e-Toiba, from Pakistan who have penetrated into SIMI cadres to achieve their goals. The activities and statements of SIMI are prejudicial to maintenance of communal harmony, hurt religious sentiments of other communities, incite religious fervor and violence and question the territorial integrity of the country. SIMI has supported militancy in Kashmir and Punjab and is involved in militant terrorist activities in the country.

6. The background note refers to activities of SIMI during the period after February 2008 and before publication of the Notification dated 5th February, 2010. In para 25 of the background note it is stated that despite imposition of ban, SIMI has been carrying out its activities including terrorist and organizational activities, floating new cover organization, undertaking clandestine trainings, raising funds, publishing/distributing provocative literature and CDs of communal and divisive propaganda. Paras 26 and 27 of the background note read:-

#### "26. Terrorist activities

##### (a) Jaipur serial blasts

On May 13, 2008, there were a series of blasts in Jaipur, in which 68 persons were killed and 150 were injured. The thirteen activists of SIMI were arrested. A case had been registered by Police which is pending trial.

##### (b) Ahmedabad serial blasts

On July 26, 2008, Ahmedabad city was rocked by a series of 23 blasts at 18 different places, including two car bomb blasts at two hospital sites, resulting in the death of 57 persons and injuries to over 160 persons. Between July 27, 2008 and September 3, 2008, 29 unexploded IEDs were recovered from various parts of Surat City. During investigation of the above mentioned serial blasts in Ahmedabad city, the police arrested 18 SIMI activists.

##### (c) Delhi serial blasts

On September 13, 2008, there were several blasts in different localities in Delhi, in which 24 persons were killed and 146 were injured. The Delhi Police arrested three SIMI activists in connection with these serial blasts, Delhi Police have registered 5 cases against 12 accused including these three. These cases are under trial.

#### 27. State-wise objectionable organizational Activities

Since ban on 7th February, 2008, SIMI cadres continued their involvement in objectionable organizational activities in various States. A brief of these activities follows:

- (a) At Gangapur City (Rajasthan) important functionaries of the Safdar Nagori faction of SIMI, held meetings on March 29, 2008, April 11, 2008 and December 26, 2008 to discuss the impact of arrest of Safdar Nagori and 12 others on March 27, 2008 at Indore, Madhya Pradesh. The agenda included arranging finances for legal expenses for arrested SIMI activists, and also drawing future strategy.



- (b) At Belgaum, Karnataka a meeting was held sometime in April 2008, wherein, a SIMI activist and his associates discussed the possibility of assassination of certain important Hindu leaders.
- (c) In Districts of Bahraich, Moradabad, Badaun, Lucknow, Varanasi, Azamgarh and Bhadohi of Uttar Pradesh, SIMI activists carried on various objectionable organizational activities, including meetings, provocative speeches and instigation, against the State during February 2008 to July 2009.
- (d) In Maharashtra, SIMI activists continued to indulge in adverse organizational activities including fund collection, campaign in favour of SIMI, indoctrination programmes and support mobilization, during April 2008 to July 2009.
- (e) In Kerala, during February 2008 to May 2009 SIMI activists, organized meetings, slogan raising, camps etc. through cover organizations.
- (f) Since February 2008, SIMI cadre held meetings at Ahmedabad, Vadodara, Surat and Modasa on various dates to reorganize themselves.
- (g) During February 2008 to August 2008, SIMI activists were arrested in Sehore, Bhopal, Rajgarh and Indore districts for carrying on illegal organizational activities.
- (h) During February 2008 to September 2008, SIMI activists were arrested at Gopalpuram and Saidabad in Hyderabad for carrying on illegal organizational activities."

7. In para 28, it is stated that SIMI is carrying on its activities under the garb of cover organizations in several States. Many members of SIMI have regrouped under various cover organizations which have been mentioned therein.

8. In para 29 of the background note, it is stated that 13 SIMI leaders including hardliners were arrested in Indore on the intervening night of 26-27th March, 2008. Interrogation of these leaders has revealed that SIMI caters and continues to engage in activities and prepare themselves for future operations. Three training camps were organized in Hubli (Karnataka), Choral (Indore) and Wagman (distt. Kottayam, Kerala) in the months of April, November and December 2007 respectively. In these camps, training was imparted in air gun, pistol firing, rock climbing, trekking, rope climbing and swimming, etc. Seizure from the arrested accused included seven pistols, seven live cartridges, computer hardware, masks, surgical hand gloves, CDs and diaries containing telephone numbers of SIMI activists all over India including SIMI literature and SIMI table of fund collection, etc. On 20th October, 2009, five SIMI activists were arrested by Gujarat police. It is alleged that they had a role to play in the Ahmedabad bomb blast on 26th July, 2008. Thereafter, four more SIMI activists were arrested in Jabalpur. As per the Central Government, these arrests indicate that SIMI organization is making all out effort to regroup and carry out its activities clandestinely. Background note in para 30 states that SIMI activists and their sympathizers undertook fund raising activities in Thane, Pune to help the accused of Mulund blasts in March 2003, Mumbai blasts in 2002 and 2006. In para 31, it is stated that SIMI activists have continued to circulate and distribute subversive and provocative material during the period post February 2008. The objectionable material including CDs, cassettes, leaflets, books and magazines were circulated in Karnataka, Maharashtra, Madhya Pradesh, Gujarat, Delhi and West Bengal. The material contained inflammatory jehadi speeches, revenge for Babri Masjid demolition, the so-called conspiracy of Zionist forces, Jihad and Khilafat. The details of these activities are listed in para 31 of the background note and read :—

- (i) A SIMI activist issued a hard disc to its cadres at Belgaum during April-May, 2008 on plight of Muslims, alleged atrocities on Muslims, inflammatory Jehadi speeches and methods to make various kinds of bomb.
- (ii) Shaan-e-Karim printed 10,000 copies of controversial Babri Masjid posters at Belgaum and it was circulated in Bijapur city during December 2008.
- (iii) Controversial posters in hard disc showing their struggle for complete supremacy of Allah includes Babri Masjid posters also.
- (iv) CDs, diaries containing telephone numbers of SIMI activists all over the country, huge SIMI literatures containing schedule of training programmes, fund collection, etc. were seized from Juni, Indore on March 26/27, 2008. The scrutiny of Digital Data storage devices seized from the SIMI cadres revealed that these had been meticulously gathered over a period of time from the internet and other sources. It included motivational songs in Urdu, probably recorded in Pakistan meant for spreading communal hatred, exhorting Muslims to revolt and avenge the demolition of Babri Masjid in Ayodhya and divide India by wiping out Hindus from Kashmir.
- (v) In August 2008, Thereek-e-Millat books, one country made weapon, etc. were recovered from the residence of a SIMI activist. The book is inflammatory in nature, and focuses on Khilafat and Jihad.
- (vi) In September 2008, books/magazines were recovered from a well of Siddi Sayed Jali, Lal Darwaja, Ahmedabad. The book is inflammatory in nature, and focuses on Khilafat and Jihad.

9. In para 32 of the background note it is stated that since 7th February, 2008 over two hundred activists of SIMI have been arrested by the State police in Karnataka, Maharashtra, Kerala, Madhya Pradesh and Andhra Pradesh.

10. The Central Government along with the background note has given State wise detail of cases registered against SIMI or its members before 7th February, 2008 as Annexure VIII. Annexure IX gives details of State-wise cases registered against SIMI activists after 7th February, 2008. The details of these cases are as Annexure 1.

#### Reply/Written Statement

11. In reply/written statement filed by Mr. Humam Siddiqui and Mr. Misbahul Islam they have raised following preliminary objections:—

- (a) SIMI was lawful and never a criminal organization. However, after the Central Government banned SIMI in September, 2001, it ceased to exist.
- (b) SIMI cannot be held liable for the actions of its members or erstwhile members, or sympathizers or erstwhile sympathizers. SIMI does not exercise any supervision or control over its members and their activities, except to the extent to which they relate to SIMI. SIMI cannot be held liable for acts of any person committed in his or her capacity as an individual.
- (c) The grounds mentioned in the notification or contents of the background note do not fulfil the requirements of law.
- (d) Statements made to police officers under Section 161 Cr. P.C. are not admissible before the Tribunal except to the extent permitted under Section 162 or Sections 27 and 145 of the Evidence Act.

12. Some other preliminary objections have also been raised.

13. The written statement/reply refers to the brief history of SIMI after it was established on 25th April, 1977 in Aligarh. It is stated that SIMI is a social, cultural, religious organization for welfare of all persons regardless of religion, caste, economic background or region. It is a *Deeni* (religious) denominational organization and its activities are non-political and non-communal. Reference is made to Articles 3, 4 and 5 of constitution of SIMI. It is stated that at the time of the first ban, there were about 400 *Ansar* (basic members) and about 20,000 *Ikhwan* (ordinary members). It is submitted that only persons of integrity, good character and with a spirit of sacrifice and service to humanity were enrolled as *Ansars*. The age limit for becoming a member for either *ansar* or *Ikhwan* was 30 years and a person automatically ceases to be a member on attaining the said age. It is, therefore stated that SIMI is purely a youth organization. It is stated that contributions to SIMI were through individual contributions, zakat and from the sale of animal hide. It is stated that SIMI was not easily influenced by hard-core Muslim terrorist organizations operating within the country or outside. It is denied that SIMI was against Indian nationalism and wanted to replace it with international Islamic order. Khilafat is part and parcel of Islamic theology and is merely a concept by which life is governed by the true teachings of Quran and sunna irrespective of race and colour. It is denied that SIMI extended support to extremists and terrorists in Punjab and Jammu and Kashmir. Involvement of SIMI activists in any crime or incident has been denied.

14. Para-wise reply is also given to the background note. In the para-wise reply, virtually each and every allegation has been denied, though denial of several allegations is on account of lack of knowledge. It is denied that any monthly magazine was published by SIMI workers (para 67 of the reply). Allegation of bias against the Central Government viz. Muslim community has also been made. It is denied for want of knowledge that SIMI activists have or continue to circulate/distribute any subversive, provocative and objectionable CDs, cassettes, leaflets and books. Similarly, it is denied for want of knowledge that 10,000 copies of posters relating to Babri Masjid were seized. It is reiterated that SIMI has ceased its activities in various States in September, 2001. Reference to criminal cases both prior to and after 2008 are denied for want of knowledge. With regard to Safdar Hussain Nagori, it is denied, for want of knowledge, that he was arrested with fire arms and objectionable literature and training books of SIMI with the aim to cause explosion at different places. Circulation and distribution of subversive and provocative materials since February, 2008 in form of CDs, Cassettes, books, magazines etc. in different parts of India has been denied. Printing of posters and allegations of using the hard disc by SIMI activists has been denied for want of knowledge.

#### Earlier Orders

15. By an earlier Notification dated 27th September, 2001 SIMI was declared an "Unlawful Association" under Section 3(1) of the Act. Tribunal headed by S.K. Aggarwal, J. vide his Order dated 26th March, 2002 published in the Gazette of India vide Notification dated S.O. 397 (E) dated 8th April, 2002 answered the reference and held that there was sufficient cause to ban SIMI.

16. After a period of two years, the Government of India issued another Notification no. S.O.1113(E) dated 26th September, 2003 re-imposing the ban on SIMI under Section 3(1) of the Act. Tribunal presided over by R.C. Chopra, J. by his Order dated 23rd March, 2004 published in the Gazette Notification No.S.O.499(E) dated 16th April, 2004 held that there was sufficient cause to continue the ban for a further period of two years.

17. SIMI was banned for the third time when Government of India issued Notification No. S.O. 191(E) dated 8th February, 2006. Tribunal constituted by B.N. Chaturvedi, J. by his order dated 7th August, 2006 published in the Gazette of India being Notification No. S.O.1302(E) dated 11th August, 2006 held that there was sufficient cause for the ban.

18. By Notification No. S.O. 276(E) dated 7th February, 2008 published in the Gazette of India, Government of India imposed a fresh or the fourth ban on SIMI in February, 2008. Gita Mittal, J. by her Order dated 5th August, 2008 held that SIMI as an organization continues to exist and is carrying on its activities. However, she held that the Notification issued by the Central Government was deficient as it failed to set out the "grounds" why SIMI should be banned. It was observed that the background note cannot be taken into consideration. Accordingly the reference was answered in negative and against the Central Government.

19. Union of India has filed a Special Leave to Appeal No.D-22346/08 and 1984/08 against the said decision by Gita Mittal, J. and vide Order dated 6th August, 2008, notice was issued and it was directed that there shall be an interim stay of the impugned Order for three weeks. Interim order was continued and extended till further orders. The case was listed before a larger Bench of three Judges along with connected matters.

#### Unlawful activity and unlawful Association

20. Section 2 (o) and (p) of the Unlawful Activities (Prevention) Act, 1967 read as follows:—

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

- (o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—
- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;
- (p) "unlawful association" means any association,—
- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;"

21. Section 2(o) of the Act defines 'unlawful activity'. It means "any action taken" by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to "action taken" with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Support or inciting is covered by clause (i). Clause (ii) refers to "action taken" which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to "action taken" which causes or is intended to cause disaffection against India.

22. Unlawful association has been defined in Section 2(p) of the Act and consists of two parts; (i) and (ii). Part (i) refers to unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourage or even aide persons to undertake the said activity. The last part of Part (i) widens the definition of the term "unlawful association" to include an association of which members undertake unlawful activity. In a way, therefore, the association is vicariously liable and can be regarded as an unlawful association if members of an association undertake unlawful activity. This aspect has been examined later on. (See, paragraphs 83 to 85 of the Report.)

23. Section 2(p)(ii) does not refer to unlawful activities defined in Section 2(o) of the Act, but refers to Sections 153A and 153B<sup>2</sup> of the Indian Penal Code, 1860(IPC for short). An association which encourages or aides or the object of

<sup>2</sup>Sections 153A and 153B IPC read:—

**153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—**

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [for]



which is to encourage or aide persons to undertake activities punishable under Section 153A or 153B is an unlawful association. "Object" for which an association is formed can in many cases be in writing but encouragement and aide to persons to undertake activities under Sections 153A and 153B may be oral or in writing. The last part of Section 2(p)(ii) widens and expands the scope of the term "unlawful association", when it stipulates that an association of which members undertake activities which are punishable under Section 153A or 153B of the IPC is an unlawful association. An association, therefore, can become an unlawful association if its members undertake any activity covered by Section 153A or 153B of the IPC. The last aspect has been examined again later on. (See, paragraphs 83 to 85 of the Report).

**Nature and Scope of enquiry before the tribunal, material and evidence that can be relied upon and the Judgment of the Supreme Court in *Jamat-E-Islami Hind Vs. Union of India*, (1995) 1 SCC 428.**

24. In *Jamaat-E-Islami Hind* (supra), the Supreme Court examined the provisions of the Act with reference to jurisdiction and nature of the tribunal constituted under Section 5 to decide a reference made under Section 4 once a declaration by way of notification is issued by the Government under Section 3 of the Act. Reference was made to Section 4, which for the sake of convenience is reproduced below:-

"4. Reference to Tribunal. (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the

- (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**Offence committed in place of worship, etc.—**(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

**153-B. Imputations, assertions prejudicial to national integration.—**(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or
- (b) asserts, consents, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or
- (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette."

25. The Supreme Court emphasized that Section 4(1) uses the expression "adjudicating whether or not there is sufficient cause for declaring the association unlawful". Reference was made to Section 4(2) which requires issue of notice in writing to show cause to the association and sub-section (3) mandates inquiry in the manner specified in Section 9 and after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the Act it was held by the Supreme Court in *Jamaat-E-Islami Hind* (supra):-

"11. .... The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context."

(emphasis supplied)

26. The aforesaid ratio was affirmed after making reference to Section 5, which stipulates that the Tribunal shall be headed by a Judge of the High Court and proceedings will be deemed to be judicial proceedings and the Tribunal shall be deemed to be a civil court for the purposes specified. It was accordingly held that the opinion given by the Tribunal under Section 5 has binding effect and has been given a characteristic of judicial determination as distinguished from an opinion of an Advisory Board under the preventive detention laws. The opinion of the Tribunal should be objective opinion whether or not there is sufficient cause for declaring an association unlawful. As mentioned above, Section 4 requires issue of notice by giving opportunity to show cause to the association. Accordingly, the Supreme Court held that the objective findings by the Tribunal must be based upon materials required to support the judicial determination. While deciding the reference, the Tribunal does not act or exercise powers of judicial review under Article 226 of the Constitution of India on whether or not declaration under Section 3(1) should have been made but goes into the factual existence of the grounds by objective determination of the lis between the Government and the association

27. Referring to the nature of evidence and the procedure which a Tribunal should adopt it was held that the minimum requirements of natural justice must be satisfied to ensure that there is meaningful adjudication. However, the requirements of natural justice have to be tailored to safeguard public interest which must outweigh every lesser interest. In this connection, reference was made to Section 3(2) of the Act and Rule 3(2) and proviso to Rule 5 of Rules for withholding and non-disclosure of facts which the Central Government considers against public interest and disclosure and non-disclosure of confidential documents and information which the Government considers against public interest to disclose. At the same time, the Supreme Court observed that the Tribunal should protect the rights of the association and members without jeopardizing the public interest and the adjudication process should not be denuded of its contents and objectivity. The Tribunal is not required to be a mere stamp or give an imprimatur on the opinion already formed by the Central Government. The judicial scrutiny implies a fair procedure to prevent vitiating element of arbitrariness.

28. On the question of confidential information that is withheld, the Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest, enables the Tribunal to test the credibility of confidential information for objectively deciding the reference.

29. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information for various reasons may require confidentiality. Disclosure can jeopardize criminal cases pending investigation and trial.

30. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, as far as practicable, the rules of evidence laid down in Indian Evidence Act. Thus, the rules of evidence as far as possible as laid down in the Evidence Act should be followed. In this regard, reference can be made to the following observations in *Jamaat-E-Islami Hind* (supra):-

“22. .... The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In *John J. Morrissey and G. Donald Booher v. Lou B. Brewer*<sup>3</sup> the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

“Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (*unless the hearing officer specifically finds good cause for not allowing confrontation*); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.”

24. XXXXX

25. XXXXX

26. .... The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.” (emphasis supplied)

31. My attention was drawn to the following passage from *Paul Ivan Birzon versus Edward S. King*, 469 F 2d 1241 (1972) which was referred to in *Jamaat-E-Islami Hind*:-

“... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....

We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we

do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.

Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."

32. However, before quoting the said portion, the Supreme Court had made its own observation and has stated the reasons why they were quoting the decision in the case of *Paul Ivan Birzon* (supra). It was stated that information can be acted upon provided the credibility issue is resolved. Credibility issue is factual and case specific.

**Sections 25 and 26 of the Indian Evidence Act, 1872 and 161 and 162 of the Code of Criminal Procedure, 1973 and their relevance and bar.**

33. Section 5 of the Indian Evidence Act, 1872 (Evidence Act, for short) states that evidence may be given of the existence and the non-existence of every fact in issue and of such facts as are hereinafter declared to be relevant and no others. Statement is the genesis, admission is the species and confession is the sub species. Statements are admissible if they relate to fact in issue or relevant facts. Admissions can be oral or in writing. Admission is a statement by a person which suggests an inference to any fact in issue or a relevant fact. Admissions are admissible as substantive evidence against a person who makes them or his representative in interest. Confession is an admission made by a person charged with a crime by which he admits in terms the offence, or at any rate substantially all the facts which constitute the offence. It is an express acknowledgement of guilt which by itself alone is sufficient to convict the person charged if it falls short of a plenary acknowledgement of guilt but the statement is somewhat incriminating or otherwise tends to prove the guilt, it is an admission.

34. Section 24 of the Evidence Act states that a confession made by an accused person is irrelevant in a criminal proceeding if it appears to the court that it has been caused by inducement, threat or promise from a person in authority which is sufficient as per the court to give the accused grounds for supposing that he would, by making the confession, gain advantage or avoid any evil of temporal nature. Confession should be voluntary and should not be obtained by improper means. However, as noticed above, Sec 24 refers to criminal proceedings. As examined above, proceedings before a Tribunal are not criminal proceedings. Section 24, therefore, does not apply in strict terms to proceedings before this Tribunal but admission should not be a result of fraud, force or coercion. Confessions or admission are accepted on the ground that what a man voluntary states against his interest is likely to be true. Confessions or admissions are admissible when recorded under the Customs Act, Income Tax Act etc.

35. Sections 25 and 26 of the Evidence Act, read as under:-

"25. **Confession to police officer not to be proved.**- No confession made to a police officer, shall be proved as against a person accused of any offence.

26. **Confession by accused while in custody of police not to be proved against him.**- No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

36. Section 25 states that a confession made to a police officer whether in custody or not will not be used against a person accused of any offence. The said Section bars and prohibits using the confessional statement made to a police officer by a person accused of any offence and is restricted to the offence in question in which the confession was recorded/made. It does not bar or prohibit admissibility of confession made by an accused person to a police officer with regard to any other matter which is not subject matter of the investigation in the case in which the statement was recorded. Further, the bar/prohibition is against confession and not recording of a statement of an accused by a police officer.

37. Section 26 of the Evidence Act expands the prohibition or the bar and states that a confession made to any person when the accused is in custody of a police officer shall not be used against the accused except when it is recorded in the presence of the Magistrate. Here again the restriction or bar is on the confession and not on making a statement.

38. Sections 161 and 162 of the Code of Criminal Procedure, 1908 (Cr.P.C., for short) read:-

"161. **Examination of witnesses by police.**- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.



(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records;

Provided that statement made under this sub-section may also be recorded by audio-video electronic means.

**162. Statements to police not to be signed—Use of statements in evidence.**—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

*Explanation.*—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

39. Way back in 1885, a Division Bench of High Court of Bombay in *Queen Empress versus Tribhovan Manekchand and others* (1885) ILR 9 Bom. 131 had decided the question whether a confession which is otherwise inadmissible under Section 25 of the Evidence Act, would be admissible for other purposes as an admission under Section 18 against the person who has made it in his character of one setting up an interest in property, object of litigation, judicial enquiry and disposal. In a short but lucid and clear judgment, it was observed:-

“1. “Confession” in Section 25 of the Indian Evidence Act I of 1872 means, as in Section 24, a confession made by an accused person,” which it is proposed to prove against him to establish an offence. For such a purpose a confession might be inadmissible which yet for other purposes would be admissible as an admission under Section 18 against the person who made it (section 21) in his character of one setting up an interest in property, the object of litigation or judicial enquiry and disposal.

2. Where there has been a trial and an order by the trying Court under Section 517 of the Criminal Procedure Code (Act X of 1882) that concludes the immediate right to possession. Where, as in this case, an order has to be made under Section 523, the Magistrate may in the enquiry proceed on such evidence as is available, and make an order for handing property to the per-Bon he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for a conversion. It does not seem necessary, therefore, for this Court to interfere: see *Bullock v. Dunlop* L.R. 2 Ex. Div. 43 in which the accused had been acquitted, yet failed in his suit against the police officer, retaining a ring pending the Magistrate’s disposal of his application for instruction as to disposal of it under Stat. 2 & 3 Vic. Cap. 71. Reference may be made also to *Dover v. Child* L.R. 1 Ex. Div. 172.

3. These cases show that the Magistrate may make an order on such evidence as is available, which order is good as to the delivery and possession, without depriving the real owner of any action that he may have for the assertion of his right in the Civil Court. In the Code of Criminal Procedure the provisions in this respect are less explicit than in the English Statutes, but the principle recognized is the same, and leads to similar consequences.”

40. In *Mahanta Singh versus Het Ram* AIR 1954 Punjab 27, Section 25 of the Evidence Act was referred to and to the contention that the statement in which a confession is made by an accused cannot be used in any proceedings. This contention was rejected and it was observed as under:-

“This section merely forbids the use of a confession made to a police officer in a trial of the accused person for having committed an offence. This section does not forbid the use of a statement made by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like. Proceedings under S. 517 though they occur in the Code of Criminal Procedure, are really in the nature of proceedings analogous to civil proceedings, in which the question to be determined is to whom the possession of certain articles should be given. It has been held in – ‘Junapa Shanbhog v. Meneshwar Kachi’, 9 Bom 181 (D) that such a statement would be admissible in proceedings under S. 517, Criminal P.C., and this ruling of the Bombay High Court was followed in *Bhagat Ram v. Emperor*’, 96 Pun LR 1911 (E). The very opening words of S. 517 are:

“When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order.....”

41. Similarly the contention relying upon Section 162 of the Code of Criminal Procedure, 1898 was rejected in the following words :

“..... Similarly, S. 162, Criminal P.C., only bars the use of such a statement “at any inquiry or trial in respect of any offence under investigation at the time when such statement is made”. Section 517 does not relate to any such inquiry or trial. In fact the opening words, which are “when an inquiry or a trial in any criminal Court is concluded.....” show clearly that it is a separate proceeding from the substantial trial of the accused person for the offence. I can see no bar, therefore, either in S. 25, Evidence Act, or in S. 162, Criminal P.C., to this statement being used for the purpose of S. 517 to determine; firstly, whether the property is property regarding which an offence appears to have been committed, and, secondly, for determining the person to whose custody it should be delivered.”

42. In *Tahsildar Singh and Another versus State of Uttar Pradesh* AIR 1959 SC 1012, Section 162 of the Code of Criminal Procedure, 1898 was examined in its historical perspective by making reference to the earlier Code and it was observed that the object of the procedural legislations throughout supports exclusion of statements of witnesses made before the police during the investigation from being made use of during trial. This was justified as there was an assumption that the circumstances in which the statement was made do not inspire confidence. Reference was made to *Emperor versus Aftab Mohd. Khan* AIR 1940 All. 291 wherein it was observed as under:

“As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths.”

43. Accordingly, the Supreme Court in *Tahsildar's* (supra) has held:-

“... Indeed, in view of the aforesaid facts, there is a statutory prohibition against police officers taking the signature of the person making the statement, indicating thereby that the statement is not intended to be binding on the witness or an assurance by him that it is a correct statement. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police-officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by s. 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. No can it be used for

contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."

44. Reference was also made by the Supreme Court to the amendment in Section 162 in 1955 which allowed the prosecution to use the statement to contradict the witness with permission of the Court.

45. This judgment of the Supreme Court was considered in *Khatri and another versus State of Bihar* 1981 (2) SCC 493. The State had objected to production of certain documents on the ground that they were 'protected' from disclosure under Sections 162 and 172 of the Cr.P.C. The Supreme Court with reference to bar under Section 162 of the Cr.P.C. held that the prohibition is applicable and prohibits use of the statement at any enquiry or trial in respect of any offence under investigation at the time when the statement was made and it does not bar or prohibit use of the statement in any proceedings in another enquiry or trial. The bar is a limited bar. It has no application for example in civil proceedings or proceedings under Articles 32 and 226 of the Constitution of India. With reference to police diaries and Section 172, the Supreme Court referred to Section 35 of the Evidence Act which reads :-

**"35. Relevancy of entry in public record or an electronic record made in performance of duty.-** An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact."

46. The Supreme Court has opined :-

"These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case: The first is the decision of this Court in *Kanwar Lal Gupta v. Amar Nath Chawla*. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under section 35 and this Court held that they were on the ground that they were "made by public servants, in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent." This Court in fact followed an earlier decision of the Court in *P.C.P. Reddiar v. S. Perumal*. So also in *Jagdat v. Sheopal* AIR 1927 Oudh 323, *Wazirhasan J.* held that the result of an inquiry by a Kanungo under Section 202 of CrPC 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High court in *Chandula v. Pushkar Rai* AIR 1952 Nagpur 271 where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in *Lionell Edweris Limited v. State of West Bengal* AIR 1967 Cal 191, that official correspondence from the Forest Officers to his superior, the conservator of Forests, carried on by the Forest Officer, in the discharge of his official duty would be admissible evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by

the Mate Government. We are clearly of the view that the reports made by Shri L. V. Singh as a result of the investigation carried out, by him and his associates are relevant under Section 35 and they are liable to be produced by the State government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present petition."

47. In *K. Aruna Kumari versus Government of Andhra Pradesh*, (1988) 1 SCC 296, at page 303 it has been held :

"8..... Besides, the detenu accepted the allegations against himself in his statement recorded under Section 161 of the Code of Criminal Procedure. It is true that it may not be a legally recorded confession which can be used as substantive evidence against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention...."

48. Similarly in *Kuldip Singh v. State of Punjab*, (1996) 10 SCC 659, at page 665 in paragraph 11 it has been observed:

"11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311....."

49. A statement of a co-accused recorded under Section 108 of the Customs Act can be used as substantive evidence (See, *Naresh J. Sukhwani versus Union of India* AIR 1996 SC 522)

50. The Full Bench of the Madras High Court in *Suman and others versus State of Tamil Nadu* AIR 1986 Madras 318, examined the question whether self-incriminating statements or confessions of the accused can be relied upon by the Advisory Board while passing an order of preventive detention. It was held in affirmative.

51. The decisions relied upon by Mr. Ashok Aggarwal, advocate under the Criminal Law Amendment Act, 1908 are distinguishable. The language of Sections 2(o) and 2(p) of the Act is different. Further decisions are in criminal cases after prosecution was filed against the members. In criminal cases the tests applied are different and the nature of proof to secure conviction is different. The question in these cases was whether a particular person had continued or acted as a member of the association after it was declared to be unlawful and had committed an offence.

#### Other provisions of the Evidence Act

52. Section 10 of the Evidence Act is not applicable as the proceedings before the Tribunal are not criminal proceedings.

53. Section 10 of the Evidence Act is based on the theory of agency and the statement should be made during the actual course of carrying out the conspiracy and not after the conspiracy has ended or the deponent making the confession had snapped out and ceased to be a part of the conspiracy. Confessions made by conspirators after arrest cannot be brought within the ambit of Section 10 of the Evidence Act if either the conspiracy has ended or the link has snapped [see, para 71 in *Navjot Sandhu* (supra) at page 683].

54. Section 30 of the Evidence Act stipulates that when one or more persons are tried jointly for the same offence, the confession made by one of such persons affecting him or such other persons is proved, the court may take into consideration such confession against both the persons i.e. the maker as well as the co-accused. Criminal courts are



normally reluctant to use the confessions against a co accused. It is not regarded as substantive evidence but can be pressed into service when court is inclined to accept other evidence but feels necessity of assurance in support of its conclusion detectable from other evidence. (Refer. *Haricharan Kurmi versus State of Bihar* AIR 1964 SC 1184; *Bhuboni Sahu versus King* AIR 1949 PC 257).

55. In fact Section 18 of the Evidence Act stipulates that where several persons are jointly interested in the matter, admission by one of them is receivable against the others when admission is made in a character of a person jointly interested. However, these admissions must be made during continuance of interest. Identity of interest is important and should be made by the declarant in a character of a person jointly interested in the party against whom the evidence is tendered.

56. S.K. Aggarwal, J., R.C. Chopra, J. and B.N. Chaturvedi, J. in their three separate Orders have taken a similar view and have referred to and relied upon the confession and statement of the accused recorded under Section 161/162 of the Cr.P.C. However, admissibility of evidence is one aspect and weight to be attached to a particular statement/confession is another aspect.

57. Even, Gita Mittal, J. in her order has observed that confessional statement can be considered by the Tribunal during enquiry under Section 4(3) of the Act.

### Section 9 of the Act and the Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968

58. Section 9 of the Act reads :-

**“Procedure to be followed in the disposal of applications under this Act.—** Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code; for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

59. Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968 (Rules for short) reads:—

**“3. Tribunal and District Judge to follow rules of evidence.—**(1) In holding an inquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the tribunal or the District Judge, as the case may be, shall subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).”

60. The aforesaid Section 9 stipulates that the Tribunal shall follow the procedure laid down in the Code for investigation of the claims so far as may be. It is accepted by counsel for the Central Government and Mr. Humam Siddiqui and Mr. Misbahul Islam representing SIMI that the proceedings and procedure before the Tribunal is governed by the Code of Civil Procedure, 1908 (Code for short) and not Cr.P.C. In these circumstances, it is clear that the opinion formed by the Tribunal will be governed by principles as applicable to civil law and the principles. The principle of preponderance of probabilities applies and proof beyond reasonable doubt will not apply. In *Jamait-i-Islami Hind*, the Supreme Court has observed that test of greater probability applies. On this aspect, it may be appropriate to reproduce the following observations of A.B. Saharya, J., in his order dated 12th August, 1992 relating to JKLF as reproduced in the Gazette Notification No. S.O.203(E) dated 12th March, 1992.

“... What is to be adjudicated upon is whether or not there is sufficient cause for declaring the association unlawful. The Tribunal shall decide this question on the basis of evidence on record. Obviously, for the admission of evidence and for going into it, the Tribunal has to hold the enquiry. In holding the enquiry, Rule 3 requires that the Tribunal shall follow as far as practicable, the rules of evidence laid down in the Evidence Act. What is the nature of enquiry and how the enquiry is to be held? Section 9 postulates that the Tribunal shall follow, as far as may be, the procedure laid down in the Code of Civil Procedure “for investigation of claims”. There is clear distinction between the procedure to be followed for hearing of suits and that for investigation of claims. Far more detailed procedure is laid down for the trial of issues and hearing of suits under Order XXI Rule 58 (1) 9 as it existed at the relevant time when the Act was passed prior to 1976 Amendment of the CPC for investigation of claims under CPC. Thus, what is envisaged is an inquiry by summary procedure.”

“The nature of function of the Tribunal envisaged under Section 4 of the Act is somewhat different from judicial review of administrative action. The scope of judicial review is restricted to find out whether the opinion of the administrative authority is based upon existing,

relevant and cogent material. Sufficiency of material is beyond the scope of judicial review. Under section 4 of the Act, the Tribunal is not concerned with the material that may or may not have been taken into consideration by the Government. The Tribunal has to autonomously adjudicate whether or not there is sufficient cause for declaring the association unlawful."

61. In the aforesaid paragraphs, A.B. Saharya, J. has observed that the proceedings before the Tribunal are summary in nature and akin to proceedings relating to a claim under Order XXI, Rule 58 of the Code before amendment in 1976. The Code prescribes a detailed procedure to be followed for adjudicating civil suits and the said procedure requires plaint, written statement, framing of issues, evidence, etc. and is rather lengthy and a technical procedure. This procedure relating to suit need not be followed. It may also be appropriate here to keep in mind the observations and findings of the Supreme Court in the case of *Jamaet-e-Islami* on the question of nature or proof and proceedings before the Tribunal.

62. Section 9 uses the words "so far as may be". The words signify that the Legislature's intent does not mandate that the Code should be followed in its entirety; section by section, order by order or word by word. Use of the words "so far as may be" ensure sufficient flexibility and freedom to the Tribunal to follow and regulate its own procedure which should be in consonance with the procedure stipulated as per the Code. The procedure prescribed in the Code can be modified and changed keeping in view the practical requirements, need and necessity. This may be required in view of the object and purpose of the Act and practical problems which may be faced in case the requirements of the Code are strictly and entirely followed. In *Abdul Haji Mohd. Versus R.R. Naik* AIR 1951 Bom. 440, it was held that the words "as far as practicable" must be construed to mean to the extent it is practicable. Bombay High Court in a subsequent decision *Keshrimal Jeevji Shah and another versus Bank of Maharashtra and others*, 2004 (122) Company cases 831 has held that whenever words like "as far as possible" or "as far as practicable" etc. are used, the legislative intent is not to apply all the provisions in their entirety, but the provision have to be applied "as far as possible" and subject to such modifications as the context as well as the object and purpose of the enactment require. The setting in which the words occur, the statute in which they occur, the object and purpose behind the enactment and mischief which is sought to be taken care of and remedy which are relevant in determining to what extent and subject to what modifications the required enactment should be applied.

63. Section 5(5) of the Act states that the Tribunal shall have power to regulate its procedure in matters arising out of discharge of its functions including the place/places at which it will hold sittings. Therefore the aforesaid sub-Section gives flexibility and freedom to the Tribunal to fix and regulate the procedure to be followed subject of course to the requirement of fair and just hearing. Sub-section (6) to Section 5 further stipulates that the Tribunal while making the enquiry will have the power of a civil court in respect of matters stipulated in clauses (a) to (e). As per Section 4(3) of the Act, the Tribunal has to hold an enquiry within a period of six months from the date of issue of Notification under sub-section (1) of Section 3. There is no provision under which this time can be extended. The use of the expression "as far as may be" in Section 9 of the Act and the power given to the Tribunal to regulate its own procedure in Section 5(5) of the Act indicates that the strict procedure as stipulated and applicable to trial of civil suits is not envisaged or required. One will also have to keep in mind the time limit of six months within which the Tribunal is required to complete the enquiry and answer the reference. A summary procedure or a hybrid procedure which may be akin or similar to and in consonance with the procedure for adjudication of claims in the Code can be followed.

64. The above ratio and reasoning will equally apply to Rule 3(1) which uses the expression "as far as practicable" the rules of evidence as laid down in the Indian Evidence Act, will apply. It may be noticed that Rule 3(1) uses the words "rules of evidence" and does not use the words "provisions of the Indian Evidence Act, 1872 would apply". Therefore general principles or rules of evidence underlying the Evidence Act are applicable to the extent practicable. In these circumstances, I do not think that the Act or the Rules envisage and require an elaborate and a detailed procedure for summoning of each and every witness mentioned in the charge-sheets, presence and examination of witnesses present at the time of preparation of panchanama or all police officers who were involved in the investigation. Summoning of record in each and every case or all the police officers or witnesses who may be even located in remote areas and different districts will be counter-productive, cumbersome and time consuming. There will be concerns about safety and security of the persons appearing as well as the records which may have to be summoned or produced. Normally, cases relied upon by the central government will be cases of serious crimes and the chargesheet etc. will be voluminous and number of witnesses also substantial. The nature of material in most cases where unlawful activity is alleged would include oral evidence, documentary evidence, as well as confidential inputs based on information received from intelligence. These cases can have inter-State or trans-border involvement and a large number of persons are normally involved in conspiracy. This aspect cannot be ignored as proceedings before the Tribunal have to be pragmatic and provisions of the Code and the Evidence Act have to be applied to the extent possible and practicable. Therefore keeping in view the volume and nature of material, geographic constraints of its production, constraint of time, the strict principles of the statute regarding mode and manner of proof of document need not be complied with. Strict rules and principles of proof of documents and material as prescribed in the Evidence Act if followed may not be practical and pragmatic.

65. Summoning of the entire case record from courts or even furnishing of certified copies of documents is a cumbersome exercise which may not be undertaken unless there is some doubt about the veracity or genuineness of a document or material and the same is under challenge. It is well known fact that the copying agencies take their own time to supply certified copies and sometimes due to technical reasons as well as procedural problems, certified copies cannot be supplied within reasonable time or may not be supplied as the documents have not been given exhibit numbers. Calling for records and summoning them would delay the present proceedings and also may necessitate adjournments in trials. It may be also noted that most of the witnesses produced were either the investigative officers or officers presently dealing with the cases. They have deposed on the basis of their personal knowledge or official records. These witnesses have referred to occurrence of the incidents as recorded/mentioned in the official files or in their personal knowledge. They have deposed about the statement of witnesses/confessions recorded and available in their records. They have also deposed about recoveries made pursuant to these statements on the basis of personal knowledge or official records. These officers whenever requested were orally cross examined or through interrogatories. In cross examinations, suggestions have made and their testimonies have been taken on record. In these circumstances, I am inclined to take on record the uncertified copies of documents wherever the authenticity and genuineness of the documents/statements is not disputed. In case of dispute, I have examined the nature of dispute and doubts raised to decide whether or not evidence, documents or material should be taken into consideration.

#### Hearsay

66. Mr. Ashok Aggarwal, Advocate has submitted that hearsay evidence has to be completely excluded in view of Section 60 of the Evidence Act, which requires production of direct evidence. The term "hearsay evidence" in legal sense means evidence given by a testifying witness on a statement made on some other occasion when it is intended as evidence of truth or what was asserted. Evidence is hearsay when tendered to prove the truth of the facts asserted, not when tendered simply to show that the statement was made. "Hearsay evidence" can have various connotations as it can be first hand when a witness states that he had heard someone else say or second hand when the deponent states that he was told that someone else said. It can be oral or documentary, of a fact or an opinion. Hearsay evidence because of lack of opportunity of cross-examination or oath, depreciation of truth because of repetition or embellishment, incentive to conceal or mislead and other reasons is generally regarded as devoid of probative value. In this connection, Mr. Ashok Aggarwal, Advocate had referred to several judgments on hearsay.

67. Rule of hearsay has exceptions. Admissions and confessions are exceptions to the hearsay rules. In *Sahoo vs State of UP*, AIR 1966 SC 40, it was held as under:

"5. .... Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence, presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be....."

68. This objection was also raised before the Supreme Court in *Jamaat -E- Islami Hind* (supra) (see para 5 at page 435). However as noticed above the Supreme Court in *Jamaat -E- Islami Hind* (supra) has held that material which would not be admissible in criminal trial can be considered and evidence need not be confined to legal evidence in strict sense. However the tribunal should assess the credibility of the material.

69. Admissions can be used against the persons making them in view of Sections 17 and 21 of the Evidence Act, though they are not a conclusive proof of matters admitted. Admissions duly proved are admissible evidence irrespective of the fact that the party making them has appeared in the witness box or not. Indeed, in some cases, it has been held that an admission, though not a conclusive proof of the facts admitted, may be shown to be wrong, creates estoppel and shifts the burden of proof on the person making the admission or his representative in interest. Unless admission is successfully withdrawn or proved erroneous, it is the best evidence against the person making it.

70. In many cases confessions or admissions have been made by the deponent-accused and they have accepted their connection with SIMI and even their involvement in unlawful activities. In some cases they have accepted that they have worked in collaboration or in conspiracy with other members of SIMI. This admission is being treated as an admission of the deponent that he was/is a member of SIMI. Section 2(p) of the Act refers to conduct of the members. In this manner conduct of the members is subject matter of enquiry. Admissions made by the members are relevant and admissible. The association or organization is affected because of the statutory consequence envisaged by Section 2(p) of the Act when members of an association undertake unlawful activity or activity punishable by Section 153A or 15B of IPC.

#### Pragmatic Approach on Evidence and Material

71. In the present case, SIMI was declared as an unlawful association on 27th September, 2001 and the ban has been extended thereafter till today from time to time except for a small period. Membership or connection with an unlawful association can result in prosecution under Sections 10 and 13 of the Act. Necessarily, therefore, an unlawful association



or its members will conduct activities under a cover and in clandestine manner. Their activities will rarely and in most cases will not be in open and full public view. Camouflage, deceits and cover-up tactics will be adopted. Equally, it has to be remembered that general public may not want to testify and give evidence in such cases for fear and threat of reprisal. Like in cases of conspiracy, an unlawful association of its members may adopt a veil of secrecy to achieve their common goal. Inference therefore will have to be drawn from overt acts for which evidence is available about indulgence or existence of "unlawful activities" and "unlawful association" as required by Section 2(o) and 2 (p) of the Act. The veil of secrecy with regard to actions and inactions, in most cases can only be pierced on inference being drawn from the acts which are proved and established.

72. At the same time, as observed in *Jamaat-E-Islami Hind* (supra) the Tribunal must reach and form an objective satisfaction as to "sufficient cause". This requires presence of relevant material which can be relied upon and accepted and not mere *ipse dixit* of the Central Government. In *Jamaat-E-Islami Hind* (supra) the Supreme Court has observed and held that principles of natural justice must be complied with and a fair procedure should be adopted.

#### Pre February 2008 and post February, 2010 material and evidence

73. Section 4(3) of the Act authorizes the Tribunal to hold enquiry and to call for further information as may be necessary from the Central Government or any office bearer or member of the association. This Tribunal has been given wide powers to call for details and information. This power is not restricted/limited to what has been stated in the Notification or the background note.

74. Keeping in view the aforesaid clause and nature of enquiry which is required to be conducted it is held that the Tribunal can go into even instances and evidence collected even after the date of Notification i.e. 5th February, 2010 for deciding whether or not there is sufficient cause to ban SIMI. Similar view has been taken by the earlier Tribunals.

75. With regard to pre 7th February, 2008 incidences and materials, the stand of the Central Government is that the same can be referred to if it has nexus or interconnection with what has happened after the said date i.e. 7th February, 2008. It is further submitted that the first three Tribunals have upheld the ban and held that SIMI is an "unlawful association". The fourth Tribunal in its report on merits has given several findings in favour of the Central Government but for technical reasons the reference was answered against them. It is further stated that in view of the said order passed by the Supreme Court the operation of the Order dated 5th August, 2008 has been stayed. The earlier Tribunals have also held that deposition of witnesses with regard to incidents prior to the earlier ban cannot be disregarded and treated as irrelevant for evaluation of material which has been produced before the Tribunal after the date of enforcement of the last ban. It has been emphasized that if there is continuity and interconnection then this aspect has to be taken into consideration. I have relied upon and referred to material/acts post 2007 for adjudicating the present reference. Reference to pre-2008 material/acts has been made wherever necessary.

#### Statements recorded under the Maharashtra Control of Organised Crime Act, 1999

76. Section 18 of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act, for short) reads:

"18. **Certain confessions made to police officer to be taken into consideration.**— (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be examined before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is

to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of any Assistant Civil Surgeon."

77. The aforesaid Section begins with a non-obstante clause and the provision applies notwithstanding Cr.P.C. or the Evidence Act. The provision makes the confession made to a police officer not below the rank of Superintendent of Police admissible in evidence when recorded in writing or on other electronic devices from which sound or images can be produced provided certain other conditions are satisfied. The aforesaid Section is similar to provision in Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA, for short) after amendments pursuant to the decision of the Supreme Court in *Kartar Singh versus State of Punjab* (1994) 3 SCC 569. The validity of the said Section is not under challenge and appears to be covered by the judgment of the Supreme Court in the case of *Kartar Singh* (supra) and *Peoples Union of Civil Liberties versus Union of India* (2004) 9 SCC 580.

78. Mr. Ashok Aggarwal, advocate referred to some observations in the case of *State (NCT of Delhi) versus Navjot Sandhu and others* (2005) 11 SCC 600. However, in the said case the Hon'ble Judges of the Supreme Court have observed that they have refrained from saying anything contrary to the legal position settled in *Kartar Singh* (supra) and *Peoples Union of Civil Liberties* (supra), rather than expressing doubt and letting the matter rest there. The jurisdiction of this Tribunal is limited and confined by the statute under which reference is made. This aspect therefore is not required to be considered and even otherwise cannot be considered in view of the Supreme Court decisions.

79. The Prevention of Terrorism Act, 2002 (POTA for short) unlike TADA did not make admission of an accused admissible against a co-accused, an abettor or conspirator. However, MCOC Act like TADA, makes admission of persons admissible against an abettor or conspirator provided they are tried for the same case together with the accused. In *State versus Nalini and others* (1999) 5 SCC 253, K.T. Thomas, J. has held that Section 15 of TADA enables confessional statements of an accused made to a police officer admissible in a trial of such person. It has been further held that confessional statements will hold good even if the accused is acquitted under TADA offences but is tried for offences under any other law (See, para 81 at page 304). However, K.T. Thomas, J. has held that confessions are substantive evidence against the maker but not against the co-accused. They can be only used as corroborative material to support substantive evidence (See, para 99 at page 309). D.P. Wadhwa, J. has held that confession of an accused is admissible against a co-accused as well as substantive evidence though it is a different matter as to what value is to be attached to a confession against a co-accused etc. This would fall in the realm of appreciation of evidence. Confession is substantive evidence and admissible both against the co-accused and the maker (See paras 415-416 at page 404). Qadri, J. has held that Section 15 of TADA will apply notwithstanding the provisions of Cr.P.C. or the Evidence Act and therefore confession of an accused in the trial of a co-accused, abettor or conspirator is admissible and is substantive evidence subject to the condition that the co-accused, abettor or conspirator is charged or tried together in the same case with the accused (See, para 672 at page 571, paras 679-680 at pages 572-573).

80. Section 18 of the MCOC Act will not strictly apply to the present proceedings as these are not criminal proceedings. However, statements as admission can be relied upon before the Tribunal. It will be incongruous to hold that statements in nature of confession or admission can be relied upon in criminal trial but not before this Tribunal as the proceeding before the Tribunal are Civil in nature. Statements recorded under Section 18 of the MCOC Act will carry more evidentiary value as compared to statements recorded under Section 161 Cr.P.C. or interrogation statements/reports.

#### Repeated Bans

81. It was submitted that Section 6(1) of the Act stipulates that ban once imposed shall remain in force for a period of two years from the date on which the Notification becomes effective. The first ban was notified on 27th September, 2001. Relying upon several decisions interpreting Section 144 Cr.P.C. it was contended that repeated bans are not envisaged. It was submitted by Mr. Ashok Aggarwal, advocate that Section 6(1) does not in specific terms permit repeated bans.

82. It is not possible to accept the said contention. Object and purpose of the Act is different from the object and purpose behind Section 144 Cr.P.C. Powers under Section 144 Cr.P.C. are exercised by police authorities and are meant for a temporary period of two months. A temporary order can be extended as per Section 144 Cr.P.C. for a period not exceeding six months. The statute has therefore fixed two time limits. The last one is intended to be the outer limit. The legislative intent is clear. On the other hand, the Act deals with unlawful activities by an association or its members. The purpose and objective behind the Act is to protect public, public order and ensure peace and tranquility in the society. It is easy to visualize and accept that repeated bans may be required in some cases where unlawful activities continue. Illegal activities will furnish a fresh cause and a ground to reimpose the ban on expiry of the first ban. If the contention of Mr. Ashok Aggarwal, advocate is to be accepted then an association can remain underground for two years and thereafter operate without any fear because the ban cannot be reimposed or only reimposed after a gap. This will be contrary to the legislative

intent. Every time a ban is imposed on the ground that the association is unlawful, the procedure prescribed under Sections 3 and 4 of the Act has to be followed. The ban is not automatic. The ground realities and factual matrix in the last two years has to be considered. R.C. Chopra, J. in his order has rejected a similar contention observing:—

“Learned counsel for the Association has vehemently argued that the Act confers no power on the Central Government to renew a ban and as such, the present notification dated 26-9-2003 is illegal and unwarranted. This contention cannot be sustained firstly for the reason that there is nothing in the Act to say that the Central Government has no power to issue successive notifications under Section 3(1) of the Act. If this submission is sustained, the result would be alarming as an unlawful Association, after a ban for a period of two years, may revive and re-start its unlawful activities with impunity and without any check. This would be not only against the interests of the country but also contrary to the aims and objects of the Act which intends to control and curb the activities of unlawful Associations. ....”

#### **Members and the Association**

83. Section 2(p) of the Act has been quoted and interpreted above. Both clauses (i) and (ii) state that an association can be banned if its members undertake “unlawful activity” as defined in Section 2(o) of the Act or undertake activities punishable under Sections 153A and 153B, IPC. It was submitted that if some misguided ex-members of SIMI are guilty of having undertaken unlawful activity, the entire association itself or other ex-members of the association cannot be blamed and made to suffer. This argument, though attractive, cannot be accepted in view of the language of Section 2(p) of the Act. Further the present case is not of one or two stray instances of some individual members indulging in criminal acts, as will be apparent from the subsequent portion of this Order. A holistic and broad view has been taken.

84. Additional Solicitor General has referred to the constitution of SIMI which has been placed on record by Mr. Misbahul Islam and Mr. Humam Ahmed Siddiqui and the order passed by B.N. Chaturvedi, J. Reference was made to the emblem of SIMI which prominently displays a rifle and blood. Central Government has stated that the constitution and the objects of SIMI are unlawful. It is claimed that they represent a hardline or a fundamentalist ideology. Per contra, it was urged by Mr. Ashok Agarwal, advocate that an association has the right to promote and propagate ideologies, even if they are not acceptable and objected to by others including majority.

85. There may be some merit in the submission made by Mr. Ashok Aggarwal, advocate but every association or an organization has to take responsibility and is liable if members of an association drift to indulge in and adopt violence to achieve their objective. When any association or an organization promotes and supports a cause or objective and its members indulge in violence, the association/organisation becomes liable. Members of an association are characterized by principles and thinking of an association and vice-versa. Actions and reactions of the members speak for the association. Any association or organization which promotes an orthodox and a conservative thought or even extreme liberal thoughts, carries a baggage of risk that the members or supporters may adopt violence and accordingly must share responsibility and consequences. It is not the thought or objective which is objectionable, but the violence. Violence in any form or on any ground or any violent protest regardless of the cause or justification cannot be accepted. In a huge country like India with diversity there can be problems, difference of opinion and even abrasions, which may not be unacceptable, but if violence is resorted to, there will be no end. A good or a genuine cause or thought does not justify violence.

#### **Locus Standi of Mr. Humam Siddiqui and Mr. Misbahul Islam.**

86. On behalf of the Central Government, it was submitted that Mr. Humam Siddiqui and Mr. Misbahul Islam cannot represent SIMI or appear and defend the present proceedings as they do not state or claim that they are office-bearers or members of SIMI and, therefore, they are not an adverse party under Section 137 of the Evidence Act, who can cross-examine the witnesses. Reference is also made to the reply/written statement filed by Mr. Humam Siddiqui and Mr. Misbahul Islam and the averments made therein. It is submitted that they do not accept and admit that they are members of SIMI *in presenti* but their stand is that SIMI has ceased to exist. It is stated that before the earlier Tribunals and even before the Supreme Court SIMI is appearing and contesting. It is argued that erstwhile members or office-bearers of SIMI cannot be an adverse party and contest the proceedings as Section 4(3) of the Act makes reference to the office-bearers and members thereof. My attention is drawn to the Section 6 (2) of the Act, which entitles a ‘person aggrieved’ to approach the Central Government at any time and difference in the words was highlighted. It is further stated that *lis* is between the Central Government and the association. Accordingly, it is submitted that the entire cross-examination and arguments on behalf of Mr. Humam Siddiqui and Mr. Misbahul Islam should be ignored.

87. The intention behind Section 4 (3) of the Act is to ensure that the association or its members or office-bearers should have a right and an opportunity to contest the proceedings before the Tribunal. Even members of the association can contest the proceedings. Once an association is banned, its members or office-bearers cannot contest the proceedings without exposing themselves to the peril or danger of prosecution. In fact they would be committing an offence under the Act. Mr. Humam Siddiqui and Mr. Misbahul Islam cannot accept that SIMI is in existence in spite of the ban imposed in September, 2001 without fear of prosecution and punishment under Section 10 and 13 of the Act.



88. The reply/written statement of Mr. Humam Siddiqui and Mr. Misbahul Islam has to be read as a whole and in totality. Portions thereof cannot be singled out and read in isolation. It is clear from the reply/written statements of Mr. Humam Siddiqui and Mr. Misbahul Islam that they are contesting the proceedings on behalf of the SIMI, which they state has ceased to exist but they would plead and want that the ban should be struck down /not continued.

89. The main grievance and objection raised by Mr. Humam Siddiqui and Mr. Misbahul Islam is that SIMI was never a criminal organization or indulging in unlawful activities prior to the ban, but being erstwhile president of SIMI Uttar Pradesh Zone and ex-member they are entitled to object to the ban and resist the case for ban put up by the Central Government on behalf of association, which was banned and therefore has ceased to exist. Their rights are affected. They have further stated that the acts or grounds pleaded by Central Government to justify the ban were, if at all committed by the erstwhile members or erstwhile sympathizers but their acts cannot be a ground to ban SIMI. In fact during the course of arguments, the Central Government itself relied upon some portions of the reply/written statements and it was pleaded, that SIMI continues to exist.

90. It is the stand of the Central Government that SIMI has never ceased to exist even after the first ban vide order dated 27th September, 2001. Mr. Humam Siddiqui had appeared as a witness before the first Tribunal constituted by the notification dated 27th September, 2001 and in the order dated 31st March, 2002, it is mentioned that Mr. Humam Siddiqui was the erstwhile president of SIMI, Uttar Pradesh Zone. Copy of the affidavit filed by Mr. Humam Siddiqui has been filed. In the said affidavit he has also stated that he was the president of SIMI, Uttar Pradesh Zone till 27th September, 2001, the date on which the SIMI was declared an unlawful association. It may be noted here that the Central Government has referred to statements of P.A. Shibly and Hafeez Hussain enclosed with the affidavit of PW-51, Mr. S.S. Khot, in which it is mentioned that Mr. Misbahul Islam was elected as the president of SIMI in February, 2006. My attention was also drawn by the Central Government to the statement of Hafeez Hussain enclosed with the affidavit of Mr. S.S. Khot (PW-51), wherein it is stated that Mr. Misbahul Islam of Bengal was elected as all India SIMI president in February, 2006, in Kerala.

91. Section 4(3) of the Act states that "After considering the cause, if any, shown by the association or the office bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified .....". The words "office-bearers" and "members" in Section 4(3) have to be liberally interpreted keeping in view the object and purpose behind the said section which is to give opportunity to contest the claim of the Central Government. This opportunity should be fair and not a mere formality. These two terms "members" or "office bearers" therefore, will include the office bearers and members of the association, when the first ban was imposed on SIMI. In this case an interim order was also passed at the time of the first ban in terms of the proviso to Section 3(3) of the Act.

92. While there is some force in the contention of the Central Government that they have not invoked and granted sanction for prosecution under Sections 10 and 13 of the Act, when Dr. Shahid Badar had contested the proceedings, the apprehension and doubt of Mr. Humam Siddiqui and Mr. Misbahul Islam that they may be prosecuted under Sections 10 and 13 of the Act because of their appearance before the Tribunal cannot be left untouched by silence. The objections and cross examination by Mr. Humam Siddiqui and Mr. Misbahul Islam will be treated as cross examination for and on behalf of SIMI. Their appearance before the Tribunal, it is hoped and expected, will not be a ground to prosecute them under Sections 10 and 13 of the Act. The contention of the Central Government that Mr. Humam Siddiqui and Mr. Misbahul Islam do not have locus standi and the cross examination should be ignored is therefore rejected.

#### Existence of SIMI

93. Three earlier Tribunals have held that SIMI continued to exist in spite of ban on 27th September, 2001. Gita Mittal, J. also held that SIMI continues to exist, though the said order has been stayed by the Supreme Court. SIMI has been filing Writ Petitions before the High Court. SIMI had filed Writ Petition No. 6030/2007 for desealing of their property which was dismissed vide order dated 12th March, 2010. Evidence discussed below shows that SIMI continues to exist.

#### Proceedings

94. After the background note was filed, vide Order dated 15th March, 2010, notice was directed to be issued under Section 4 (2) of the Act to SIMI to show cause within 30 days. It was directed that notice would be served on SIMI at their available/last known principal offices and also on the earlier principal office bearers of SIMI as per list furnished by the Central Government. Names of Mr. Humam Siddiqui and Mr. Misbahul Islam are mentioned in the list furnished by the Central Government.

95. On 16th April, 2010, Mr. Mobin Akhtar, Advocate had appeared on behalf of Dr. Sahid Badar. He was directed to be served with grounds/background note and file response/objections within 15 days. On the next date i.e. 1st May, 2010, appearance was made on behalf Mr. Human Ahmed Siddiqui and he was given time to file reply/response to the background note/notification. Dr. Sahid Badar was present before the Tribunal on 1st May, 2010, and had asked for permission to place on record his affidavit. Mr. Mobin Akhtar, Advocate, who had earlier appeared for Dr. Sahid Badar was discharged as Dr. Sahid Badar had engaged Mr. Jawahar Raja, Advocate to appear for him. Dr. Sahid Badar had stated that he had decided not to contest the declaration of the Central Government.

96. Most of the proceedings of the Tribunal were held in Delhi but keeping in view convenience of the witnesses and as voluminous records were to be examined and produced, proceedings were also held in Maharashtra, Kerala, Karnataka and Madhya Pradesh. It may be noted that before the last Tribunal public witnesses had appeared when proceedings were held in different States. Proceedings were also held during summer vacations of the Delhi High Court and on some Saturdays.

97. Central Government was asked to file evidence by way of affidavit. In all 114 affidavits have been filed by the Central Government<sup>3</sup>. 64 witnesses were cross-examined by Mr. Ashok Aggarwal, Advocate and these witnesses have been given numbers PW-1 to PW-67 (there are no PW-14 and 15). One witness PW-66, D.S. Yadav was not cross examined as he had produced confidential material which was not shown and made available to Mr. Human Siddiqui and Mr. Misbahul Islam. Other witnesses were examined by way of interrogatories with the consent of the counsel appearing for Mr. Human Siddiqui and Mr. Misbahul Islam. In this report these witnesses have been referred to as IWs. List of witnesses is enclosed as annexure II to this Report. Two witnesses, namely, Mr. Shivajirao and Mr. Ambadas were not produced for cross-examination therefore their affidavits have not been examined and considered. One public witness Mr. K.N. Vijayvargiya had appeared at Indore. However, the statement made by the said witness is not material.

#### KERALA

98. Witnesses from the State of Kerala, Mr. V.K. Akber (PW-1), Mr. S. Sasidharan (PW-2), Mr. K.R. Kannan (PW-3) and Mr. T.K. Vinodkumar (PW-4), in their affidavits have stated that SIMI is a radical fundamentalist organization, which was formed on 25th April, 1977 at Aligarh as a front organization of the Jamaat-e-Islami Hind to urge the Muslim youths and students to follow and spread its philosophy. They have stated that SIMI activists have been involved in carrying out illegal and anti-national activities in the State of Kerala in a clandestine manner. The facts stated in the affidavits by the aforesaid four witnesses and their cross-examination is discussed below.

#### Mr. V.K. Akber (PW-1), Deputy Superintendent of Police, former Investigating Officer in Crime No. 356/08 of Edakkad P. S.

99. On the basis of reliable information, the SI of P.S. Edakkad arrested Abdul Jaleel on 18th October, 2008, for aiding and assisting a banned organization in Jammu and Kashmir and registered Crime No. 356/08. Investigation was taken over by the Joint Investigation Team headed by Shri T.K. Vinod Kumar (PW-4), the then DIG on 23rd October, 2008 and PW-1 was designated as the investigating officer. Investigation was conducted from 23rd October, 2008 to 28th October, 2008 wherein 23 persons have been arrayed as accused out of which 14 have been arrested, 4 died in encounter and 5 are absconding. Investigation disclosed that the accused persons had entered into a criminal conspiracy with intent to incite, facilitate and advocate terrorism and thereby to wage war against the Government of India and had conducted classes under the shadow of 'Noorrisha Tareequath' at different places of Kannur, Malappuram and Ernakulam districts. As per the final meeting of accused on 14th August, 2008 at Neerchal, Kannur five accused were to be sent to J&K to be trained by LeT and six accused proceeded to Hyderabad from Shoranur. Five accused reached J&K, joined LeT, collected arms and ammunitions and created disturbance in the valley. Four accused were killed in two separate encounters with the security forces in J&K and one accused managed to escape.

100. During investigation, one accused - Surfras Navas was arrested. He confessed that he held official position of Office Secretary at Delhi office of SIMI and attended meetings of SIMI both in India and abroad. PW-1 has stated that it was learnt that the accused-Sarfras Navas had associated with LeT, arranged funds for training of the accused in J&K and also assisted in the escape of the main accused Nasir and Shafas outside India. The case was handed over to National Investigation Agency (NIA) on 8th February, 2010.

101. In the cross examination, Mr. V. K. Akber (PW-1) has stated that he was the Investigating Officer in Crime no. 356/2008 of Edakkad P. S. from 23rd October, 2008 to 8th February, 2010, and then the matter was transferred to NIA and on a written request by NIA, he had assisted them in recording his evidence and information. He has further stated that the statement made in para 2 of the affidavit (Exhb. PW-1/A) stating that the SIMI is a radical Fundamentalist organization, was not his personal opinion and has been made on the basis of the intelligence information, statement of Surfras Navas and on the basis of investigation done in Binanipuram P. S., Ernakulam Distt. and Wagaman, P.S. cases. He has stated that when FIR in Crime No. 56/2008 was registered Surfras Navas was not arrayed as an accused and the charge sheet (Exhb. PW-1/C) which was filed on 23rd January, 2009, therefore, only mentions the offences committed by Surfras Navas and not his association with SIMI. He has further stated that the statement of Surfras Navas was recorded when he was in police custody, in presence of officers of other investigating agency for over a period of 10 days. No public witness was present at that time. He has further stated that on the basis of the statement given by Surfras Navas further evidence was collected. He has denied the suggestion that he has not filed the statement of other co-accused. He has stated that Surfras Navas was associated with SIMI. He has stated that the statement made in Para 2 of the affidavit was not his personal opinion and has been made on the basis of the intelligence information and statement of the Surfras Navas. He has further stated that

3. List of 114 affidavits filed before the Tribunal.

investigation reveals that SIMI is a front organization of Jamaat-e-Islami (Hind). He has further stated that the content of the para 3 of the affidavit is correct. He has stated that it is wrong to say that a false case was registered at the behest and the instance of Central Government to substantiate the case for ban declared by the Central Government in February, 2010. He has stated that the case was registered on 18th October, 2008 and he took up the case on 23rd October, 2008.

**Mr. S. Sasidaran (PW-2), Deputy Superintendent of Police and Investigating Officer of CR No. 159/2006**

102. On 15th August, 2006, 18 activists of SIMI assembled at the Happy Auditorium, Ernakulam, conducted a secret meeting and the main accused delivered speeches against the nation for the failure to protect the interests of Indian Muslims. Shri K.N. Rajesh, the then SI conducted a raid, upon receiving reliable information and found 18 persons who had in their possession pamphlets of SIMI and some books containing seditious materials such as a Pakistani publication "Mass Resistance in Kashmir". He arrested 5 of them who were later released on bail by the Kerala High Court. The case was later on transferred to Joint Investigation Team (JIT) and he subsequently took charge on 15th September, 2008. During the course of investigation he questioned witnesses/persons connected to the crime, arrested 12 of them and produced them before the JFCM Court, North Paravur. Some of the accused were released on bail. One accused Nisar has not been arrested. Accused Shaduly and Ansar Moulvi were involved in Cr. No. 257/08 of Mundakkayam P.S. in connection with a camp organized by SIMI. The accused persons belong to different places in Kerala and were brought together to Binanipuram for the purpose of conducting a meeting of SIMI. The statement of the witnesses and the documents, seized from the accused on 15th August, 2006 show that the accused had assembled to propagate the ideology of the SIMI and for recruiting members. The investigation was completed and sanction was obtained. The investigation of the case was handed over to NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI had been indulging in anti-national activities and intended to bring about the cessation of a part of territory of India and the ban imposed is legally justified.

103. In his cross examination PW-2 has stated that he was the Investigating Officer in the FIR of Crime No. 159/2006 from 15th September, 2008 to 8th September, 2010 and there were two more investigating officers before him who had conducted the investigation. He has further stated that he had personal knowledge of the case prior to joining investigation on 15th September, 2008 but he had not filed the complete record of the case before the Tribunal as the case has been handed over to NIA along with the complete file. He has denied the suggestion that he had not filed the complete records as it would show that the accused mentioned in the FIR, had no connection with SIMI. He has stated that the two accused are in jail and 15 accused have been granted bail and one person was yet to be arrested. He has stated that he is aware of the bail order dated 29th October, 2008 passed by the Session Judge, Ernakulum in the case of Shameer and Abdul Hakim which was later on modified by the High Court. (He has produced the orders before the Tribunal). He has stated that he was aware of the pamphlets and the books which he has mentioned in Para 3 of the affidavit and he had not filed the same with his affidavit. He has further stated that the aforesaid averment was not made to prejudice the mind of the Tribunal and the copy of the pamphlets and the books could be produced. He has stated that whether the book "Mass Resistance in Kashmir" should be banned in India was pending consideration. He has further stated that it was correct that in September, 2008, statements of police officers were recorded in FIR. He has stated that it was wrong to suggest that he had deliberately prolonged the investigation in the case so that the accused persons could be implicated in other false cases. He has further stated that the Happy Auditorium is owned by a private person and accused Nisamudheen had booked the said Auditorium on the pretext that they were to hold a Quran class in the said Auditorium. The receipt book was seized and filed before the criminal court. He has further stated that he has not made any false statement at the instance of the Central Government in order to make out a case for ban. He has denied the suggestion that he has not filed complete records so as to prejudice the mind of the Tribunal and the case file is with NIA. He has further stated that the affidavit states the true facts and was not his personal opinion.

**Mr. K.R. Kannan (PW-3), Superintendent of Police, Kerala, Investigating Officer of Cr. No. 257/08 of Mundakkayam P.S.**

104. Crime no. 257/08 Mundakkayam P.S. was registered on 21st June, 2008 regarding a camp conducted by SIMI, which had continued for 3 days at Thangalpara. The investigation of Joint Investigation Team (JIT) revealed that the camp was engaged in physical training, arms training etc. and also classes for Jihad in India were conducted. The investigation revealed that there were 43 accused persons and out of which 26 were arrested. A Scorpio car bearing registration no. KL7/AP/4655, used by the accused was seized from the Attingal on 11th November, 2008. Samples were collected from the vehicle. FSL report establishes presence of explosive substance. The JIT also seized the counter foil of sale of 2 Air Guns and 1000 pellets from Cochin Armoury on 11th November, 2008. The Air guns were used for target practice during the camp. On 2nd February, 2009 the accused Ameel Parvez was produced before the court and was formally arrested. The test identification parade was conducted on 5th February, 2009 at Kottayam and some of the witnesses identified the accused Ameel Parvez. The accused was handed over to Police custody on 9th February, 2009 for 5 days and was interrogated and a confession statement was recorded, on the basis of which the Investigating Officer recovered the remnants of Petrol Bombs and the FSL report reveals that the remnants contained explosive substance. The experts opined that the substance were a portion of an exploded explosive device which if exploded could cause serious damage to human life and property.



On 27th February, 2009, accused Hafiz Hussain and P. A. Shibly were produced before the court and were formally arrested and remanded to sub jail, Kottayam. The test identification parade was conducted on 5th March, 2009 and some of the witnesses identified both the accused persons. On 2nd May, 2009, accused P. A. Shaduly and Ansar Nadvi were produced before the court and were formally arrested and sent to police custody on 8th May, 2009 and the confessional statement of accused P. A. Shaduly revealed that one motor bike bearing registration no. KA-01/R/3983 was used by Asadulla for going to the Wagaman camp and further used for bike racing training at the camp. The investigation revealed that accused Ameer Parvez, Safdar Hussain and Abdul Sathar had stayed in Lekha Lodge at Wagamon for a day during the period of the camp. The register of the lodge was seized. The case has been transferred to NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI has been indulging in anti national activities and intended to bring about the cessation of a part of territory of India and the ban imposed is legally justified.

105. In the cross-examination, PW-3 has stated that the statement that SIMI was a radical fundamentalist organization was not his personal opinion but based on intelligence information. He has stated that the training was organized on 2nd week of the December, 2007 and he came to know about the said fact when a FIR was registered by the local Police on 21st June, 2008 and the FIR was registered on the basis of the report made by the Deputy Superintendent of Police (Intelligence). The report was made in writing to SHO, Mundakkayam and he did not remember the date of the report. He has further stated that the camp was organized between 10th to 12th December, 2007 but these dates were not mentioned in the affidavit (Exhb.PW-3/A). He has further stated that these facts were mentioned in the interrogation statement of accused Ameer Parvez which was recorded on 9th June, 2009. He has stated that he had personally visited the place where the camp was organized and it was a place which is frequently visited by tourists. He has stated that he saw the word SIMI written in the Malayalam and English on the rock which was about one kilometer from the place where the secret meeting was held. Photographs (Exhb.PW-3/T-1) were taken. He has further stated that the FIR was registered after six months. Before the test identification parade was conducted he had recorded statement of Mr. Anand Das on 23rd January, 2009. He has further stated that no action was taken against the owner of the Scorpio car and when the vehicle was seized it was in a running condition. He has stated that no license is required for purchasing and using air guns in Kerala. PW-3 has stated that Mohd. Ameer Parvez in his statement had admitted that from 1992 onwards, he was working with SIMI. He has stated that he had not registered the case at instance of the Central Government. He has stated that the all the available records had been submitted and the affidavit (Exhb.PW-3/A) was not merely based on his personal opinion.

**Mr. T. K. Vinodkumar (PW-4) IPS, Deputy Inspector General of Police (Internal Security), Special Branch CID HQs, Police Department, Government of Kerala and Nodal Officer of the State for SIMI related matters**

106. A Case Crime no. 159/06 was registered in Binanipuram P. S. on receiving information that the activists of SIMI had conducted a secret meeting at the Happy Auditorium, Kerala on 15th August, 2006. A raid was conducted and 18 persons were found engaged in a secret meeting. The police seized some printed material and a book named "Mass Resistance in Kashmir". Five persons were arrested and produced before the court and were remanded to judicial custody. Some of the accused were released on bail. The case was later on transferred to Joint Investigation Team (JIT). During the investigation by JIT it was revealed that the remaining 13 persons had actually taken active involvement in the crime. 12 accused were arrested and produced before the court. One accused Nisar has not been arrested. The accused P. A. Shaduly and Ansar Moulavi were later found to be involved in Crime no.257/08 of Mundakkayam P. S. The case was transferred to NIA on 8th February, 2010.

107. Crime no. 257/08 was registered in Mundakkayam P. S. on receiving information that a training camp was conducted by SIMI activists. The investigation revealed that the camp had continued for 3 days at Thangalpara. The case was later on investigated by JIT. The camp was used for physical training, arms training, handling of explosives, etc. and for classes in 'Jihad in India'. The investigation revealed that there were 43 accused persons and out of which 26 were arrested. A Scorpio car bearing registration no. KL7/AP/4655, used by the accused was seized from the Attingal on 11th November, 2008. The FSL report shows presence of explosive substance in the samples which were collected from the vehicle. The JIT also seized the counter foil for sale of 2 Air Guns and 1000 Pellets from the Cochin Armoury on 11th November, 2008. The Air guns were used for target practice during the camp. The JIT conducted TIP of the accused Ameer Pervez, Hafiz Hussain and P. A. Shibly and some of the witnesses identified them. On the basis of the confessional statement of Ameer Pervez, the JIT recovered remnants of Petrol Bomb and the FSL report confirms that remnants were portion of an exploded explosive device. A motor bike used during the camp was also seized. Investigation reveals that the accused Ameer Parvez, Safdar Hussain Nagori and Abdul Sathar had stayed in a lodge at Wagamon for a day during the period of the camp. The register of the lodge was seized. The case was transferred to NIA on 8th February, 2010.

108. Crime no.356/08 was registered in Edakkad P. S. on the basis that one Abdul Jaleel was associated with and assisting a terrorist organization. The Investigation was taken over by the JIT. Investigation disclosed that a criminal conspiracy was hatched with intent to facilitate terrorism in India and conduct classes at different places of Kannaur, Malappuram and Ernakulam districts to propagate terrorism. In the meeting held on 14th August, 2008 at Neerachal, Kannaur, it was decided that young men should be sent to J&K and accordingly five accused reached J&K, joined LeT, and got trained. Four accused were killed in an encounter with the security forces in J&K.

109. The main accused Nazeer, Shafas, Ibrahim Moulavi, Ayub, Ummer Farook and Zainudeen were also involved in Cr. No. 438/08 of Madivala P. S. registered in connection with Bomb explosion in Bangalore. Accused Surfras Navas, an Ex-SIMI activist, held an official position in SIMI at Delhi and had attended meetings of SIMI both in India and abroad, was associated with LeT. He had arranged funds for training of the accused in J&K, and assisted in the escape of the main accused Nazeer and Shafas outside the country. The JIT completed the investigation and the charge sheet was filed on 21st January, 2009. The absconding accused Sainudheen was arrested later and the final charge sheet was filed before the court on 17th August, 2009. The case was then transferred to the NIA on 8th February, 2010. He has stated that the above facts shows that the SIMI has been indulging in anti national activities with the intent to bring about cessation of a part of territory of India and the ban imposed is legally justified.

110. In the cross examination, Mr. T. K. Vinodkumar (PW-4) has stated that the content of his affidavit (Exhb. PW-4/A) are based on the official records as well his personal experience. He has stated that he had examined various documents, papers including source reports, intelligence reports and had guided investigation. He has further stated that the source reports were confidential and he would not be able to talk about the number and nature of these reports. He has stated that the two primary sources relied upon by him were the documents and information gathered during the process of the supervision of the three cases. He has stated that the averments made in the affidavit were not his personal opinion but were facts and based upon information available with the intelligence Department from diverse sources. He has stated that he took charge of FIR no. 159/2006 on 21st August, 2008 and he did not remember the exact date on which the JIT took the investigation in FIR no. 159/2006. He has further stated that he had not appeared before the previous tribunal but the then IG, Mr. N. C. Asthana had filed an affidavit in which the FIR no. 159/2006 was mentioned. He has stated that he did not have any intimate knowledge about the order dated 29th September, 2008 passed by the Session Court. He has stated that as a Supervisory Officer, he was aware that the findings were reversed by the Appellate Court but the exact details were known to the Investigating Officer. He has stated that it was not correct that Investigation in FIR No. 159/2006 was deliberately delayed to implicate some of the accused in another case. After preparing the charge sheet, sanction was obtained from the government of Kerala and at that point NIA took over the case. He has stated that it was not correct that FIR No. 257/2008 was registered on the basis of investigation conducted in FIR No. 159/2006 and some of the accused in FIR No. 159/2006 have been framed as accused in FIR No. 257/2008. The persons involved were identified in the TIP. He has further stated that the documents linked with the crime in FIR No. 159/2006 and material evidence collected from site in crime No. 257/2008 showed involvement of SIMI. He has further stated that all details of material evidence were available in the crime file which is now with the NIA. He has stated that FIR No. 257/2008 was registered on the basis of Intelligence reports. He has further stated that the camp was conducted in December, 2007 and the exact dates were available in the file and known to the Investigating Officer. He has further stated that he had personally visited the place of camp, accompanied by other officers. This was a remote place, frequented by some tourists. He has stated that he had not visited the place of the camp as an Investigating Officer and, therefore, was not required to take public witnesses. He has stated that he was the Supervisory Officer and, therefore, was not required to prepare a site plan. He has stated that the exact dates when classes on Jihad were held were recorded in the crime file, which was with the NIA. He has stated that the observation regarding Jihad was derived on the basis of report, statements of witnesses and interrogation. He has stated that he was aware and had knowledge that the Scorpio bearing registration No. KL 7/AP/4655 was seized but was not aware of the minute details and particulars. He has stated that the information that accused Ameer Pervez was associated with SIMI came to their knowledge during investigation of the case and the accused and some other persons were involved in activities of SIMI in other states. Reports of investigating officer and intelligence reports received from other States prove and established the said fact. He has stated that Surfras Navas in his statement has admitted that he was an ex-SIMI activist and had held an official position. Enquires made in his neighbourhood have also confirmed the said fact. He has stated that these cases had not been registered at the instance of the Central Government to establish and substantiate their claim for ban on SIMI and these three cases reveal three different faces of SIMI in Kerala. The FIR No. 159/2006 shows ground level activities and recruitment by SIMI in Kerala. Crime No. 257/2008 shows their intention for arm training and Crime No. 356/2008 shows their links with agencies outside the country such as LeT. He has stated that during investigation he came to know that young persons of impressionable age were called from different parts of the State in meetings for the purpose of indoctrination and the documents circulated in the meeting show the intention to enrol young minds as members of SIMI. Documents were available in the crime file, which was with NIA. The material, which was circulated in the meeting was seized and submitted to the courts.

111. Evidence of the witnesses has been partly discussed above while referring to the statement of various witnesses.

#### DISCUSSION OF EVIDENCE FROM KERALA

112. In FIR No. 356/2008, Police Station Edakkad it is stated that a watch was kept on accused Abdul Jalil as he was a strong sympathizer of SIMI and has immense displeasure against the ban. Watch was also kept on his mobile phone and it was realized that he was making calls to Jammu & Kashmir and was connected with terrorist activities and encounters at Jammu & Kashmir. PW-1, Mr. V.K. Akber, has stated that accused No. 23 in FIR No. 356/2008, Police Station Edakkad, Sarfras

Navas was an ex-SIMI activist and held post of Office Secretary of Delhi office of SIMI. PW-1, Mr. V.K. Akber was not cross-examined on this statement. PW-4, Mr. T.K. Vinodkumar, Nodal Officer, has similarly stated that Sarfras Navas was Office Secretary of SIMI. In the cross-examination, PW-4, Mr. T.K. Vinodkumar, was asked whether this statement was based upon the interrogation report or any other material. In response, PW-4, Mr. T.K. Vinodkumar, has stated that this was based upon interrogation of Sarfras Navas and inquiries from the neighbors. The exact details were available with the Investigating Officer. Interestingly, PW-4, Mr. T.K. Vinodkumar, has stated that some Malayalies were killed in Jammu and Kashmir and thereafter FIRs were registered and investigation was done in Kerala. PW-3, Mr. K.R. Kannan, has placed on record two photographs Exhibit PW-3/T-1 of rocks on which word SIMI is written both in Malyalam and English. These photographs were taken while conducting investigation in FIR No. 257/2008 near the site about one kilometer away from where Wagaman camp was held. The word SIMI was written in bold letters and was meant to be clearly visible even from a distance. I am not placing reliance upon the materials, pellets, etc. collected from the site of Wagaman camp.

113. Mr. T.K. Vinodkumar (PW-4), had produced before the Tribunal photocopy mark 'B' of Malyalam literature/pamphlet and its English translation mark 'A'. These documents were produced during cross-examination and were not given exhibit numbers as certified copies were not filed on record. Mark 'A' refers to Ikhwan Conference from November 12-14 at Malappuram, Kootilamgadi, SIMI Kerala Zone. It contains inflammatory material against persons prescribed as non-believers and need to establish Islamic Shariat and need to have international society for realization of "Muslim Ummath".

114. Exhibit PW-2/R-2 is an order passed by the High Court of Kerala dated 10th December, 2008 in which it has been observed as under:-

"5. I have considered all the relevant circumstances. There are definite indications to suggest that some of the 18 persons who had attended the meeting on 15/8/06 at Panayikulam have later been allegedly involved in very serious crimes. They have been arrested from out side the State. It is shown that those persons have connections with the people carrying on seditious activities. There are also indications to suggest that all the 18 who had collected there had gone there to take part in the conclave. It was certainly not an open meeting. There are indications also to suggest that the participants in the meeting on 15/8/06 had connections with the SIMI- a banned organization which is now allegedly functioning under different names....."

115. It may be interesting to note that the counsel appearing for Mr. Human Ahmad Siddiqui and Mr. Misbahul Islam had placed before the Tribunal a bail order dated 29th October, 2008 passed by the Session Judge, Ernakulam, which was marked Exhibit PW-2/R-1.

116. Certified copies of the two FSL reports dated 23rd May, 2009 and 31st July, 2009 show presence of potassium chloride, aluminium powder and sulphur. In the first report the remnant glass bottle etc. have been declared to be portions of explosive devices of common origin but which can cause serious damage to human life and property. Accused Ameel Pervez, Shibily P.A. and Hafiz Hussain have been correctly identified by some of the witnesses and the TIP have been placed on record. It has also been stated by PW-3 and PW-4 that Ameel Pervez, Safdar Nagori and Abdul Sathar had stayed in Lekha Lodge for one day during the training camp, which was organized at Wagamon between 10th-12th December, 2007. Safdar Nagori was General Secretary of SIMI at the time when it was banned for the first time on 27th September, 2001. He was absconding till he was arrested in 2008.

#### DELHI.

117. Seven witnesses have been examined from Delhi and I am discussing the relevant material for the purpose of present enquiry. PW-5, Mr. C.B. Sharma is retired ACP, Delhi Police and his affidavit pertains to FIR No.532/01 police station New Friends Colony, New Delhi, which was registered on 28th September, 2001 at 12.50 A.M. night immediately when SIMI was banned under the Act. Along with the affidavit, the witness has enclosed some of the seized materials in the form of articles from the Islamic Movement Magazines and other articles, which were seized. He has also enclosed copy of the alleged down loaded material from the CPU seized from the office of the SIMI and transcripts of audio tapes. He has stated that Shahbaz Hussain was the Hindi editor and Press Secretary of the SIMI on the relevant date and Safdar Nagori was the Secretary General of SIMI and Chief Editor Hindi Magazine. He has stated that Safdar Nagori was absconding and was declared proclaimed offender but later on was arrested in FIR No.120/2008 at Indore. Certified copy of the relevant material obtained from the court has been placed on record. The trial in the said case is still pending. This witness is only relevant to show and establish the nature of activities undertaken by the SIMI on the date of ban i.e. 27th September, 2001 and association and relationship between Safdar Nagori, Shahbaz Hussain and SIMI. In this regard, it will be appropriate to state here that the three Tribunals have upheld the ban on SIMI in 2001, 2004 and 2006 relying upon the material placed before them.

118. Mr. Govind Sharma, Inspector, SHO police station Amar Colony appeared as PW-7 and has stated that FIR No. 304/2001 was registered at police station Kamla Market, New Delhi after militants had carried out series of bomb blasts. In the said case vide judgment dated 5th July, 2007 the accused were convicted under Section 122 Indian Penal Code and



Section 4(b) and Section 5 of the Explosive Substance Act in view of the recovery of 1-900 Kilograms of black RDX, four detonators, two remote control detonating devices and one wireless set etc. However, the accused were acquitted for lack of evidence under Sections 121 and 121-A Indian Penal Code. It was held that the prosecution has failed to establish that the accused were members of banned organization, particularly, Hizbul Mujahideen and were terrorists of the organizations involved in the bomb blasts, which took place in Delhi between January, 2000 to July, 2001. In some other cases, judgments of acquittal had already been passed. Against the judgment of conviction, appeal has been filed by the accused and the same is pending. PW-7, Govind Sharma has stated in his affidavit that the accused in the said case had disclosed their relations with SIMI and involvement of other accused persons. It may be relevant to state here that in the said case the charges were only framed under Sections 4 and 5 of the Explosive Substance Act and no charge was framed under Sections 121/121-A/123/120-B Indian Penal Code or under the provisions of the Act. This judgment, therefore, is of no assistance to the Central Government.

119. PW-8, Mr. Ramesh Chander Lamba, Inspector Special Cell, New Delhi has deposed about the FIR Nos.40/2005 and 190/2005. FIR No.40/2005 is under Sections 121/121-A/122/123/120-B Indian Penal Code read with Section 25 of the Arms Act and Sections 4 and 5 of the Explosive Substance Act and 18, 19 and 20 of the Act. FIR No.190/2005 is under Sections 121/121-A/122/123/307/186/353/120-B Indian Penal Code read with Sections 4/5 of the Explosive Substance Act and Sections 25/27 of the Arms Act and Sections 18/19/20 of the Act. In the first FIR there is reference to RDX and other explosive material, which were recovered. In the second FIR, there is reference to AK-56 rifles, detonators, dynamites etc. It is further stated that vide judgment dated 8th January, 2010, learned Additional Sessions Judge-II, North Delhi, Delhi has convicted two accused persons, namely, Hamid Hussain and Mohd. Shariq and has acquitted four other accused persons. Hamid Hussain and Mohd. Shariq have been convicted under Section 5 of the Explosive Substance Act read with Section 120-B Indian Penal Code and Sections 18 and 23 of the Act. Accused Mohd. Shariq has also been convicted under Section 411 Indian Penal Code in FIR No.132/2004. The conviction was on account of the fact that the two accused were members of the terrorist outfit Laskar-e-Toiba. Both Iftekhar Ahsan Malik and Haroon Rashid, who were stated to be members of SIMI, have been acquitted in the said judgment. However 10,000 Singapore dollars which were not claimed by Haroon Rashid were directed to be confiscated to the State under Section 26 of the Act. Therefore, evidence of PW-8, Mr. Ramesh Chander Lamba is of no assistance to the Central Government.

120. Mr. L.N. Rao (PW-9), Assistant Commissioner of Police, Special Cell, Southern Range, police station New Friends Colony, New Delhi is the Nodal Officer. He has referred to eleven FIRs, which have been registered from 2001 to 2008.

121. Mr. L.N. Rao (PW-9) has stated that the FIR No.04/2007 police station Lodhi Colony was registered on 25th January, 2007, when accused Mohd. Iftiqar Alam was arrested at Metro Station Seelampur, Delhi with 2.5 Kilograms RDX and 2 electronic detonators. He had stated that he was an active member of SIMI when he was in Patna. The said accused has been convicted and sentenced to five years rigorous imprisonment and fine of Rs. 1,000/- under the Explosive Substance Act. The said witness has also referred to 5 more FIRs registered in Delhi after bomb blasts on 13th September, 2008 being FIR Nos.166/2008, 130/2008, 418/2008, 419/2008 and 293/2008 registered in different police stations in New Delhi.

122. These FIRs have been examined while examining the evidence of PW-10, Sanjeev Kumar Yadav.

123. Mr. L.N. Rao (PW-9) has also filed an additional affidavit enclosing therewith copy of the writ petition No.6030/2007 titled *Students Islamic Movement of India Vs. The Secretary Home and Other*, which is marked Exhb.PW9/4 and the judgment dated 12th March, 2010 is marked Exhb.PW9/3. This writ petition as is apparent from the cause title, was filed on behalf of the SIMI. The judgment shows that Dr. Shahid Badar had appeared in the said writ petition as erstwhile president of SIMI. The prayer made was that the premises of the association should be desealed. It may be noted here that the learned Judge while dismissing the writ petition vide judgment dated 12th March, 2010 had observed that unlawful association itself was seeking restoration of the premises, while it continues to be a declared unlawful association.

124. Mr. Sanjeev Kumar Yadav (PW-10), Assistant Commissioner of Police, Mehrauli, New Delhi has deposed about serial bomb blasts in Delhi on 13th September, 2008 between 5.55 P.M. to 6.30 P.M. killing 26 persons and injuring 133 persons. This had lead to registration of FIR Nos.166/2008 police station Karol Bagh, 130/2008 police station Greater Kailash, 418/2008 police station Connaught Place, 419/2008 police station Connaught Place and 293/2008 police station Tilak Marg. In these FIRs, initially various provisions of Indian Penal Code, Explosive Substances Act and Information Technology Act were invoked. It is stated that the aforesaid FIRs also relate to live bombs, which were detected at Central Park at Regal Cinema and Children Park, New Delhi. It is stated that on the same day terrorist group "Indian Mujahideen (IM)" has sent an e-mail to various media and news channels with headline "Message of Death", and took the responsibility of the blasts. This e-mail along with other e-mails have been dealt with separately. As per the affidavit, several accused, including Mohd. Saif, Mohd. Sadique Sheikh and Kayamuddin Kapadia were/are connected and members of SIMI. Along with his affidavit, PW-10, has filed copy of the disclosure statements made by Mohd. Saif, Exhb.PW10/3, Kayamuddin Kapadia, Exhb.PW10/4 and Mohd. Sadique Sheikh, Exhb.PW10/5. Statements of these accused were not recorded under Section 164 Cr.P.C. Kayamuddin Kapadia in his statement has stated that he had joined SIMI because he wanted to take revenge for Gujarat riots in 2002. He has further stated that SIMI was divided into two groups i.e. Shahid Badar group

(preaching group) and Safdar Nagori group (practical/executive group). He had pointed out that Safdar Nagori group believes in violence, use of power and killings. He has stated that when Safdar Nagori was arrested in 2008, he along with his associate Taukeer, became head of the SIMI group headed by Safdar Nagori.

125. Mohd. Sadiq Sheikh in his statement has stated that he used to attend weekly meetings of the SIMI, where he met Riyaz Bhatkāl, Abdus Subhan and others. Jehadi speeches were delivered in these meetings of SIMI.

126. Mohd. Saif has stated that he was an active member of SIMI and Indian Mujahideen. At the instance of Mohd. Saif, from the room of Atif Ameen incriminating material like inflammatory songs, books (speeches), CDs etc were recovered. The incriminating material has been furnished in the form of CD, which has been marked Exhb.PW10/7. At the instance of Mohd. Saif, from a house at Jamia Nagar, several articles relating to Atif Ameen were recovered. From the mobile of Atif Ameen; data and 16 audio/video clippings and photographs have been downloaded. Some video clippings show banner of Indian Mujahidin relating to Ahmedabad blasts, IEDs explosives in red and blue colour with timer devices and bags being kept in cars. One of the video clips, shows a Maruti car in which IED explosives were kept, and an ambulance with a Gujarat number plate. One video clipping is of a blast. Mohd. Saif has also identified several other articles belonging to Atif Ameen.

127. Mohd. Saif has stated that he has stayed in a hotel, Udupi, Karnataka, under the same assumed name Rahul Sharma. Mohd. Saif had gone there to purchase explosive materials. PW-10 has produced on record the hotel register with entry in the name of Rahul Sharma on 29th August, 2008. (Page 211-212 Exhb PW-10/6).

128. The receptionist and auto driver has also identified Mohd Saif.

#### RAJASTHAN

129. There are no PW-14 and PW-15.

#### Mr. Satyendra Singh Ranawat (PW-16), Additional S.P., Anti Terrorist Squad, Jaipur, Rajasthan.

130. Mr. Satyendra Singh Ranawat (PW-16), Addl. Superintendent of Police, Anti Terrorist Squad, Jaipur, Rajasthan. He has filed three affidavits being Exhb. PW-16/1, 1A and B. He was cross examined on two dates 17th May, 2010 and 28th June, 2010. He was the Investigating Officer of Special Investigating Team regarding Jaipur blast cases on 13.05.2008. In these blasts 70 persons killed and 186 persons were seriously injured. He has stated that he received secret information during investigation of the bomb blast cases in Jaipur and interrogation reports of the Gujarat police in connection with serial bomb blasts on 26th July, 2008 in Ahmedabad city. They reveal that the accused Sazid was a member of SIMI before the ban in 2001. On 28th December, 2001 a raid was conducted and SIMI activists were arrested and the said accused Sazid absconded and came to Kota, Rajasthan with his family in 2002 and changed his name to Salim. On this basis, FIR No. 15/2008 was registered. During investigation it was found that Sazid @ Salim was not only carrying on activities of SIMI but also indulging in militant and anti-national activities and had formed a core group by inducting several persons viz. Munnawar, Imran @ Raja, Atikurrahman @ Aatik, Mehandi Hassan, Isak, Najakat, Amanullah @ Aman, Yunus and Nadim. Munnawar was appointed chief of SIMI, Aatik was appointed secretary and Imran @ Raja was appointed as a treasurer of the Core Group. Accommodation for Salim was provided by one Dr. Ishak at Kota in 2005. The meetings were also held at other places. Salim visited Jodhpur and held meetings of SIMI along with his associates and met several persons who were associated with SIMI in October 2007, January 2008 and March 2008. He collected funds by beguiling persons. For the purpose of militant training Imran, Aatik and Mehandi Hasan of the Core Group were sent to Halol (Pawagarh) in Gujarat to undertake a training course in a jungle there from 12th January, 2008 till 14th January, 2008. To prove and establish the said fact PW-16 has referred to reservation chart of Paschim Express and reservation charts/slips from Jhodhpur to Surat on 12th January, 2008, register and bill book of Mayur Hotel, Jodhpur, etc. It is also stated that objectionable pamphlets (*Babri Masjid ki Pukar*), literature of SIMI, CDs were seized from his residence on 5th September, 2008.

131. Mr. Satyendra Singh Ranawat (PW-16) has stated that prior to 2008, 10 cases were registered against SIMI activists under the Act in Rajasthan. Post 2008, 9 blast cases have been registered against the activists/members of SIMI and in these 9 cases, 70 people have died and 186 were injured. The details of these 9 FIRs are as under :-

S.No. FIR & DATE	POLICE STN.	PLACE OF OCCURRENCE
1. 130/08 13.05.08	Manak Chowk, Jaipur	In front of P.S. Manak Chowk (Khanda) at turning point of Hawa Mahal Bazar
2. 131/08 13.05.08	Manak Chowk, Jaipur	Turning point of Khanda Manihari Tripoliya Bazar (near tala-chavi shop)
3. 132/08 13.05.08	Manak Chowk, Jaipur	Near National Handloom at turning point of Pitaliyon ka rasta johari Bazar
4. 133/08 13.05.08	Manak Chowk, Jaipur	Near Hanuman Temple water hut Sanganeri Gafe
5. 117/08 13.05.08	Kotwali Jaipur.	In front of Shop No.238, Nana Ram & Company
6. 118/08 13.05.08	Kotwali Jaipur	Chhoti Chopar, near Phool wala Khanda
7. 119/08 13.05.08	Kotwali Jaipur	In front of shop no.346 Tripoliya Bazar

8. 120/0813.05.08 .	Kotwali Jaipur	In front of Hanuman Temple Chandpole Bazar
9. 121/0813.05.08	Kotwali Jaipur	In-front of shop no.17 Manglam Electricals (parking place) Chandpole Bazar

132. In the 9th FIR, there was no explosion and a live bomb was detected at 8.58 p.m. and defused.

133. The projectiles used in the bomb were ball bearings. Detailed description of the bombs and the material used has been given. In all the 9 FIRs, cycles were used to plant the bombs. This witness has also made reference to the e-mail dated 14th May, 2008 (Exhb.PW-16/B-2) which was sent from e-mail i.d. [guru\\_alhindi\\_Jaipur@yahoo.co.uk](mailto:guru_alhindi_Jaipur@yahoo.co.uk) from a cyber-café at Sahibabad, near Delhi. The computer i.e. the CPU along with hard disk were traced out and seized. It was noticed that along with the e-mail, three films of 3-4 seconds each were also attached. The first film showed a person handling an assembled bomb at 12.15 p.m. with a background sound similar to that of a fast moving train. The second film had a bicycle with a bag placed in front of the Kotwali police station, Jaipur which later exploded on the same site. The third film had another cycle with bag on the back carrier of the cycle placed at another site. Frame number 129489 of cycle near Kotwali at choti chaupad was also mentioned in the four page e-mail sent by Indian Mujahideen. As per Mr. Satyendra Singh Ranawat (PW-16) the investigation established this e-mail was sent by one Shahbaz Hussain r/o. Mohalla Katara Bazar, Bhadoi (U.P.) and temporary resident of 155/177 Hata Sulema Maulawi Ganz, Lucknow. He was taken into police custody on 25th August, 2008 from Lucknow and interrogated thereafter. It is stated that Shahbaz Hussain was the editor of 'Islamic Movement'- a monthly magazine published by SIMI. Photocopy of the said magazine has been placed on record along with affidavit (Exhb.PW-16/1) as part of Exhb.PW-16/7. Mr. Madhukar Mishra-owner of a cyber café at Sahibabad identified Shahbaz Hussain as the person who had sent e-mail from his cyber café in the name of Indian Mujahideen from e-mail i.d. [guru\\_alhindi\\_jaipur@yahoo.co.uk](mailto:guru_alhindi_jaipur@yahoo.co.uk). The TIP of Shahbaz Hussain has been enclosed with affidavit (Exhb.PW-16/B) at internal page 44 as part of Exhb.PW-16/B-4.

134. Mr. Satyendra Singh Ranawat (PW-16) had stated that Mohd. Saif, Mohd. Sarwar Azmi and Saifur @ Saifurrahman were arrested in the aforesaid FIRs registered under the Jaipur Blast cases. The said accused were identified by Mr. Prakash Sain, Mr. Laxman Jajani and Mr. Lalit Lakhwani as persons who had purchased cycles for carrying out the blasts. The TIP in which the accused were identified by Mr. Prakash Sain, Mr. Laxman Jajani and Mr. Lalit Lakhwani along with their statements recorded under Section 161 have been marked Exhb.PW-16/B-5.

135. With regard to identification of Shahbaz Hussain by Madhukar Mishra as the person who had sent the e-mails in connection with the Jaipur blasts it was stated that Madhukar Mishra in his initial statement recorded under Section 161 Cr.P.C. had stated that the person concerned who had sent the e-mails from his cyber café was clean shaven. It was submitted that Shahbaz Hussain had a beard at the time of the arrest. Shahbaz Hussain was arrested on 25th August, 2008 and the e-mails were sent on 14th May, 2008. Within this period a person can grow his beard. Any person can shave his beard and become clean shaven and thereafter re-grow the same. This can be also done to conceal one's identity/appearance and to deceive. It may be relevant to state that in the TIP proceedings, learned Magistrate has mentioned that the accused-Shahbaz Hussain had stated that he had never cut his beard. What was the need and necessity for Shahbaz Hussain to make the said statement at the time of TIP itself causes suspicion and doubt. It cannot be accepted at this stage that he was aware of the statement made by Madhukar Mishra that the person who had sent the e-mail was clean shaven. The fact that the e-mail in question was received on 14th May, 2008 cannot be disputed. There is material evidence to connect Shahbaz Hussain as the sender of the said e-mail. Shahbaz Hussain was editor of "Islamic Movement"- a publication of SIMI.

136. Mr. Ashok Aggarwal, advocate submitted that investigation is shoddy, cycle frame numbers are not mentioned in FSL reports. FSL report at page 207 of Exhb.PW-16/B states that IEDs had been fixed between handle and the front wheel of the cycle and IED was planted to target the police station but in the short film enclosed with the e-mail, the said cycle with frame number 129489 the bag is shown on the carrier of the cycle. I am not impressed with the so called discrepancies. Central Government has explained these discrepancies in their short note/written submission. These are matters of detailed trial before the criminal court. In the short video in respect of a cycle at Kotwali police station a bag is shown tied up on the handle of the cycle. It cannot be denied that the cycle bombs were used and 70 people died and 186 were injured in the Jaipur blast on 13th May, 2008. The em-mail with the short films clearly shows that this was prepared by the person who was associated with the said blasts. This e-mail was sent from a cyber café in Sahibabad, near Delhi. Madhukar Mishra, the owner cyber café has identified Shahbaz Hussain as the person who has sent the said e-mails. It was submitted that the e-mail consisted of one document file and three attachment files but Madhukar Mishra had stated that he had copied one file on the terminal/computer. This has also been explained by the Central Government in their response stating that Madhukar Mishra had stated that he had copied one file but attachment could have been loaded before the e-mail was transmitted. It was submitted that there was delay in seizing the computer. This is not material for the present proceedings. Interestingly, in the written submissions filed by Mr. Humam Siddiqui and Mr. Misbahul Islam they have admitted that Shahbaz Hussain was the editor of "Islamic Movement", the official magazine of SIMI prior to its ban. In their reply/written statement, it was denied that Shahbaz Hussain was editor of any magazine. On the question of age of Shahbaz Hussain as described by Mr. Madhukar Mishra, witness-Mr. Pradeep Mohan Sharma to PW-16, I do not find there is any serious discrepancy to doubt and ignore the evidence of PW-16.



**Mr. Thangkhanlal Guite (PW-17), Inspector General of Police (INT.)**

137. He has referred to FIRs which were registered in 2001 against members of SIMI. He has stated that 17 criminal cases have been registered against SIMI activists, out of which 11 cases have been registered after SIMI was banned. He was, however, not aware whether other cases are still pending or decided. In these cases, 38 SIMI activists/leaders have been arrested and 14 of them are in judicial custody and 25 have been released on bail. In one case FIR No. 345/2001, one Mr. Niyamat Ali has been convicted vide judgment dated 18th December, 2007 passed by the ACGM court, Bikaner. However, the accused has been released under the Probation of Offenders Act on furnishing personal bond of Rs.20,000.

138. He has stated that Mohd. Ilyas, against whom FIR No. 665/2001 was registered under Section 10 of the Act, had also been arrested in FIR No. 15/2008 registered in Police Station, Special Crime and Economic Offence (S.O.G), Jaipur on 23rd August, 2008. He has stated that Mohd. Ilyas had continued to be a member of SIMI even after the ban. However, he has stated that he was not aware whether any particular incriminating material was recovered from Mohd. Ilyas though the said material was recovered during investigation of FIR No. 15/2008.

**MAHARASHTRA****Mr. Aijnath Satpute, Mr. Satish Deshmukh, Mr. Dnyaneshwar Ganore, Mr. Vishnu Baburao Jagtap, Mr. Dattatraya Bapurao Patil, Mr. Prakash Hingmere, Mr. Anil Nivrutti Lambate, Mr. S.D. More, Mr. Sangram Sangle, Mr. Subhash Panse and Mr. Chhagan (PW Nos.18 to 28)**

139. They are the witnesses, who have deposed about FIRs registered in 2001. Their statements are not required to be discussed in detail. All the said witnesses have stated that activities on behalf of SIMI are still continuing and members of SIMI were hardcore fundamentalists, who were supporting terrorist and militant activities. PW-24, Mr. Anil Nivrutti Lambate has stated that the accused in the said case were found to be addressing people stating that Government by putting ban on SIMI has mala fidely committed a criminal act against Muslims and will have to pay for the bad deeds. Kashmir should become an independent Muslim country and for this we are even prepared to die. In his cross-examination he has denied that the accused in the said case were not members of SIMI.

**Mr. Punjabrao Deshmukh (PW-29), I.O. CR No. 3065/2009, P.S. Murtijapur, Akola, Maharashtra**

140. On 19th July, 2009, P.I.P.R. Giri received information that members of SIMI were organizing a meeting at Chotti Masjid at Mana, near Murtizapur, Akola and accordingly a nakabandi (setting up of check-posts and surveillance) was imposed. He further stated that during this nakabandi an Indica car bearing no. MH 23 E 3773 was stopped by the police and in the presence of two panch witnesses the three occupants of the car namely Abdul Rajjaq, Syed Ibrahim and Masud Khan were questioned.

141. He has stated that on a search of the car, a CD titled "Darusal Quram" and papers written in Urdu were found and seized. Articles which were written in Urdu were translated by Head Constable PS Murtizapur into Marathi and informed the police that the material was objectionable and related to SIMI. A case was registered as CR.No. 3065/09. The CD recovered was also accessed in presence of witnesses with the assistance of a computer professional and it was found that the CD contained 127 files. The two files are as under:

- (i) File No. 8 titled "A 52-014-'Musharay mein khir kaise'" was a speech delivered by one Sayyad Manvar Hussain in which he spoke about Jihad, cross border terrorism and inability of Indian army to stop such terrorism.
- (ii) File no. 16 titled as "A52-025-'Hum badalte hain rukh hawaon ka'" was a speech delivered by one Sayyad Manvar Hussain in which he spoke about freedom of Kashmir was the fight of Islam, Muslim population of India was under the yoke of slavery of the Hindus.

142. He has stated that among 3 handwritten Urdu papers was a pamphlet which was calling upon Muslims to take arms, to take revenge, the need for increased enrolment of youth in SIMI, need for an increased cadre that SIMI should work by changing names. He has stated that on the basis of investigation it was concluded that accused used to provoke Muslims. The sanction was obtained.

143. In his cross-examination he has stated that the CD has 127 files and the break up/names of the said files are mentioned in the Panchnama Exhb.PW-29/A-5. He has further stated that he had received secret information that a secret meeting of SIMI was being held in Managaon on 19th July, 2009. After receiving the secret information, a raiding party was constituted and "Naka Bandi" was undertaken. A car bearing No.3733 was stopped and three accused were apprehended along with the handwritten pamphlet in Urdu, which is marked Exhb.PW-29/A-8(1). Photocopy of the pamphlet was available in the police file. The original of the said document had been sent to a handwriting expert.

144. He has stated that he was not aware that Mr. Virk, the then DGP has stated in a press conference dated 6th August, 2009 that the three persons, who were arrested from car. No.3733 were not connected with SIMI. Witness was confronted with press report from Navbharat dated 7th August, 2009, which for the sake of convenience was marked Exhb.PW-29/D-1.

145. He has stated that it is incorrect that story of the said meeting was concocted to support continued ban on SIMI. He has voluntarily stated that in the Urdu pamphlet mentioned Exhb.PW-29/A-8(1), it is mentioned that SIMI should continue with its activities and even after the Malegaon blast, Muslims were being harassed and revenge had to be taken. He has denied that the pamphlet Exhb.PW-29/A-8(1) was planted and was forcibly got written from one of the accused and it was not voluntary or self written pamphlet. He has stated that he had not filed the application on the basis of which order under Section 169 Cr.P.C. Exhb.PW-29/A-7 was passed. The application was not available in the investigating file. It was wrong that deliberately the application had not been filed.

146. He has stated that he was aware that the CD contains religious sermons of Ulema from Pakistan and India but it also contains objectionable materials which have been mentioned in the panchanama. He has stated that he was not aware that Sayyed Munayvar Hussain, Khurram Murad and Hafiz M. Idris, are well known Islamic scholars in Pakistan. He has further stated that he was not aware that these CDs were freely available in the market. He has stated that Exhb.PW-29/D-2 is the certified copy of the application which was filed by the police u/s. 169 Cr.P.C.

147. He has stated that it is incorrect that the facts stated in his affidavit and the materials annexed with it were false and concocted.

148. Order dated 15th February, 2010 passed by JMFC, Murtizapur rejecting the report filed by the IO under Section 169, Cr. P.C. has recorded that some of the pamphlets seized appear to be printed and published only with the intention to destroy sovereignty and integrity of the nation. Similarly, two file Nos. 8 and 16 on the CD indicate that they were prepared with the intention to support secession of Kashmir from India. Ld. JMFC has recorded as under:—

“14. The above mentioned facts emerging from investigation itself shows that accused no. 4 to 8 were members of SIMI and they have taken active participation in respect of conducting meeting of SIMI at choti masjid Mana, provoking peoples present for said meeting, printing, publishing pamphlets, documents and CDs. It also prima facie appears that action of accused persons by way of committing above act directly disrupts or is intended to disrupt the sovereignty and integrity of India. It also appears that the I.O. has not correctly applied his mind to the facts emerging from the investigation and come to incorrect conclusion.

15. For the above mentioned reasons, this court does not agree with the present report filed by I.O. against accused No. 4 to 8. On the contrary, on the basis of above mentioned reasons this court finds that there are sufficient grounds for for (sic) proceedings against accused no. 4 to 8 u/s 10 and 13 of the Unlawful Activities (Prevention Act). As per 45 of said Act no court shall take cognizance of offence under chapter 3 of said Act without previous sanction of the Central Government or any officer authorized by the Central Government in this behalf. Therefore even though this court finds that there are sufficient grounds to proceed against accused No. 4 to 8 still in view of express bar u/s 45 this court is unable to take cognizance. Hence, considering the above discussion, following order is passed.

#### ORDER

1. The report submitted u/s 169 of Cr.P.C. is not accepted.
2. I.O. is hereby directed to take steps within one month from today for getting sanction of Central Government or authorized officer of Central Government for taking cognizance against accused No. 4 to 8 for offences u/s 10, 13 of Prevention of Unlawful (Activities) Act.
3. I.O. is directed to inform to this Court in writing about what steps taken by him for getting said sanction. After I.O. receiving sanction it be placed before this court so as to enable this court to pass further orders against accused No. 4 to 8.”

149. It is interesting to note that the counsel appearing for Mr. Human Ahmad Siddiqui and Mr. Misbahul Islam had produced before the Tribunal certified copy of the application filed by the police under Section 169 Cr.P.C. for closure.

#### Shivajirao Tambre (PW-30) IO in CR.No. 3036/2008 PS Vijapur Naka, Solapur City

150. He has stated that accused Khalid Ahmed was arrested at Indore, Madhya Pradesh. Since he was a resident of Vijapur Naka in Solapur city, on 29th March, 2008 a search was conducted at his residence where incriminating articles of SIMI were recovered. A case CR No. 3036/2008, P.S. Vijapur Naka, Solapur was registered against accused and was arrested on 9th July, 2008. He has stated that the case was pending for want of sanction from the state government. He has further stated that the investigation has revealed that inspite of ban members of SIMI continue to carry out unlawful activities and therefore further imposition of ban is in the interest of justice.

151: In his cross-examination he has stated that it was incorrect that incriminating documents were not found at the time of search. The panchnama dated 23rd March, 2008 at page 17 which is part of Exhb.PW-30/A-2 gives some details in

brief of the documents which were seized at pages 19 and 20. He has stated that document no.1 at page 19 of the panchnama is related to SIMI which is a banned organization. He volunteered that the document mentions how SIMI operates and functions. The document was available in the file with him and could produce the same. (The original document was shown to the Tribunal). Photocopy of the said document was placed on record and is marked Exhb.PW-30/D-1. He has stated that he had read these documents and that they show that SIMI continues to be in existence even after the ban and therefore he considered them to be incriminating. He has stated that apart from serial no.1 one document printed in red ink in Urdu language was incriminating which in marathi means "Raktachi laal dokyapasun ka jaina, mitrachya umbarthyapasun uthun ka jaina". At the bottom of this document there were statements which instigate Muslims against Hindus. He has stated that he can produce the original document. Photocopy of the said document was marked Exhb.PW-30/D-2. He has stated that it was correct that document Exhb.PW-30/D-2 pertains to the period prior to August 2001 and not 2008 and this paper does not specifically mention or refer SIMI. Copy of the newspapers articles/extracts were marked Exhb.PW-30/D-3.

152. He has stated that in the newspaper cutting dated 03rd July, 2001 word SIMI is mentioned and not in any other document at serial nos. 2-10. He has stated that he had conducted search in the premises of Khalid Ahmed Mohd. Salim Mucchale at Indore and in his residence documents of SIMI were found and seized. He has further stated that he had not seen the FIR in which Mr. Mucchale was arrested at Indore and had not verified from other documents whether Mr. Mucchale was member of SIMI. He has stated that he was not a member of the search party at the residence of Mr. Mucchale.

**Atul Sabnis (PW-34) IO in CR.No. 17/2008 PSATS, Kala Chowki, Mumbai**

153. Mr. Atul Sabnis (PW-34) is the investigating officer of FIR No. 17/2008 and was posted with ATS P.S. On 20th August, 2008 a source/ information was received that a known SIMI activist in Pune has given the task of distribution of propaganda and indoctrination material of SIMI. A trap was laid and Firoz Mehboob Pathan a SIMI activist of SIMI was arrested near the Seven Loves Hotel, Pune. From his possession following material was seized:

1. 10 books titled as 'Jihadi Azgar' containing basic rule and guiding towards a holy way of jihad, attainment of paradise on becoming a martyr in the fight against non Muslims,
2. 10 books titled as 'Jihadi Fi Sabi Illah' containing the importance and advantages of Jihad for the common Muslim and in the religion of Islam etc.,
3. 10 books titled as 'Jihadi Fisabillilla Quo' containing the reasons and the rationale behind Jihad, need to fight for those who oppose conversion to Islam etc.,
4. 5 books titled as 'Vafadari Ya Bejari' containing propaganda that the main intention of every Muslim should be to create losses to non-Muslims,
5. 5 books titled as 'Allah ke Rah Me Jihad' containing propaganda that injustice is being treated out to Muslims in India on every front and jihad is necessary and needed.

154. Extracts of the books have been placed on the record with translation and marked Exhb. PW31/A-1 and A-2. Investigation has revealed that one Imtiyaz Babumia Shaikh, a known SIMI activist was an associate of Firoz Mehboob Pathan. Imtiyaz Babumia Shaikh was already in custody in another case. He was also arrested in FIR No. 17/2008. On 31st August, 2008 Imtiyaz Babumia Shaikh, in his statement disclosed names of Ayyaz Yusuf Khan, Nadeem Mohammad Salim Shaikh and Md. Bilal Gulam Rasool Kagzi as persons who had supplied objectionable Jehadi material to distribute to the Muslim youth. The Xerox copy of one Urdu book "Jihad-e-Kashmir Farziyat Fajilat Aur Tarik" and 4 videos CDs containing images of atrocities against Muslims in Gujarat and other atrocities in the world which were recovered from his home.

155. The book titled "Jihad-e-Kashmir Farziyat Fajilat Aur Tarik" mentions alleged atrocities being committed against Muslims in Kashmir by the non Muslims and Indian Government and details and particulars of such incidents highlighting the need for jihad. Four CDs contain: 1.) CD1- images of dead bodies of Gujarat riots and images of Muslims persons from post riot refugee camps, 2.) CD2- images of world atrocities against Muslims accompanied by a voice commentary in Urdu and sub titles in Arabic, 3.) CD3- images of Osama bin Laden and his associate taking credit for World Trade Centre bombing and paying homage to 19 terrorists who died in the bombing, 4.) CD4- Arabic commentary, video footage etc showing the importance and role of Jihad.

156. PW34 has stated that during the course of investigation, it was revealed from the statements of the witnesses that all the arrested accused were related to SIMI and were distributing Urdu books and CDs to provoke Muslim youth towards jihad. Accused Firoz Mehboob Pathan was the Ex President of SIMI Pune division and against him various cases have been registered at various Police Station. In the year 2001, he was also detained for a year. He was in contact with various known SIMI activists such as Safdar Nagari, Abdus Subhan Quereshi alias Taukir and Yusuf alias Mirza Himayat Baig. He has further stated that accused Mohd. Bilal Kagazi, Nadeem Md. Salim Shaikh and Ayyaz Yusuf Khan were also arrested in other crimes and all of them were released on bail. He has stated that inspite of ban, activities of SIMI were still continuing. He has filed the statement of witnesses, after protecting their identities to show the connection between accused and SIMI.



157. In his cross-examination PW-34 has stated that Firoz Mehboob Pathan has been acquitted in the cases which have been decided and has not been convicted in any case. He has denied that the material seized does not disclose connection with SIMI as the sole purpose and objective was to propagate SIMI and to persuade people to join SIMI. In the cross-examination, it was not even suggested that Firoz Mehboob Pathan was not the ex-president of SIMI, Pune division.

**Mr. Ashok T. Duraphe (PW-38), I.O. in MCOC, Special Case No. 4/2009 registered with DCB, CID, Mumbai and presently working as Assistant Commissioner of Police, D-1, South, DCB-CID, Mumbai**

158. PW-38, Mr. Ashok T. Duraphe is the Investigating Officer in FIR No. 162/2008. He has stated that SIMI activists have regrouped and are carrying on their operations. He has alleged that Indian Muhahideen is another face of SIMI. In his affidavit, he has referred to serial blasts in Ahmedabad on 26th July, 2008 and recovery of Improvised Explosive Devices in Surat on 27th July, 2008. Two of the explosions at Ahmedabad had occurred in explosive laden cars and at Surat two live IEDs were discovered in two cars.

159. Prior to the Ahmedabad blasts, TV channels and media had received an e-mail from IM warning that series of blasts would occur. During investigation, it was found that the said e-mail (for the sake of convenience is referred to as the first e-mail for the purpose of this witness) was sent from IP address in Navi Mumbai.

160. Investigations revealed that all four cars were stolen from Navi Mumbai. This prompted the Mumbai Crime Branch to start a manhunt for the persons, who had sent the terror e-mail and also car thief who had stolen the cars, which were used in bomb blasts in Ahmedabad and in Surat. On 23rd August, 2008, another e-mail (hereinafter referred to as the second e-mail for the purpose of this witness) was sent by IM. They claimed responsibility for the Ahmedabad blasts and planting of IEDs at Surat. Investigations revealed that this e-mail had originated from the IP address 121.243.206.151, which was traced to Gurunanak Institute of Research and Development, Khalsa College, King Circle, Mumbai. The e-mail was dispatched from e-mail address Alrabi.alhind@gmail.com. The e-mail clearly warned that lethal weapons for waging war would be used and threatened police officers of Maharashtra and Gujarat with annihilation. The e-mail was designed to instigate and hurt religious feelings by deliberately using derogatory language. The e-mail contains photographs of cars captioned "Your Favourite Toys" and "The Cars that Devastated" and also IEDs captioned "Weapons of Mass Destruction".

161. Two FIRs C.R. No. 314/2008 and 375/2008 were registered in Police Station, ATS Mumbai under various provisions of IPC. The CPU, wireless router, cables and cords used for sending the second e-mail were seized. The investigation was subsequently taken over by Cyber Cell, DCB, CID and then by Criminal Intelligence Unit (Operations), DCB-CID, Mumbai.

162. On 15th August, 2008, Property Cell, DCB-CID, Mumbai arrested a car thief Afzal Mutalib Usmani in U.P. During investigation he admitted and confessed car thefts in three FIRs in which he was detained. While interrogating Afzal Mutalib Usmani, the second e-mail sent by IM with photographs of the motor cars was shown to him. He identified the motor cars and stated that these cars were stolen by him from Navi Mumbai. These cars were driven by him to Ahmedabad along with his other associates Amin@Raja Ayub Shaikh and Mohd. Mobin Abdul Shakur Khan @ Irfan, who first delivered the cars to Surat and then to Ahmedabad. He admitted that he had loaded explosives in the cars for Surat and Ahmedabad blasts.

163. Accused Afzal Mutalib Usmani was arrested in the FIRs relating to the e-mails. On further interrogation at his instance, two more accused Mohd. Sadique Israr Ahmed Shaikh and Mohd. Arif Badruddin Shaikh@Arif Badar were arrested. On the basis of interrogation of Mohd. Mohd. Sadique Israr Ahmed Shaikh two more persons Mohd. Jakir Abdul Haq Shaikh and Ansar Ahmad Badshah Shaikh were arrested for bomb blasts in Gujarat and other States.

164. Statements of Mohd. Sadique Israr Ahmed Shaikh and Mohd. Arif Badruddin Shaikh were recorded under Section 18(1) of MCOC Act. Certified copy of the statement of Mohd. Sadique Israr Ahmed Shaikh has been placed on record as Exhb. PW38/A-5. In his statement, Mohd. Sadique Israr Ahmed Shaikh has stated that they were members of majlis of SIMI and used to attend the majlis where discussions were held on Quran, Hindu-Muslim riots, Babri Masjid and consequences of sacrifice. In his statement, he has given details of how he went to Bangladesh and to Karachi (Pakistan) with some other boys who had Pakistani passports. He has stated that he was given training in explosives, detonators, bombs, switches, timers, local explosives, circuits, etc. in Muzzafarabad, in Umulkura Camp. He stated that he was also taught to operate pistols, AK-47, L.M.G. weapons also.

165. With regard to SIMI he has stated as under:-

"At that time, I used to meet Arif Badar in Saraymir Tahasil, where he runs the Electrical Shop. As both of us are connected with SIMI organization, we both became friends. After we became intimate friends we used to discuss about atrocity upon Muslims. I told Badar that I have received training in Pakistan and the boys should be sent to Pakistan for training and Jihad for protection of Muslim Brothers. He agreed with me on this proposal and gave me assurance to prepare boys for training in Pakistan."

166. He has also given details about bomb blasts from February 2005 to September 2008 and how money used to be transferred and given to them. He has stated that with an intention to terrorize the public, IM has been set up and for the last one year they were sending e-mails to the media.

167. Statement of Ansar Ahmad Badshah Shaikh was also recorded under Section 18(1) of MCOC Act. He has stated that he became a member of SIMI and used to attend their programmes and meetings conducted by SIMI above the clinic of Dr. Shahnawaz. He used to accompany Mohd. Sadique Israr Ahmed Shaikh to the office of SIMI near Kurla Police Station. A camp was organized once a month where they used to discuss issue of Palestine, Siberia as well as of atrocities on Muslims in Kashmir. He has disclosed how he crossed over to Bangladesh and then went to Karachi and to the office of LeT. He confirmed the statement of Mohd. Sadique Israr Ahmed Shaikh that he went to Bhawalpur and went to the office of LeT in Islamabad. There he met Mohd. Sadique Israr Ahmed Shaikh, who was also a school friend. He undertook training at a camp in Muzzafarabad with 100 persons including 4 Indians, which continued for a period of 15 days. They were trained in operating rifles, AK-47, AK-56, pistols and hand grenades. They were made to undergo physical exercise and were preached about jehad. They went to a desert area of Bhawalpur and were taught how to make bombs and given practical training in rifle firing. He was given Rs. 10,000/- and a Pakistani passport and he went from Karachi to Kathmandu and then crossed over to India. He was again paid Rs. 10,000/-. Mohd. Sadique Israr Ahmed Shaikh spoke to him in 2006 about bringing a parcel from Hyderabad. He suspected that the parcel may contain explosives. He left for his native place and avoided Mohd. Sadique Israr Ahmed Shaikh. In July, 2007, he met Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal. He knew Riyaz Bhatkal, who was a member of SIMI. Riyaz Bhatkal in his bag had brought a circuit, the working of which were discussed between Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal. However, both of them, i.e., Mohd. Sadique Israr Ahmed Shaikh and Riyaz Bhatkal stated that they had formed IM for the purpose of jehad. After some days, there were bomb blasts in Hyderabad.

168. In the cross-examination, PW-38 has stated that Mohd. Sadique Israr Ahmed Shaikh had not retracted from his confessional statement but Ansar Ahmad Badshah Sheikh retracted a part of his confessional statements. The retracted statements had not been filed before the Tribunal and were not mentioned in the certified copies. The certified copy of the statement of Ansar Ahmed is the original unretracted statement and is enclosed as Exhb. PW-38/A-8. The witness has explanation why this has happened. The retraction was made before the Chief Judicial Magistrate under Section 18 of MCOC Act. The relevant order and the retracted portion had now been filed before me in a sealed cover. The retractions made by Ansar Ahmed are not relevant for the purpose of present enquiry as they are not in respect of his association or association of his co-accused with SIMI.

169. PW-38 has also pointed out recoveries made on the basis of disclosure statement of Mohd. Sadique Israr Ahmed Shaikh from a factory premises in Sewri, Mumbai, which includes revolvers, carbines, magazines and bullets in huge quantities. Panchnama of the said recovery dated 24th September, 2008 is Exhb. PW-38/A-6.

170. Recoveries have also been made on the basis of Arif Badar's disclosure and consists of 10 Kg of Ammonium Nitrate, 15 Detonators, 4 Timers and 8 Kg of ball bearings vide Exhb. PW-38/A-7.

171. Accused Asif Wasir Shaikh, Mohd. Mansoor Asgar Perbhoy and Mobin were interrogated separately. They confirmed their involvement in the crime. They confessed having sent second e-mail from Khalsa College as per instructions of Riyaz Bhatkal and his brother Iqbal Bhatkal by hacking IP address of Khalsa College. At the instance of Asif Wasir, 4 laptops, wireless routers, spy locators and wi-fi location detector, etc. and one pistol with 7 live cartridges, walkie-talkie, objectionable material like jihadi books, audio-video tapes containing inflammatory material, etc. were recovered vide panchnama, which is marked Exhb. PW-38/A-9. Some other persons were also arrested.

172. On personal interrogation of Riyaz Bhatkal and Iqbal Bhatkal, seizures were made in Pune and some more arrests were made. Seizures were also made of incriminating material, which has been marked Exhb. PW-38/A-10. One of the materials, which was seized was Tehelka magazine titled "SIMI Fiction". In the cross-examination several suggestions were given with regard to the said magazine. PW-38 has clarified that this magazine was seized along with other incriminating material. The seizure of this magazine may be wrong but this does not make the witness unreliable or untrustworthy.

173. PW-38 has also referred to the raid conducted at Mangalore wherein 5 hand grenades, cash of Rs. 11 lacs and other incriminating material were seized and some other persons were arrested and Crime No. 242/2008 was registered.

174. Cross-examination of this witness does not shake his statement. The two of the accused in their statements under Section 18 of MCOC Act, viz., Mohd. Sadique Israr Ahmed Shaikh and Mohd. Ansar Ahmad Badshah Shaikh have admitted that they are members of SIMI. They have also admitted involvement in criminal acts which qualify and are "unlawful activities" and have stated that others associated with them were also involved in illegal activities. Name of Riyaz Bhatkal cropped up and it is stated that he is also a member of SIMI.

175. The contention that only two FIRs were registered with regard to the second e-mail and the third e-mail which was sent on 13th September, 2008 warning of blasts in Delhi pursuant to which another FIR was registered is irrelevant. Further, interrogation of American citizen Ken Heywood and the allegation that his e-mail account was used to send the first e-mail and non-registration of FIR with regard to the said e-mail is irrelevant and immaterial. It may be noted here that as per the witnesses wife of Ken Heywood was hacked in Navi Mumbai.

**KARNATAKA****Mr. Jayanth V. Shetty (Pw-46), Deputy Superintendent Of Police, Udupi Sub-division, Udupi Distt. Karnataka.**

176. Shri Jayant Vasudev Shetty, Dy. S.P., Udupi sub-division, Karnataka has stated that on 3rd October, 2008, at 10.30 am, the staff of District Crime Intelligence Bureau (DCIB) and SP's special squad raided the house of Mohammed Ali in Mukkacheri, Mangalore upon credible information that he had given shelter to one Riyaz Bhaktal Shabandri, a terrorist and one of the founder members of IM who was responsible for bomb blasts in Mumbai, Delhi, Ahmedabad and Surat. Mohammed Ali admitted upon inquiry that he had given shelter to the said person. The raiding party searched and seized 3 books, DVDs and a CPU pertaining to terrorist activities. Another house at Chembugudde, Mangalore was raided upon information and five live bombs and ten mobile phones were seized. PW-46 has also stated that the house of Mohammed Noushad at Subhash Nagar, Mangalore was also searched and they seized a computer disk and some documents related to Jihad along with a motorcycle. Thereafter the house of one Muddasar Yasin, which was found locked, was also raided. After breaking open the lock a laptop, CDs, cash of Rs.11,39,850/- was recovered. PW-46 has further stated in his affidavit that the Cr.No: 242/2008 was registered at Ullal Police Station, Mangalore.

177. He has stated that on 5th October, 2008, a car bearing no. KA 03 N-8812 being used by accused Mudasar Yasin was seized from garage situated at Permannur Village near Ullal. He stated that a xerox copy of sale deed regarding purchase of land in Vittalmakki Village and a General Power of Attorney dated 24th January, 2007 in favour of Ahmed Bava Abubakar, a Motorcycle bearing no. KA 19 S-2467 along with its RC, books written in Arabic/Urdu, chemical glassware laboratory products were recovered and seized from the house of Fakir Ahmed in Vittalmakki Village.

178. He has stated that on 16th October, 2008 accused Mohd. Rafiq and Fakir Ahammed were arrested and produced before PSI, Ullal P.S. where they were interrogated and their voluntary statements were recorded pursuant to which on 17th October, 2008, PSI, P.S. Ullal, recovered black oxide, hand gloves, gum tape, aluminium pieces, steel pieces, test tubes, plastic, glycerine bottle, plastic and glass jars, one airgun, one bow made of wood, bamboo and sheet, firing target card, which bears pellet holes marked with pencil, pieces of steel pipes, readymade tent, two mobile phones and such other articles numbering 38. On the same day, articles such as drilling machines, spanners, hacksaw blades, battery chargers, battery, tape, angle grinders, chisels, file, pipe wrench, grinding plate, soldering lead coil, nylon thread, glass bowls and similar such articles numbering 41 were seized. PW-46 has stated that on 16th December, 2008, he took over the investigation of the case and recorded statements of accused Syed Md. Naushad, Mohd. Bava Abubakar and Mohd. Ali. Accused-Syed Mohd. Naushad confessed upon interrogation that Mudassar Yasin and Md. Bava Abubakar were members of SIMI and they had enrolled themselves as members of Indian Mujahideen and planned to execute bomb blasts and create disturbance in India. He also stated that on his disclosure the PSI recovered Rs. 8,37,500/- from Eliyas. He further stated that the accused-Mohd. Naushad took them to a house belonging to his father in Mangalore and produced six timers, pen drive, agreement deed, and ID cards of other students. He further stated that accused Ahmed Bava Abubakar led them to recover 20 gelatin sticks, 19 detonators, and four timers from his house.

179. He has stated that the Bank account details of the accused were verified, witnesses were examined and statements were recorded at every stage of the investigation and that the investigation has revealed that the accused who were members of SIMI and its front organization Indian Mujahideen, had been collecting funds from different sources, procuring illegal arms and ammunitions, explosive substances, electrical circuits, timers and conducting conspiracy meetings with an intention to commit terrorist activities between 2004 and 2008. He also stated that they had collected Jihadi literature, SIM cards, fake passports, etc.

180. He has further stated that a charge sheet was filed against 13 accused out of which six were shown absconding and except accused no. 6 all others were in judicial custody.

181. On being cross examined, Mr. Jayanth V. Shetty (PW-46) has stated that he had filed the charge sheet but was not aware whether any charge had been framed. He also stated that he is not the Investigating Officer (IO) of this case at present and that there was one IO before him. He stated that he did not get any statement of the accused recorded U/s 164 Cr.P.C. before the Magistrate; he had recorded the alleged confessional statements (Exhb.PW-46/A-12) but I had not recorded alleged confessional statements marked Exhb. PW-46/A-8 and A-9.

182. He stated that there is an error in the translation in Exhb. PW-46/A-12 at portion A to A at page 123 wherein it is recorded "my guilt pleaded earlier" and volunteered that he had read the original at page 103; the original statement states that Mr. Syed Mohd. Noushad was giving the statement without any fear, coercion or threat. He stated that the first three lines of Exhb. PW-46/A-14 give details of deponent (Ahamed Bava Abubakar), his parentage, address and mobile telephone number. He stated that the words "without fear, coercion or threat" are mentioned in the subsequent portions of the statements at page 138 in vernacular (page 142 of Exhb. PW-46/A-12). He stated that it was correct that at page 139 at portion A to A it is mentioned "without any inducement, threat, promise, fear hereby voluntary giving the following statement regarding my guilt pleaded earlier" is not there in the original. He stated that it is incorrect to suggest that he had not read the translations before certifying them. He further stated that he had verified that the accused persons were members of SIMI and that verification was done during investigation.



183. On being asked how did he come to know and formed an opinion that the accused were members of SIMI, he has stated that the complaint made by Mr. Venketesh Prasanna states that the accused were members of SIMI. Mohd. Naushad in his statement (Exhb. PW-46/A-12) has stated that he along with others were members of SIMI. Further, during the course of investigation, he came to know about two other FIRs registered by Gokul Road Police Station, Hubli, Karnataka and Madiwala P.S. - Bengaluru City.

184. He further stated that Mr. Venketesh Prasanna is a Police officer and he had made the statement on the basis of credible information and he had not filed copy of the "credible information" before the Tribunal. He also denied the following suggestions :

- there is no basis for Mr. Prasanna's statement or the statements in the other two FIRs mentioned above about involvement of SIMI or members of SIMI.
- there is no basis for his opinion that the accused are members of SIMI and false averments are being made in the FIRs about involvement of members of SIMI in criminal activities and these false averments are being cited in other cases.
- he had not filed any material to show that the accused are members of SIMI. He volunteered that he had filed confessional statement of Mr. Mohd. Noushad and Exhb. PW-46/A-12.

185. He stated that he had had not recorded and was not the author of the documents (Exhb. PW-46/A-1 to A-11) and volunteered that he was aware of the said documents as he had gone through the file. He stated that he had not summoned any of the panch witnesses to depose before the Tribunal and stated that it was incorrect to suggest that Sr. No. 4 mentioned in property seized vide Panchnama 4 (Exhb. PW-46/A-5, page 53) of his affidavit was not an incriminating material. He volunteered that the book has been filed before the Court. The police file does not contain a copy of the said book.

186. He stated that it was incorrect to suggest that there is no material to suggest that IM is a front organization of SIMI and stated that the confessional statement (Exhb. PW-46/A-12) made by Mr. Mohd. Naushad mentions that they were members of SIMI and IM and refers to the factum that meetings were held at different locations and times, which were attended to by all the co-accused.

187. He stated that it was incorrect to suggest that the witnesses to all Pachnamas were not local witnesses. He stated that he was aware of Section 100 (4) Cr.P.C. and it was incorrect to suggest that he did not attempt to get local witnesses at the time of search. He further volunteered that the witnesses were local witnesses and they were from the locality and the dates of arrest of accused were given in his affidavit (Exhb. PW-46/A). He stated that he did have any details of first police remand and these details might be available in the police file. He stated that the accused were in police custody when their statements were recorded.

188. He stated that the dates of arrest of 13 accused are mentioned at pages 7 and 8 of his affidavit. Accused No. 1, Sayyed Mohd. Naushad was remanded to police custody for the first time in FIR No.242/2008 on 10th December, 2008, and was remanded for the first time to judicial custody on 24th December, 2008. He has given details when the accused were in Police custody. The statements of accused No.1 to 6 were recorded by the police when the said accused persons were in police custody and not in judicial custody. Accused No.13, Shabbir was arrested by Pune police after charge sheet was filed in Cr. No.242/2008. He remained in our police custody during the period 6th March, 2009 to 9th March, 2009 and thereafter he was remanded to judicial custody. Accused Nos.5 and 6 were sent to judicial custody on 23rd October, 2008. He stated that FIR No.22/2008 was registered by the ATS, Pune u/s 489 A, B and C of IPC and that there is a typing error in his affidavit. Accused Nos. A-10 and 11 were in custody in some other case after filing the charge sheet. He has stated that as far as his knowledge goes accused No.A-9 was not in custody in any other case and they had not sought police remand for accused Nos. A- 10 and 11. The confessional statements of the accused A-1 to A-6 were recorded u/s 27 of the Evidence Act. He stated that apart from Mumbai Police, he did not remember whether accused Nos. A-1 to A-6 were taken into police custody in some other case. He stated that Mr. Sharath Kumar was a panch witness in two panchnamas at page No.43 and 93, (Exhbs. PW-46/A-4 and A-10) and at page No. 105 (Exhb. PW-46/A-11). These recovery panchnamas were made by the earlier Investigating Officer. He stated that did not, therefore, know whether the said panch witnesses were summoned to the police station. He stated that PSI Shiv Prakash was working under him on the date when panchnama Exhb. PW-46/A-10 was prepared but not in respect of the case No.242/2008. On 17th October, 2008, Mr. Shiv Prakash was the Investigating Officer of the case No.242/2008. He stated that he was not the supervisory officer of Mr. Shiv Prakash on 17th October, 2008, but was entrusted with some other responsible work. He stated that he had applied for sanction for prosecution u/s 10 and 13 of the Act from the State Government and not from the Central Government. The Sanction has been filed before the Court and the same has not been filed before this Tribunal. He stated that it was incorrect to suggest that the witnesses to the pachnamas were stock witnesses.

189. The chargesheet (Exhb.PW46/A-16) along with the recovery memos shows that a number of incriminating material for making bombs/IEDs as well as inflammatory material has been recovered on the basis of disclosure statements or otherwise on search. From search of Ahmed Baba Abubakar's house at Halean ganj 20 gelatin sticks, 19 detonators and 4 timers were seized. In his statement recorded on 20th December, 2008, he has given graphic and extensive details of his involvement. For the purpose of the present enquiry this material cannot be ignored. The charge sheet has stated that each one of the 13 accused were members of banned SIMI. This charge sheet was filed after conducting a detailed enquiry by the police in FIR No. 242/2008.

**Mr. V.B.Kumbar (PW-47), Deputy Superintendent of Police, HESCOM, Vigilance, Hubli, Karnataka.**

190. He has stated that he had conducted investigation in Cr. No. 104/08 of Belgaum city, Karnataka and was conversant with the facts of this case. He stated that the house of Liyakat Ali was searched upon credible information being received and this led to seizure of a Laptop, CDs, books, passports, three mobiles, etc. He stated that the seized laptop and the CDs contained provocative material meant to cause communal disturbances and pertained mainly to Kashmir, Godra massacre, 9/11 incident, activities of Al Qaida and its leader Bin Laden, photos and literature and a forged registration certificate of four-wheeler. A suo motu case was registered and Liyakat Ali's voluntary statement was recorded. On 15th May, 2008 the accused was taken into police custody and as per his statement ATM hacking papers, one air ticket, a black handbag, hand written provocative figures and literature about Islam were seized from his house. He further stated that on 22nd May, 2008 the accused-Liyakat Ali volunteered to produce and at his instance a pen drive containing provocative information and literature was recovered from his house. He also stated that in his laptop the accused had uploaded the most barbaric scenes pertaining to Babri Mosque demolitions, Gujrat riots, Godra massacre, Mumbai serial blasts and pictures of police action on Muslim community during riots and discourses. He has stated that these pictures were seen by his co-conspirators and developed hatred towards non believers of Jihadi theory. He has stated that seven accused were arrested in this case and all of them are active members of SIMI.

191. In his cross-examination, he has stated that the Previous Investigating Officer had filed an affidavit before the earlier Tribunal presided over by Gita Mittal, J. but he had not orally deposed. He has stated that it is incorrect to suggest that the material seized has not been published or produced by SIMI and pointed out that annexures at page Nos. 28, 29, 30, and 31 were statements of two independent witnesses, who had stated that accused were connected with SIMI and reference can also be made to the statements at page Nos. 40 to 44 and 50 to 65. He further stated that before conducting the searches he did not obtain search warrant and volunteered that the searches were emergent and were required to be conducted immediately.

192. He has stated that before being appointed as Deputy S.P. Market, Sub-division Belgaon, he was working as a Deputy SP, State Intelligence Division, Bijapur and he took over investigation of this case on 18th August, 2008. He has stated that as Deputy SP, Market, Sub-division Belgaon, he had jurisdiction over P.S. APMC. He also stated that the Belgaon city was divided into two divisions and he had jurisdiction over one division. He has stated that he had not investigated Crime No.88/2008 but had arrested two of the absconding accused and had recorded voluntary statements of the two accused in the said case. He has stated that it was correct that the accused No.1, Liyaqat Ali Sayyad in Cr. No.104/2008 P.S. Market Sub-division Belgaon was an accused in Cr. No.88/2008 P.S. APMC and that Nasir, who was an accused in Cr. No.104/2008, was initially arrested in Cr.No.88/2008. He has further stated that it was incorrect to suggest that basis of complaint in Cr. No.104/2008 was similar to the complaint in Cr.No.88/2008.

193. He has denied the suggestion that the first portion of the complaint nos. Cr. No.104/2008 and 88/2008 which has been filed with the affidavit of Mr. V.A. Pujar were identical or similar. He has also stated that all the seven accused in Cr.No.108/2008 are also the accused in Cr.No. 88/2008 but it was incorrect to suggest that Cr.No. 88/2008 was registered so as to have multiple FIRs for the same crime against SIMI and in Cr.No. 88/2008 no additional evidence was added to show as if they are two separate crimes.

194. He has admitted that the statements of the two witnesses (Exhb. PW-47/A-8 and A-9) are identical except for the personal details and volunteered that the statement was recorded faithfully by the Investigating Officer and whatever was stated by the witnesses was recorded truly by the Investigating Officer. Both the witnesses were neighbours and they have stated about the same issue and subject-matter. He has denied that the seizure memos (Exhb. PW-47/A-12 and A-13) of these two witnesses were same and volunteered that the witnesses to the two seizure memos were different. He has denied that the statements and seizure memos have been fabricated and that no statements (Exhb. PW-47/A-8 and A-9) were made and no materials *vide* pachanama (Exhb. PW-47/A-12 and A-13) were recovered. He has denied the suggestion that the two statements (Exhb.PW-47/A-10 and A-11) were identical and stated that there were made by two witnesses i.e. Mr. Madan Vilas Barle and Mr. Yeshwant Bhimanna Tanilkar.

195. He has further stated that the witnesses Mr. Madan Vilas Barle and Mr. Yeshwant Bhimanna Taniikar are Hindus and the said witnesses had stated what they had seen inside the Mosque but had not heard. However, they had heard the conspirators outside the Mosque and mentioned about the same. He has denied the suggestion that during police custody Liyakat Ali Sayyed was tortured and made to sign all papers and documents or that the so called voluntary confessional statements of Liyakat Ali Sayyed have been procured illegally and that alleged incriminating material has been planted or that Cr.No.88/2008 has also been registered on fabricated material.

196. He has denied the suggestion that the statements of two accused Imtiaz Izaz Dalayat and Tanveer Abdul Sattar Mulla (Exhbs. PW-47/A-10 and A-17), were identical except for personal details and has stated that the translations of the statements had been done by him and were correct translations. He has further denied the suggestion that he had not enclosed materials seized at the time of search because there was nothing incriminating in the seized material. He has also denied the suggestion that he had no personal knowledge about investigation against Liyakat Ali Sayyed, accused No.1 and has stated that he had not got recorded any statement of the accused u/s 164 Cr.P.C. He has denied suggestion that statements of the accused recorded by him are concocted and are not voluntary statements and he had verified from the independent documentary sources that the accused were members of SIMI. He has stated that he had not filed the said independent documentary source but the accused were attending SIMI meetings. He has informed that the case No.104/2008 is pending trial and he was not aware of the stage of trial as he was no longer the Investigating Officer of the said case. He has stated that he had applied for sanction from the appropriate authority for filing charge sheet u/s 10 and 13 of the Act.

197. He has stated that there are seven accused in Cr. No. 104/2008, their names and details were mentioned on page Nos. 3 and 4 of his affidavit along with dates of their arrest. He has further stated that accused Liaqat Abdul Gani Sayyed was first sent to police custody by the Court on 15th May, 2008, and was sent to judicial custody for the first time by the order of the Magistrate 27th May, 2008; police custody was extended on 17th May, 2008, and 23rd May, 2008. He has also stated that accused No.2, Shaukat Ali Jakati was not taken into the police custody in this case but was arrested on body warrant. He has also stated that accused Nos. 3, 5, 6 and 7 - Imtiaz Abdul Izaz Dalayat, Tanveer Mulla, Nasir Liyakath Ali Patel and Nadeem Abdul Naeem Sayyed were taken into police custody for the first time on 7th August, 2008 and were sent to Judicial Custody on 8th August, 2008 and accused No.4, Dr. Munroj Uz-Jama Jamat was taken into police custody on 8th September, 2008 and was sent into judicial custody by the magistrate on 10th September, 2008, when he was produced before the Court. He has stated that after accused were sent into the judicial custody they were not remanded back to police custody and the statements of the accused persons relied upon by him were recorded while they were in police custody. He has stated that they had full power under the law to record statement and he did not know whether the said seven accused were taken into police custody in some other case.

198. Charge-sheets (Exhbs. PW47/A-12 & A-13) state that accused No. 4-Imtiyaz became an accomplice and was fully aware of the acts and objectives of the conspiracy of all accused and had physically participated in the unlawful activities of the SIMI activists.

**Mr. V.A. Pujar (PW48), ACP, Devaraja Sub Division, Mysore, Karnataka**

199. He has stated that on 27th May, 2008, the police visited the house of Nasir on the basis of credible information, conducted a search and seized a hard disc, books, computer, cables, bag etc. He has stated that the details of the hard disc were retrieved with the help of a computer expert and were found to be provocative in nature, intending to cause alarm and incite the Muslim community. It also contained provocative speeches of Osama bin Laden. He has stated that it contained the procedure of preparation of various types of bombs using different chemicals (glycerin, nitric acid, etc.) and literature regarding activities of Al-Qaida etc. He has stated that during questioning, Nasir had stated that he is a SIMI activist and revealed the names of 9 other accused persons involved in similar unlawful activities and were also linked with SIMI. He has stated that a suo motu case being C.R. No.88/2008 under Sections 153A, 153B, 124A IPC and under Sections 15 and 18 of the Act was registered against the ten accused persons. He has stated that the accused Nasir showed to them the house where the conspiracy meetings were held and where the accused used to screen provocative pictures relating to atrocities on Muslims.

200. He has further stated that accused No. 4-Imtiyaz Dalayat was arrested on 28th May, 2008 and on the basis of his voluntary statement a clock, electronic and other articles used to prepare bomb were seized from his pan shop. He has stated that on the same day, accused No.5-Nadim Abdul Nayeem Syed was also arrested and admitted that he was an Ameer (head) of SIMI. At his statement, his house was searched and a bottle of Glycerol, a white plastic bottle, a white old carry bag with broken pieces of bottle soaked with fluid and a white carry bag soaked in fluids alleged to be used for preparing crude bombs, etc. were seized. He has further stated that accused No. 10-Liyakat Ali was Abdul Gani was arrested on 9th June, 2008 and he had revealed that he is a SIMI activist and along with others had seen provocative scenes of atrocities on Muslims on the laptop and the method to make bombs to take revenge against the Hindus. He has stated that accused No. 10-Liyakat Ali showed them the houses where the conspiracy meetings were held. He has further stated that accused no.2-Izaz Gulam Hussain Khan was arrested on 4th July, 2008; accused No. 6-Thavir Mulla had been arrested on 2nd August, 2008 and he had revealed that he was a SIMI member and along with other SIMI activists had prepared to execute bomb blasts in Tilakwadi area in Belgaum on the State Assembly election day and pursuant to his statement, three



CDs and a cylinder were seized from his place. He also stated that accused No. 7-Iqbal Ahmed was arrested on 4th August, 2008 who disclosed that he was the Ameer (Head) of SIMI in Belgaum. He stated that accused No. 8-Dr. Munroj Uz Jama was a key accused in this case, his presence was secured on body warrant dated 26th September, 2008 and he had revealed involvement of all accused who were members of SIMI. He further stated that presence of accused No. 9-Mohamed Asif D, was secured on body warrant dated 27th September, 2008. He has stated that accused No. 3 and 11 were absconding while the remaining accused were in judicial custody. He has further stated that accused No. 11-Naseer was arrested on 27th October, 2008 and he produced a Nokia 1100, IMEI No. 35569200/051697/6 with SIM card No. 98440 82415. He has also stated that accused No. 15-Naveen was arrested on 27th October, 2008 and he had produced a passport and a Nokia handset during his voluntary statement.

201. In his cross examination, Mr. V.A. Pujar (PW-48) has stated that he had deposed about the case No.88/2008 P.S. APMC, Belgaon before the earlier Tribunal. He did not get statement of the accused recorded u/s 164 Cr.P.C. He has stated that the accused No.1, Nasir S/o Liaqat Ali Patel was also an accused in the case No.104/2008 PS Belgaon City. He has denied that the accused No.1, Nasir was first arrested in the case No.104/2008 and volunteered that he was first arrested in case No. 88/2008. He has stated that seven of the accused persons in FIR No.88/2008 were also the accused in the FIR No.104/2008 but denied that FIR No. 88/2008 was registered on the information furnished by the police investigating the FIR No.104/2008 or that FIR No.88/2008 was registered to have multiple cases against the accused. He has stated that Mr. V.V. Kumbar was not his superior officer in the present case, Mr. V.V. Kumbar had also investigated the present case; after he was transferred. Mr. V.V. Kumbar had become head of the said division and in that capacity Mr. V. V. Kumbar had investigated. He has denied the suggestion that the seizure memos are fabricated and no such seizures were made.

202. The statements (Exhb. PW-48/A-15, Exhb. PW-48/A-16 and Exhb. PW-48/A-17) have been correctly recorded and state what was stated by the witnesses and denied the suggestion that the fact that the statements were identical show, that they had been fabricated.

203. He has given details of when the accused had remained in Police custody.

204. He has further stated that out of the eight alleged confessional statements the statement of accused No.1, Mr. Nasir dated 28th May, 2008 was recorded after his arrest, when he was in judicial custody. He has stated that he had taken sanction for prosecution of the accused u/s 10 and 13 of the Act from the State Government but copy of the sanction was not attached with his affidavit. He has confirmed that the panch witnesses for the said four seizure memos are the same persons. He has denied that the panch witnesses in Exhb. PW-48/A-4, 11, 13, 14, 19, 21 and 22 were common. He has further denied that the witnesses to the panchnamas were stock police witnesses and they were used to fabricate records/recoveries.

205. Testimony of PW-48 has extensively referred to the recoveries made on search and on the basis of disclosure statements. The recoveries include inflammatory and provocative material for raising communal passions and exhorting persons to resort to violence. Material also includes method for preparation and use of RDX explosives, biological and chemical warfare. The chargesheet further states that many of the accused were members of SIMI and were actively propagating ideology and objectives of SIMI.

**Mr. H. M. Omkariah (PW-49), Assistant Commissioner of Police, Sheshadripuram Sub-Division, Bangalore**

206. He has stated that on 25th July, 2008 a series of bomb blasts had occurred in Bangalore and investigation of cases was entrusted on him. He has further stated that during the course of investigation, the involvement of SIMI activists, has come to light. The details of cases/FIRs are as under :

**Madivala P.S. Cr. No. 483/08, 1ST ACMM Court C. C No. 23444/08**

On 25th July, 2008 at 1.20 pm, PI Madivala P.S. received information that an explosion took place at a bus stop near Madivala check post on Hosur Road. On reaching the spot, PI Madivala P.S. noticed six persons who were badly injured. PI Madivala P.S. also learnt that similar bomb blasts were reported in other parts of Bangalore within a span of one hour. PI Madivala P.S. registered a suo moto case in Cr. No. 483/08.

**Adugodi PS Cr. No. 217/08, 1ST ACMM Court, C. C No. 11803/09**

On 25th July, 2008 at 1.30 pm, PI Adugodi P.S. received information that an explosion took place on footpath on Hosur-Laskar Road near Adugodi textile bank. On reaching the spot, PI Adugodi P.S. noticed a person who was badly injured. PI Adugodi P.S. also learnt that similar bomb blasts were reported in other parts of Bangalore within a span of one hour. PI Adugodi PS registered a case in Cr. No. 217/08.

**Koramangala P.S. Cr. No. 297/08, 1st ACMM C.C No. 11134/09**

On 26th July, 2008 at 11 am, PI, Koramangala P.S. received an information that an unexploded live bomb was lying near a shop. On reaching the spot he noticed a flower pot containing a bomb attached with wires. Accordingly a BDDS squad visited the spot and diffused the bomb. PI, Koramangala P.S. registered a case Cr. No. 297/08.

**Ashokanagar P.S. Cr. No. 260/08, 1ST ACMM Court C. C No. 12270/09**

On 25th July, 2008 at 2.10 pm, one Vasudev Pujari filed a complaint with the police to the effect that on 25th July, 2008 at 1.30 pm there was a big explosion near Adugodi drainage located nearer to his hotel, which caused injuries to two persons. Therefore Ashoknagar Police registered a case in Cr. No.260/08.

Ashokanagar P.S. Cr. No. 261/08, 1ST ACMM Court C. C No. 12271/09

On 25th July, 2008 at 2.20 pm, one Sri. Sandeep Ged filed a complaint with the police to the effect that on 25th July, 2008 between 1.30 p.m. to 1.40 p.m. there was an explosion in front of his shop i.e. in the middle of the flower pots kept in front of his shop. Therefore Ashoknagar Police registered a case in Cr. No. 261/08.

Sampangiramanagar P.S. Cr. No. 92/08, 1ST ACMM Court C. C No. 12272/09

On 25th July, 2008 at about 3.00 pm, one Sri Ravindran Kanakraj filed a complaint with the police that near Rajarama Mohan Ray Circle, there was a big explosion which has caused injuries to him and to other persons. Therefore Sampangiramanagar Police registered a case in Cr. No. 92/08.

Bytarayanapura P.S. Cr. No. 314/08, 1ST ACMM Court C. C No. 11729/09

on 25th July, 2008 at about 1.50 pm, PI, Bytarayanapura PS, received an information that an explosion took place in front of Papanna Building, Pantharapalya, Mysore Road. On reaching the spot he noticed stone slabs which covered the drainage in front of Papanna Building were broken due to the explosion. Therefore Bytarayanapura P.S. registered a case in Cr. No. 314/08.

Bytarayanapura P.S. Cr. No. 315/08, 1ST ACMM Court C. C No. 11782/09

On 25th July, 2008 at about 1.40 pm, one Shri. Mahaveer Mehta, while he was riding his Honda Activa near premier irrigation office on Mysore Road, heard a blast and a bolt like thing hit his helmet and damaged its glass. He parked his two wheeler and went near the transformer in front of the said office and informed the Police. Accordingly, PSI Shri Manjunatha, Bytarayanapura P.S. registered a case in Cr. No. 315/08.

Kengeri PS Cr. No. 177/08, 1ST ACMM Court C.C No. 11799/09

On 25th July, 2008 at about 1.00 pm one Shri R. Vinayprasad stated that he has heard a loud blast sound in the corner of Concorde Motors, Mysore Road. He further stated that he initially took it to be tyre burst but later he noticed smoke coming out and then he realized it to be a bomb blast. He therefore requested Police for necessary action. Accordingly PI, Kengeri P.S. registered a case in Cr. No. 177/08.

207. Mr. H. M. Omkariah, ACP has stated that all these cases were later transferred to Central Crime Branch, Bangalore city.

208. He has further stated that all the accused persons were identified by the witnesses and were active members of SIMI and due to the ban, they had associated themselves with another outfit called as "Indian Mujahideen" to carry out their terrorist activities. He has further stated that investigation has also revealed that SIMI/its activists were operating in the name of organizations like Khizentul Kutubul Islamia, Wahadat-e-Islami and Ansarullah.

209. He has further stated that accused-Abdul Madani started Islamic Seva Sangh (I.S.S.) at Kerala and organized public gatherings. In those gatherings he delivered provocative speeches against Hinduism, about Godhra and the Babri Masjid issue. Another accused namely, Abdul Naseer inspired by the speeches became his follower. Accused Abdul Madani gave certain books to accused-Abdul Naseer to read and follow them and therefore the latter under the influence of the books started an organization called as "Sil-Sila-Noorlisha-Tharikath" with the help of other co-accused. Accused No. 3-Sarfaraz Nawaz was a top most/key SIMI activist.

210. He has stated that in the year 2005 the said accused had conspired to engineer the bomb blasts in Bengaluru and in furtherance of this conspiracy they had arranged for assistance and organized training camps in order to carry out Jihad activities. He further stated that in furtherance of this conspiracy the accused No. 3-Sarfaraz Nawaz had conducted a survey of the city of Bengaluru in the year 2008 and selected the locations to plant the bombs. He has stated that they had committed theft of explosive substances and conducted secret meetings and motivated the other said accused to get involved in Jihadi activities. He also stated that the accused had collected and stocked explosive substances in the house of accused No. 5 before transporting the material to other locations. Accused No. 14 was sent to Pakistan on forged documents for training. He stated that further meetings were held between 22nd June, 2008 to 25th June, 2008 at Aishwarya Tourist Home, Kerala to prepare advanced timer and micro chips to conduct serial bomb blasts at various parts of India including Bengaluru. He further stated that in furtherance of the said conspiracy and in order to execute serial bomb blasts in Bengaluru city accused No. 12-Abdul Raheem had obtained a house at Bommasandra, Bengaluru on rent basis to carry out unlawful activities and to achieve the objective of the conspiracy. He has further stated that during the course of investigation it was revealed that the accused assembled explosives in the house of Accused No. 7-P. Mujeeb and made live bombs, loaded them in a car and planted one live bomb at the Bus Stop near residential quarters of St. John's Hospital, Bengaluru on 24th July, 2008 between 03.30 a.m. to 06.30 a.m.; later on 25th July, 2008 at 1.20 p.m. the bomb exploded resulting in death of one, injuries to five, damages and caused loss of public property. He further stated that similar bomb blasts took place within a span of about one hour in Kormangala, Adugoddi, Ashok Nagar, Sampangiramanagara,

Byatarayanapura and Kengeri police station limits in Bengaluru city. He has stated that accused No. 4-Sarafuddin had voluntarily and wilfully deleted the data stored in the hard disc of the computer kept in his shop situated at Kondatty and damaged the hardware used for committing bomb blasts thereby causing disappearance of evidence. He further stated that the accused No. 1-T. Naseer fled the country with the aid of accused no.3-Sarfāraz Khan, accused No. 22-Wali, accused No. 23-Ali and accused No. 25-Saleem after the execution of the bomb blasts. Accused No. 1- T. Naseer, accused No. 19-Safaz, accused No.27-Sarfuddin, accused No. 28-Thajuddin, accused No. 29-Abdul Khadar, accused No. 30-P.B. Saabeer were arrested. He has stated that voluntary information was provided by accused no.1-Naseer.

211. In his cross-examination he has stated that he had filed the charge sheet in the said cases but charge is yet to be framed and the statements of accused had not been recorded u/s 164 Cr.P.C..He has stated that it was incorrect to state that alleged confessional statements (Exhb.PW-49/A-10) were concocted and were not given by the accused or to suggest in the alternative that the statements (Exhb.PW-49/A-10) had been taken under force, coercion and threat. He has denied the suggestion that statements of witnesses were identical except for minor variation/differences and he had faithfully recorded the said statements; it was incorrect to suggest that statements of witnesses had been fabricated.

212. Exhb. PW49/A-13 was described by PW49 as a calendar or a diary maintained by accused no. 14- Fiaz. PW49 was extensively cross-examined on Exhb.PW49/A-13. The said calendar/diary is hand written in Malayalam language. Mr. H.M Omkariah (PW49) has stated that he had asked Mr. Suresh Kumar the panch witness and father of accused no.14-Mr.Abdul Rahman who had confirmed that this was an appointment diary/calendar and their statements have been filed before the criminal court. It was put to the witness that Exhb.PW49/A-13 contains statements about Islamic practices in Quran and other texts and 99 names of Allah or Prophet Mohammad in Malayalam and Arabic. The witness had stated that he does not know Malayalam. The said document has been translated and as per the translation the contention of Mr. Ashok Aggarwal, advocate is apparently correct. However, the said document (Exhb.PW49/A-13) also has a sticker of SIMI with the words "Ayodhya to Jerusalem the jehad will go on" and two masjids can be seen in the background and there are words written in Urdu also.

213. He has stated that the statements in annexure J to M (Exhb.PW-49/A-10) were recorded under Cr.P.C. when the accused were in police custody. He has stated that after recording of the statements, the accused remained in police custody for the purpose of recovery etc. He has stated that copy of the books and CDs have been filed before the Court and it was incorrect to suggest that he had not filed copy of books and CDs before the Tribunal because there were nothing incriminating in the said books and CDs or that the said material did not show connection of accused with SIMI. He stated that list of members of SIMI has not been mentioned in the books or CD seized by him. He further stated that there was evidence of the witnesses as well as the documentary evidence to prove and establish that the accused were all members of SIMI and the documentary evidence is in form of Exhb.PW-49/A-13 along with the voluntary statements of the accused. He stated that Exhb.PW-49/A-13 was the only document to connect the accused with SIMI. He has stated that during the course of investigation and inquiries and on the basis of statements of witnesses, he came to the conclusion that IM was a front organization of SIMI. He volunteered that he had filed the said statements (Exhb.PW-49/A-12) before the Tribunal.

214. He stated that averments made in page 7 of his affidavit at point A, wherein he has mentioned the names of organizations like Khizental Kutubul Islamia, Wahadat-e-Islami and Ansarullah were based upon his personal knowledge and on the basis of investigation and inquiries made by him. He has stated that he had not visited the office of the said organizations and that he was not aware whether the said organizations were registered or who were the office bearers of these organizations. He stated that he did not have copy of the list of members of these organizations. He stated that his personal knowledge was based upon his inquiries, meetings with his seniors and interactions with police officers. He stated that he had visited the office of Sil-Sila-Noorlisha-Tharikanth and investigated this organization. He stated that this organization was started by accused No.1 in Thail of Kannur City in 1996 but he was not aware whether a branch office was started in Thail or the organization itself come into existence. He has stated that he had only visited Thail office of the said organization and as far as he was aware this organization was wound up by the accused persons after their arrest without any legal formalities being completed for winding up. The door of the building from where the organization was functioning was closed. He has stated that he was not aware whether Sil-Sila-Noorlisha-Tharikanth was an existing religious organization in 1977, i.e. the year, when SIMI was started or whether this organization was banned. He has stated that he had not charge sheeted Mohd. Ali, Javed Ali, Noushad and Abubakar as accused. On being asked whether he had filed a 'B report', he stated that initially, he had conducted the investigation and did not find these four persons involved in his case.

215. I am not inclined to disregard the statements of Mr. H.M. Omkariah (PW49) on the ground that he had partly misunderstood the document (Exhb.PW49/A-13). PW49 does not know Malayalam. Anyone familiar with Malayalam would have known the answer which was obvious. Statement of witness with regard to the said document appears to be partly correct but this does not imply that the entire statement of PW49 should be ignored as untruthful and unreliable. It is difficult to believe that the sticker in the document (Exhb.PW49/A-13) was printed prior to 2001 but had remained with Fiaz till 2009. The sticker is of SIMI and there is no dispute about the said fact.



**Mr. Jagadish Basalingappa Khot (PW-50), Deputy Superintendent of Police, Bijapur Sub Division, Karnatka**

216. He has stated that he was conversant with the facts and circumstances of Crime No. 260/2008 as he was entrusted with the investigation of this case at Bijapur Golgumbaz P.S. On 4th December, 2008 PSI M.K. Dhamannavar and his staff found that some miscreants had pasted provocative pamphlets containing slogans such as "OUR STRUGGLE FOR FINAL & COMPLETE SUPREMACY OF ALLAH INVOLVES BABRI MASJID TOO.....". He stated that the said pamphlets were seized and a suo motu complaint was filed by PSI M.K. Dhamannavar based on which Cr. No 260/2008 was registered against unknown persons. He further stated that during the course of investigation 15 accused persons were arrested.

217. He has stated that six accused were arrested on 19th December, 2008 along with Accused no.1-Shaan-e-Karim and approximately 70 handbills were seized from their houses while the following articles were seized from A1's home: a black Nokia 1600 mobile IMEI No. 356957/01/978506/03 and Spice SIM No. 9844240360, a chocolate coloured diary, 80 CDs containing provocative material against Hindu religion, a Samsung company flat computer monitor, key board, speaker 4.1 woofer, 1 mouse, UPS, a CPU-LG along with hard disc, CDs and 25 provocative handbills, one CPU with nothing on the hard disc, two Quran books.

218. Mr. J.B. Khot (PW-50) has also stated that the CDs that were seized from Shaan-e-Karim revealed provocative slogans such as: "Six feet of earth makes all men equal (IBT)" along with a map of America which shows demolition of New York building by an aeroplane, "Allah is our Lord. Mohammad is our commander. Quran is our Constitution. Jihad is our Path. Shahadat is our desire (IBT)", "Islam will dominate the world (IBT)", "The world is red by Muslim Blood", some pictures of the Gujarat incidents and the Malegaon incident in which pictures of the demolished Masjid and burning of Quran are shown. He has stated that investigations revealed that Shaan-e-Karim was a dental student, an active member of SIMI since 2000, had organized many functions for SIMI in Bijapur, many cases had been registered against him and he was Iqvan (Head) of SIMI in 2000-2001. He also stated that Shaan-e-Karim had continued his illegal activities for SIMI under the name of Student Islamic Movement (SIM) to escape the clutches of law. He further stated that during the course of investigation he had recorded the statement of Sri Channu who was working as watchman in Model Golgumbaz and the masjid building attached to it. He stated that Shri Channu had seen Shaan-e-Karim (accused no.1) come to the masjid along with 8-10 persons to conduct a meeting where he said that he had got printed some handbills which he wanted to exhibit at conspicuous places. He also stated that 3 other accused were arrested on 20th December, 2008 and these accused had burnt the provocative material they had as they came to know of the arrest of Shaan-e-Karim.

219. In his cross examination, he has stated that his entire affidavit is based upon annexure 13 (Exhb.PW-50/A-13) and has denied the suggestion that the document at page 56 has been downloaded from the internet. He has stated that he has brought the original with him. Some originals have been filed. They have not been down loaded from the internet. The posters read "our struggle for final and complete supremacy of Allah ....involves Babri Masjid too....". He has also stated that IBT stands for Islamic Book Treasurer which is a library in the house of accused no.1-Shaan-e-Karim at Bijapur. He has stated that he was not aware whether this library was at other places also.

220. He has stated that in the document (Exhb.PW-50/A-13), it was not mentioned that the said document was published by SIMI or connected to SIMI but volunteered that the accused no.1-Shaan-e-Karim was a SIMI activist and this document was recovered from his residence and he was distributing similar documents and was creating hatred and disturbing harmony between Hindus and Muslims. He denied that A1 was a member of SIMI prior to 27th September, 2001 and stated that he was and still is a member of SIMI. Further Shaan-e-Karim in his statement, (Exhb.PW-50/A-11), had stated that he was a member of SIMI since 2000 and had not quit SIMI in 2001. He also stated that the other accused were connected with SIMI. He has stated that he was aware that 6th December is observed as a protest or a black day by many organizations. He has stated that the panch witness were from the locality.

221. He also stated that he was appointed as an Investigating Officer on 2nd January, 2009 and even prior to the said date, he was supervising the investigation and had examined the documents and papers. He stated that he was the Sub Divisional Police Officer and, therefore, investigation was conducted under his supervision. He also stated that voluntary statements (Exhb.PW-50/A-15 to A-18) of the accused were recorded when the said accused were in police custody but the same were not recorded u/s 164 Cr.P.C. He has stated that he had taken sanction for prosecution u/s 10 and 13 of the Act.

222. He has stated that on the basis of official records he had prepared a chart (Exhb.PW-50/D-2) about the date of arrest of the accused, dates or periods on which they had remained in police custody or were permitted to remain in police custody, the date on which they were transferred and remanded to judicial custody for the first time. He further stated that the accused No.1, Shaan-e-Karim was taken in police custody after the court order dated 9th January, 2009 and for interrogation on 10th January, 2009. Shaan-e-Karim remained in police custody till 15th January, 2009 and on that date itself was sent to judicial custody. He stated that he was aware that police of Gandhi Chowk P.S., Karnataka had taken police custody of the accused Shaan-e-Karim but he did not know the exact date. He has stated that voluntary statements were recorded when the accused were in police custody and not in judicial custody and the other accused were not taken into police custody after they were remanded to judicial custody.

**Mr. S.S. Khot (PW-51), Dy. Superintendent of Police, Shiggaon Sub-Division, District Haveri, Karnataka**

223. He has deposed that when he was working as the Deputy Superintendent of Police, Special Enquiry Squad – COD, Bangalore. On 30th January, 2008, a complaint was lodged vide Cr. No. 14/08, Gokul Road P.S., against the accused Mohammed Asif D for speeding a motorcycle and he did not have ownership papers. It was suspected that motorcycle was stolen. He has stated that the investigation of this case was handed over to him thereafter and during the course of investigation it was revealed that the said accused along with others was involved in the unlawful activities of SIMI. The role played by each arrested accused is as follows:—

Accused no.1-Mohd. Asif D. an active member of SIMI and participated in conspiracy meetings of SIMI activists was a medical student who along with Accused no.6-Alla Bhaksh and Accused no.7-Mirza Ahamed Baig had participated in conspiracy meetings aimed at Islamisation of the world by means of Jihad in April 2007. The accused had prepared hand grenades using gelatin sticks and detonators. He was found in possession of four revolvers and rounds. Two witnesses revealed that Mohd. Asif D. along with other arrested accused nos. 6 and 7 have deliberated to destroy the important installations in India, uproot Indian economy, etc.

Accused no.2-Raziauddin a SIMI activist had contacts with Arab countries and had visited Saudi Arabia in Aug 2005 and from there he went to Pakistan and got terror training with LeT and ISI for about one year. He also learnt handling various weapons such as AK-47, LMG, HMG, grenades, using IED and preparation of explosives. He had returned to India on a fake passport with Accused no.3-H.A. Asadulla to identify/ target places to explode bombs and was involved in committing theft of motorcycles to be used in bomb blasts.

Accused no.3-H.A. Asadulla participated in training camp organised by SIMI activists in December 2007 in Kerala had committed motorcycle thefts from various places along with Accused no.2-Raziauddin and had also purchased a Maruti car to be used in serial bomb blasts.

Accused no.4-Hafeez Hussain Mulla had provided financial assistance to purchase vehicle, wireless sets, air pistol etc. for the illegal activities of SIMI.

Accused no.5-Shakeel Ahamed, a SIMI member who participated in conspiracy meetings of SIMI at different places was also involved in committing theft of motorcycles to be used in terrorist activities. The motorcycles were seized from him.

Accused no.6-Alla Bhaksh a SIMI supporter had arranged for rented houses at Hubli city for SIMI activities and incriminating books were seized from him.

Accused no.7-Mirza Ahamed Baig was an accomplice of Accused no.1-Mohd. Asif D. and was also involved in purchase of Maruti car for SIMI activities.

Accused no.8-P.A.Shibly and most of his family members were SIMI activists.

Accused no.9-Yahya Iyash Kammukutti, at the time of his arrest had in his possession incriminating books, CDs, laptop and invitation pamphlets to attend SIMI meeting.

Accused no.10-Safdar Hussain Nagori, was General Secretary of all India SIMI in 2001 and was also a topmost SIMI functionary who had decided in a SIMI meeting to avenge the Babri Masjid Demolition, Gujarat Riots and the Krishna Commission Reports. He had also attended SIMI conspiracy meetings and training camps.

Accused no.12-Syed Sadiq Sameer Abdul had with him provocative literature in Urdu, Nokia mobile phone and a personal diary. He had attended SIMI conspiracy meetings.

Accused no.13-Kamruddin was a staunch follower of Accused no.10-Safdar Nagori and 7 country pistols and 45 rounds were seized from his possession.

Accused no.14-Mohd. Yasin was an active member of SIMI and pursuant to his statement a fake number plate of a Maruti Car was seized.

Accused no.15-Mohd. Ansar was a close follower of Accused no.8-P.A.Shibly and had participated actively in SIMI ideology meeting at Aluva and other conspiracy meetings.

Accused no.16-Dr. Munroz Zama had in his possession a country made pistol which was later given to Iqbal Jakati. It was revealed in course of the investigation that he is the key accused in the case No. 14/2008 and had organized conspiracy meetings in his house along with other co-accused.

Accused no.17-P.A. Shadoli had attended SIMI conspiracy meetings and training camps.

224. Mr. S.S. Khot (PW-51) has further stated that the accused had held conspiracy meetings of SIMI between April 2007 and December 2007 at various places where conspiracy was hatched to avenge and eradicate all non Islamic religions of the world through Jihad. In furtherance of their objectives, three two wheelers were stolen and one old maruti

car and a motorcycle were purchased. He has stated that accused no.2 was trained in Pakistan with the assistance of LeT and ISI. He was trained for handling weapons like AK-47, LMG, etc. and preparation of bombs using chemical substances. He has also deposed that in another case-Cr. No. 05/08 the accused Asadulla along with accused Raziuddin on 11th January, 2008 were caught under suspicious circumstances along with a stolen motor cycle, six fake number plates and two fake I.D. cards. Later on they revealed they were members of SIMI.

225. In his cross-examination he has stated that Sayyed Nayeem was not an accused in the charge sheet but his name finds mention in the sanction order Exhb.PW-51/D-1 and volunteered that in the sanction order itself it was mentioned that there was no evidence against Sayyed Nayeem and, therefore, his name, was left out from the charge sheet.

226. He has stated that the criminal case is now fixed for appearance of the accused on 17th July, 2010 but the statements of accused have not been recorded u/s 164 Cr.P.C. He has stated that he did not have a list of SIMI members and had not verified whether accused were shown as members of SIMI in any list.

227. He has stated that NARCO tests were conducted after taking permission of the Court but no consent in writing was taken from the accused. He has stated that he was aware that Dr. S. Malini, who had conducted the NARCO tests, has been suspended but was not aware whether she has been dismissed or whether she had submitted fake educational qualification certificates. I am not relying upon the NARCO test reports.

228. He has stated that the documents, books and records seized have been filed in the Court and they had not kept copy of the book at Serial No. 4 (Exhb.PW51/A-4). He has stated that the other materials seized were laptop, pen drive etc. He has stated that they did not keep copy or printout of the said laptop, pen drive etc. He has denied the allegation that he had not filed copy of the seized documents (Exhb.PW-51/A-4) as there was nothing incriminating or illegal in the said material. He has stated that he had sent books/documents which were seized for verification/translation as they were in Urdu and other languages and he had not received report till/when he was transferred. He has stated that book, which was seized, has details of publisher and author; he had not verified from author and publisher whether the book was banned. He has volunteered that he was conducting investigation on other aspects till he was transferred. He has stated that a booklet, namely, "Liberation of India through Islam" and the pamphlet "Nationalism or Khilafat" which were seized were both published and issued by SIMI. He has further stated that keeping of this material in 2008 was an offence and in this case the accused who were found with these two booklets, were also found instigating other youths to join SIMI and to be part of their activity. He has stated that he did not know the exact number of recoveries made in Cr.No 5/2008 as he was not the Investigating Officer in the said case.

229. He has stated that he has brought a chart (Exhb.PW-51/D-2) giving dates of arrest of the accused, the date on which the accused was produced before the Court for the first time after arrest, the periods during which the accused remained in police custody and the date on which the learned Trial Court for the first time had remanded the accused to judicial custody. He has stated that he was not aware whether police from any other police station had asked for and taken police custody of the accused after they were remanded to judicial custody. He stated that he did not remember whether he had taken separate permissions for sanction/prosecution under Cr.P.C. and u/s 10 and 13 of the Act. On being asked if he had the entire records of Cr. No. 5/2008 he had stated that he had copy of the FIR, some seizure panchnamas and some of the statements of accused in Cr. No.5/2008 and some other documents. He has stated that the file of Cr. No.5/2008 was clubbed with file of Cr.No.14/2008. He has stated, on the basis of voluntary statement of accused Raziuddin (Exhb.PW-51/A-11) at page No.103, that the father of Raziuddin i.e. Mohd. Nasiruddin was arrested by Gujarat police in connection with assassination of Mr. Haren Pandya. He has stated that he was not aware whether Mohd. Nasiruddin has been acquitted of the case against him.

230. He has stated that the statement of Asadullah was recorded on 27th January, 2008 in Cr.No.5/2008 and in the said statement Asadullah had mentioned that he and his friend Asif used to keep Islamic fundamental and jihad books and used to read them and Raziuddin Nasir used to encourage them and used to state that he was a SIMI activist and he had contacts with Lashkar-e-Toiba (LeT) and DJS, Hyderabad and other organizations. He had also stated that he had gone to Pakistan for training.

231. He has stated that he did not know the total number of seizure memos in Cr.No.5/2008 and as per the records available with him the seizure memos had been signed by three witnesses, namely, Mr. Chandershekar, Mr. C.H.Nagappa and Mr. Anappa.

232. He has denied the suggestion that records and statements in Cr.No.14/2008 have been fabricated to implicate SIMI and the accused or that the ban on SIMI was coming to an end in February 2008 and just before the ban was to expire, the case was fabricated. He has stated that he had not come across any application filed by Raziuddin Nasir in which he had stated that he had not made any voluntary statement before the police and has denied the allegation that there was no material except the so called voluntary statements to connect the accused to each other. He has further stated that he was not aware whether accused No.1, 5, 6, 12, 3, 7 and 9 have filed any applications before the Principal District and Session Judge, Dharwad stating that they have no connection with SIMI. He has stated that gelatin and other explosive material were recovered from the open place and volunteered that the material was hidden in the open place in the forest area and that gelatin is used for stone cutting in Karnataka.



233. It is clear from the statement that FIR no. 14/2008 P.S. Gokulroad was registered on 30th January, 2008 under Section 379 IPC r/w S. 41(1)(3) read with 102 Cr.P.C. as Mohd. Asif D. was unable to explain about ownership and produce documents of the motorcycle, he was driving. He had stated that his friend Asadullah and Mohd. Gauz know about the motorcycle and on search their photographs were also recovered from the Mohd. Asif. The motor vehicle was seized. Subsequent interrogation of Mohd. Asif revealed that he was involved with others in unlawful activities and was a member of SIMI.

234. FIR no. 14/2008 therefore cannot be rejected on the ground that the said FIR initially was not registered under the Act and there were no allegations about unlawful activity or SIMI in the said FIR. Asadullah and Mohd. Gauz @ Raziuddin were arrested on 11th January, 2008 in FIR No. 5/2008 registered at P.S. Honnali. They were arrested while driving a motorcycle without proper papers. On search one black bag was found with bunch of keys of other motor bikes, ID cards, knife, some money including dollars, etc. PW51 along with the affidavit has not filed FIR No. 5/2008 P.S. Honnali and other documents. Contention of Mr. Ashok Aggarwal, advocate is that this was deliberately done and is intentional. PW-51 has explained that he was not the Investigating Officer of FIR 5/2008 P.S. Honnali, though in his cross examination he has admitted that he had procured copy of seizure memos as they were relevant. The witness has stated that several motor cycles were stolen by the accused and the details are given at page 46 of this affidavit. Contention of Mr. Ashok Aggarwal, advocate was that this is factually incorrect and wrong. The charge sheet does mention about the seizure of motor cycles in column nos. 1, 11, 14, etc. Moreover no such suggestion was given to PW-51. This question should have been put to the witness to enable him to answer the same.

235. Subsequently, FIR No. 5/2008 P.S. Honnali was clubbed with FIR No. 14/2008 P.S. Hubli and a chargesheet was filed by the Investigating Officer-Subash Chandra. This was done after PW-51 was no longer the Investigating Officer in the said case.

236. It was submitted that FIR No. 14/2008 was false as the accused was later on able to submit ownership papers. As per the FIR no. 14/2008 at the time when the motor cycle was stopped, the accused was not able to produce ownership papers. Therefore, at that time, the FIR was rightly registered as per the averments made therein. There is recovery of incriminating materials from the accused.

#### ANDHRA PRADESH

**S. Srinivas Rao (PW-52), Inspector of Police, P.S. Octopus, Hyderabad, Andhra Pradesh**

237. PW-52 has stated that SIMI was formed at Aligarh, U.P. on 25th April, 1977. Professor Mohammad Ahmadullah Siddiqi was the founding President of the outfit. He has stated that objectives of SIMI are : (1) governing human life on the basis of Quran, (2) propagating Islam, (3) Jihad for the cause of Islam, (4) destruction of nationalism and establishment of Islamic rule. He has further stated that organisation believe that (1) Allah is our lord, (2) Rasool is our commander, (3) Quran is our holy book, (4) Jihad is our path, (5) Shahadat is our desire. This organisation is working for an international Islamic Order, publishing and circulating posters and literatures, which were designed to incite communal feelings.

238. He has stated that reports have been received from Spl. Branch, Hyderabad and other agencies which in his opinion were secret and confidential and shall be produced before this Tribunal. He has further stated that enquiry was conducted and it was revealed that there were several sympathizers and activists of SIMI in Hyderabad. He has stated that SIMI activists have joined various other organisations like D.J.S, T.T.S.I. and Indian Mujahideen in order to hide their identity. Their individual testimonies and other aspects are being discussed below.

239. He has stated that in view of the second anniversary of Mecca Masjid Bomb blast, on 18th May, 2009 police personnel were placed on picket duty when Tahreek Galba-e-Islam Organization attacked the picket, opened fire and injured two police personnel and ran away. Accordingly, CR.No. 2/2009 was registered.

240. CR.No. 01/2009, P.S. Octopus, was registered on 3rd December, 2008, when accused Vikar Ahmed @ Viqaruddin opened fire on the police party and simultaneously one of his accomplices also opened fire. Guru Rama Raju, Head Constable got injured. Vikar Ahmed @ Viqaruddin was caught but in the scuffle managed to escape but police snatched pistol of Vikar Ahmed @ Viqaruddin from his hands. He has stated that the weapon which the accused were carrying was used to commit crime in the case of CR.No. 157/2009, P.S. Falaknuma and CR.No. 87/2010, P.S. Hussain Alam.

241. The ballistic expert after examining the rounds seized in both cases observed that they were of similar elemental composition and as per the scrape marks, chamber marks were present on the bullets and cartridges.

242. Accused Vikar Ahmed @ Viqaruddin was a close associate of Moutasim Billa, brother of Late Mujahed Saleem-a SIMI activist and an active member of Jamait-e-Islami and he was also close associate of Baleequaddin, T.S.S.I. President and also accused in Haren Pandyan murder case. He has further stated that in May, 2007 Safdar Nagori visited Hyderabad and stayed in the house of Abdul Aleem Isalahi. He has stated that accused Vikar Ahmed @ Viqaruddin gave a hard disk to Jaber, Yaser and Moutasim Billa, accused in Gopalapuram case, which was handed over to Safdar Nagori.

243. He has stated that the accused-Vikar Ahmed @ Viqaruddin has many friends of Jihadi mentality and they incited communal feelings and carried out disruptive activities in Hyderabad effecting communal harmony. He has further stated that even after the imposition of ban, the activists of SIMI were continuing to propagate their ideology and activities.

244. In his cross examination, he has stated that he had become the Investigating Officer of the FIR No. 157/2007 (Exhb.PW-52/A-1) on 22nd June, 2009. Prior to 22nd June, 2009, Inspector, Police Station, Falaknuma was the Investigating Officer of the FIR (Exhb. PW-52/A-1) and later on investigation was transferred to special investigation team. Special investigation team is not part of P.S. Octopus. He has stated that he had read the case diary of the investigations conducted by the earlier Investigating Officer but had not enclosed the entire copy of the police file/record with his affidavit. He has stated that a cartridge casing of the bullet falls out from a pistol when it is fired. He has denied the suggestion that the FSL report (Exhb.PW-52/A-7) does not corroborate that the cartridge and the bullet used were not from the seized pistol.

245. He has stated that he was not aware whether the cartridges/bullets were hand-made or standardized factory made or whether factory manufactured bullets have the same elemental composition for every batch. He has denied that observations made at page 47 (Exhb. PW-52/A-7) in the FSL report merely refers to the marks caused by the firing pin and the barrel marks but do not relate to the mark caused by a specific/particular weapon and do not indicate that a specific/particular weapon was used. He has denied the suggestion that there was no connection between Case No. 1/2009 and Case No. 2/2009 of P.S. Octopus and has stated that the FSL report shows that the two cases were inter-connected. He has stated that no one has been arrested in case No. 2/2009.

246. In support of the averments made in para 7 of his affidavit that accused were members of SIMI, he has stated that one of the evidence is the confessional statements (Exhb.PW-52/A-8). Other than these confessional statements there was no other material. He has stated that these two confessional statements (Exhb. PW-52/A-8) were recorded prior to registration of FIR No. 2/2009, P.S. Octopus. He has stated that he had not recorded these statements or witnessed the said statements. He has denied the suggestion that there was no connection between his case and the case in which the confessional statements (Exhb.PW-52/A-8) were recorded. He has stated that the secret material referred to in paragraph 4 of his affidavit, which has come from various inputs, would be produced before the Tribunal by the Nodal Officer. He was relying upon the same.

247. He has stated that DJS and TTSI have not been banned and have been in existence for many years. He has denied the suggestion that averments made in paragraphs 8 and 9 of his affidavit about SIMI were without any basis and were incorrect. He has stated that he was not the Investigating Office in Crime No. 87/2010, P.S. Husain Alam but had been involved in the investigation of the said case as he had sent information that the same accused were involved in the said cases. He has denied the suggestion that FSL report has not been received in Crime No. 87/2010 and volunteered that he was aware that FSL report has been received in Crime No. 87/2010.

**Mr. P. Devender (PW-53), Inspector of Police, P.S. Saidabad, Hyderabad :**

248. He has stated that on 5th March, 2008, absconding accused- Moutasim Billa, associate of SIMI activist-Mr. Yasar was arrested near his house in CR.No. 198/2007, P.S. Gopalapuram. After sometime lady family members and active member of SIMI women wing under the leadership of Ms. Huma Islahi, alongwith Tasneem Fatima, SIMI sympathizer formed themselves into an unlawful assembly and attacked the said Police Station. Four police persons were injured and damage was caused to Government property. CR. No. 73/2008 was registered and 22 ladies were arrested. Case is pending trial.

249. He has stated that this was a rare case in India where SIMI militant activists organized their lady activists and attacked the police. SIMI continues to work covertly and their cadre is active and exists in Hyderabad city.

250. Words on the posters published by SIMI support PAN Islamic Fundamentalism, use derogatory languages for other religions and exhorted Muslims in the name of Jihad. He stated that even after the ban, SIMI is operating under various frontal organisations like Tanzim Islahul Muslimeen, Inter Services Intelligence, Laskar-E-Toiba, I.M.M.M., Al-Umma, Darsgah-E-Jehad-O-Shahadat, Jamait-E-Islamic-Hind, Islami Dawath Mission etc.

251. In his cross examination, he has stated that charge has been framed and the case is fixed for trial. He has further stated that he is aware that his predecessor had filed an affidavit before the earlier Tribunal in respect of this case. He has stated that as per the official records, accused were members of SIMI. Again said that the investigation records of this case do not state that the accused were members of SIMI. He has stated that there was no such information in the official records of this case to support the averments made in paragraph 1 of his affidavit at point 'A to A'. Voluntarily stated that this averment is as per his knowledge while working in the Department and as per intelligence sources of the police.

252. FIR No. 73/2008 was registered after some ladies attacked police station and damaged the same and indulged in stone throwing. The FIR shows that it was not registered under the Act. The charge sheet was also not filed under the Act. During cross-examination, Mr. P.Devender (PW-53) admitted that there was no material on record connecting this case to SIMI. It is however stated that Ms. Zile Huma is sister of Moutasim Billa, who is a SIMI activist and she is an active member of SIMI woman wing. It is further stated that on 5th March, 2008, one Mr.Yasar, a SIMI activist and a close associate of Moutasim Billa was arrested and therefore the protest was organized. These facts are not mentioned in the FIR or in the charge sheet. These are not part of the official records. In these circumstances, I am not relying upon evidence of PW-53.

**Mr. S. John Wesley (PW-54), Inspector, P.S. Octopus, Hyderabad, Andhra Pradesh**

253. On 3rd December, 2008, Mohd. Jaffer, Head Constable (HC) made a statement before Shri Srinivas Rao, SI, stating that he along with D. Kashim had kept a discreet watch on a suspect- Vikar Ahmed @ Viqaruddin. Suspect Vikar Ahmed came out from V.V.R. Communication located in I.S. Sadan X Road after making a phone call. Surveillance team tried to catch him but Vikar Ahmed opened fire on the police party simultaneously with one of his accomplices, as a result of which Guru Rama Raju, HC sustained bullet injury in his stomach. Mohd. Jaffer, HC caught hold of the pistol of Vikar Ahmed and snatched it from his hands. In the meantime, suspects' associates came in support of Vikar Ahmed and took him on the motorcycle and escaped towards Champapet side. Injured constables were shifted to hospital.

254. He has stated that in this case the accused Vikar Ahmed was a close associate of Moutasim Billa, brother of Late Mujahed Saleem-a SIMI activist and active member of Jamait-e-Islami and he was also a close associate of Baleequaddin, T.S.S.I. President and an accused in the Haren Pandyan murder case. In May, 2007, Safdar Nagori had visited Hyderabad and stayed in the house of Abdul Aleem Isalahi. He has stated that accused Vikar Ahmed gave a hard disk to Jaber, Yaser and Moutasim Billa, accused in Gopalapuram case, which was handed over to Safdar Nagori.

255. He has stated that accused Vikar Ahmed @ Viqaruddin has many friends of Jihadi mentality and they used to incite communal feelings and carried out disruptive activities in Hyderabad effecting communal harmony. He has further stated that even after the imposition of ban, the activists of SIMI were continuing to propagate their ideology and activities.

256. In his cross examination, he has denied the suggestion that there is no basis or material to make statements against SIMI in paragraph Nos. 2, 5, 6 8 and 9 of his affidavit. He has stated that these averments have been made on the basis of intelligence reports that his Nodal Officer would file before the Tribunal.

257. He has stated that he became the Investigating Officer of Crime No.1/2009 on 16th June, 2009 after a part of the investigation was complete. He has stated that a pistol and not a revolver, was seized in the present case and was handed over by the complainant to the Investigating Officer; some cartridge casings were also seized from the scene of offence. He has denied the suggestion that FSL report does not connect the accused to the offence. He has stated that the FSL report refers to country made pistol used by Mr. Vikar Ahmad @ Vikaruddin, which was seized from him and gives opinion as this was one of the weapons used by the accused. He has stated that he has relied upon the confessional statements apart from his independent investigation and inquiries that reveal that the accused were members of SIMI. He has admitted that the confessional statements (Exhb. PW-54/A-8) were not recorded in Crime No.1/2009, P.S. Octopus and volunteered that they were recorded in Crime No. 198/2007, P.S. Gopalapuram. He has stated that the statements (Exhb. PW-54/A-8) were recorded prior to the date of the incident/occurrence, subject matter of FIR No. 1/2009 but he had not recorded and was not a witness to the confessional statements. He has denied the suggestion that the statements (Exhb. PW-54/A-8) have no connection with his case and have been filed solely to prejudice the Tribunal. He has volunteered that these statements were by the accused, who are connected with his case.

**K. Srinivasa Rao (PW-55), Inspector of Police, Special Investigation Team, Hyderabad City Police, Hyderabad, Andhra Pradesh.**

258. He has stated that on 31st October, 2004, one Moulana Mohd. Naseruddin, President of T.T.S.I. was arrested by Gujarat Police. A non-bailable warrant was issued by POTA court, Ahmadabad in CR.No. 12/2003. He has stated that during execution of warrant, the followers of Moulana Mohd. Naseruddin protested and attacked police personnel and tried to take away the arrested accused. He has further stated that five accused were arrested and were produced on PT warrant.

259. He has stated that charge sheet has been filed against Moutasim Billa and Mohd. Shakeel on 29th May, 2008 and trial was yet to commence. Charge sheet was also filed on 3rd June, 2008 against Raziuddin Naser in Juvenile Court and trial was yet to commence. Similarly, against accused Muqemuddin Yaser and Baleeghuddin Jaber charge sheet was filed on 9th December, 2009.

260. He has stated that accused-Moutasim Billa in CR.No. 882/2004 P.S. Saidabad, confessed on 18th March, 2008 and 29th April, 2008 that his father is the member of Jamat-e-Islami Hind and has actively participated in their programmes all over the India. Number of activists namely Zia Ur-Rehman of Aurangabad, Sajid Shehrai of Rajasthan, Dr. Anees of Lucknow, Safdar Nagori of Bhopal, Saheed Badar Falahi and Abdul Bashir of U.P. used to come and meet his father. When they would come to Delhi, he and his brother Mujahid Saleem used to meet them being the members of SIMI. Accused has further stated that one Ms. Ayesha and Ibrahim of Al Umma who were accused in Coimbatore blast in 1998 came to Hyderabad and his brother gave them shelter though he knew about the blast case. Due to the involvement of Salim Mujahid, SIMI activist, his father shifted him to Hiwandi in a secret place and his father spoke to Abdul Rehman's wife who is the sister of Sayeed Salahuddin, Ex SIMI, All India President Cadre. Since his brother's name did not figure in the charge sheet, they brought him to Hyderabad and he surrendered in Hyderabad. Accused-Moutasim Billa further stated that they went to Cuttack and met Meem Naseem, Murshad of one Masjid and gave him some pamphlets and from there they went to Jharkhand and thereafter to Patna and met Hasseb Raza, SIMI Zonal President and had lunch in his house. Confessional-cum-Seizure Panchanama of Mohd. Muqemuddin @ Yasar was also recorded in CR.No. 198/07, P.S. Gopalapuram in which he has stated that his family, Moulana Abdul Aleem Islahi's family and Shaik Mahaboob's family were activists and



supporters of SIMI which advocates the liberation of India by converting it into Islamic Land and to establish Dar-ul-loom by converting everyone into Islam either forcibly or by violence. He also stated that after the ban of SIMI in January, 2001, (\*sic, September, 2001) all the cadres of SIMI joined the TTSI.

261. On 1st November, 2004 the funeral procession of Mujahid Saleem, who was SIMI activist and was killed in firing by Gujarat Police, was in progress under the leadership of Shaikh Mahaboob Ali, President of D.J.S., activist of T.T.S.I. and SIMI consisting of about 2000 processionists, became violent and suddenly attacked the police party with iron rods and stones. They also tried to set fire to the police vehicle and due to this many vehicles were badly damaged. In this case, 13 accused were arrested and 21 were absconding. Charge sheet was filed on 28th May, 2008 and trial was yet to commence.

262. He has stated that confessional statement of accused Moutashim Billah which was recorded in CR.No. 41/2004, P.S. Saidabad in which he has stated that in the year 2006 during Ramzan, SIMI activist-Subhan came to Hyderabad to meet them and stayed at Ek Minar Masjid, he and Jaber went to Subhan and discussed about the funds of SIMI. Accused has also confessed that in the first week of May, 2007 Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan came to their Madarsa in Saidabad, had discussion with his father and with him and later went to the house of Moulana Naseeruddin and stayed in their house. They had discussion about the division of SIMI into two groups.

263. He has stated that CR.No. 1037/05, P.S. Hyderabad was registered and it was a case of criminal conspiracy which occurred on 12th October, 2005 in which one suicide bomber by name Dalin-a native of Bangladesh rushed into the Task Force office at Begumpet and exploded himself resulting in the death of one Home guard-Sri Satyanarayana and damage to the office building. As all the officers were on *bandobust* duties due to Dusherra festival, major casualties were averted. In this case ten accused were arrested and remanded to judicial custody while the ten other accused are absconding. Charge sheet has been filed on 12th March, 2006.

264. He has stated that in his confessional statement accused Mohd. Abdul Kaleem recorded, has stated that he was a staunch follower of Moulana Naseeruddin (T.T.S.I.) and was inspired by his speeches in Mosques. This accused had confessed that he came in contact with Mujaid Saleem ( a SIMI activist) who convinced him to take part in Jehadi activities and in order to take revenge for killing of Mujahid Saleem, he along with suicide bomber Dalin planned to attack the Task Force Office at Begumpet and successfully completed the task.

265. CR.No. 213/2008, P.S. CCS/SIT, Hyderabad was registered and in this case Shri P.V.Muralidhar, Inspector of Police, P.S. Gopalapuram, investigated and recorded confessional statement of accused Baleeghuddin who was arrested in CR.No. 198/2007. Accused-Baleeghuddin had confessed that he was an active member of SIMI who actively participated in Jehadi activities and he had selected Ananthagiri Forest near Vikarabad to wage war against the Government.

266. In CR.No. 87/2010, P.S. SIT, Hyderabad, on 14th May, 2010, Hyder Baig, ASI of P.S. Kamatipura, PC 9884 of P.S. Hussainialam and HC 627, PCs 811, 868, 649 and 1077 of APSP were on Picket duty at Volga Hotel 'T' Junction, Himmathpura because of Friday prayers. After prayers, the civil PC 9884-G. Santha Rao and APSP PC 649 U.-Ramesh remained at the picket. Two unknown persons had come on a two wheeler and fired three rounds on them with a short weapon as a result of which PC 649-U. Ramesh received bullet injuries and died. "Tahreek Galba-e-Islam" a terror group claimed the responsibility of killing the constable as a revenge of bomb blast at Mecca Mosque on 18th May, 2007. The case is under investigation.

267. Consequently to series of attacks on Police, one Home guard was shot dead and a police constable sustained bullet injuries vide CR.No. 157/2009, P.S. Falaknuma and in the present case where a police constable was shot dead in CR.No. 87/2010 P.S. SIT, Hyderabad. Earlier, a Head Constable had sustained bullet injuries in CR.No. 358/2008, P.S. Kanchanbagh, while nabbing Vikar Ahmed.

268. In all these three cases a cartridge of 7.65 mm were used in the commission of the offences. Discreet enquiries and investigation revealed that Vikar Ahmed who was an active member of DJS and a supporter of SIMI, was the mastermind behind these incidents.

269. PW-55 has deposed about FIR Nos. 882/2004, 410/2004, 1037/2005, 213/2008 and 87/2010. FIR Nos. 882/2004 and 410/2004 were not relevant as such. However, Moutashim Billah, an accused in the said FIRs was arrested and his statements were recorded on 18th March, 2008 in FIR No. 882/2004 and 29th April, 2008 in FIR No. 410/2004. These confessional statements have been placed on record along with affidavit (Exhb.PW55/A) and include in detail the modus operandi and the manner in which he had operated during this period, the persons he had met and what he had done. He has also stated about his involvement with SIMI and other members of SIMI during this period. These statements have been enclosed along with the affidavit.

270. FIR No. 213/2008 was registered on 23rd September, 2008 in P.S. Central Crime Station. This FIR has been registered suo motu on the basis that during investigation of FIR No. 198/2007, P.S. Gopalapuram credible information was received about absconding accused-Baleeghuddin. A perusal of the FIR would indicate the same records as what has been stated by Moutashim Billah in his statements. He has stated that accused Baleeghuddin stated that his family, Moulana Abdul Aleem Islahi's family and Shaik Mahaboob's family were activists and supporters of SIMI which advocates the liberation of India by converting it into Islamic land and to establish Dar-ul-loom by converting everyone into Islam either forcibly or by violence. Also stated that after the ban of SIMI in 2001, all the cadres of SIMI joined the T.T.S.I. The accused has confessed that in the first week of May, 2007, Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan came to Hyderabad to have a discussion on SIMI and later went to Jaber's house along with Abdul Aleem Islahi and his son Moutashim Billah where he and his brother Yaser were present and they all discussed about spreading of Jihad. Jaber handed over some CDs, audio cassettes, hard disks and literature prepared by him to Safdar Nagori. The material was initially given to him by Vikar Ahmed.

271. During the visit of Safdar Nagori, Qamruddin Nagori and Hafeez Hussain, Subhan, informed them that Abdul Aleem Islahi, Moutashim Billah, Yaser, Jaber and others had conducted a Jihadi training camp at Karnataka State in April, 2006 and they had planned to conduct more camps at Kerala, M.P., Gujarat and Hyderabad. They requested for arrangements of all logistic support to conduct the said camps. Accordingly, Jaber along with his brother Yaser, Moutashim Billah and others searched for various places for the camp and finally selected Anathgiri forest area of Vikarabad near Hyderabad.

272. The said FIR is still under investigation

273. FIR No. 87/2010 was registered in respect of the incident dated 14th May, 2010 when at about 4.00 p.m. two unknown persons came on a two wheeler and suddenly fired two rounds on a police picket after the Friday prayers. Mr. U.Ramesh received bullet injuries on his chest and back side of his left waist and left fore-arm. He was declared brought dead by the hospital. Tehreek Galba-e-Islam, a terror group had accepted responsibility for murdering these policemen as a revenge for killing of Muslims by firing on 18th May, 2007 at Mecca Masjid. A poster/communication in this regard warns the Government of Andhra Pradesh that they should arrest and punish all policemen who had participated in the firing and had ordered the firing by death penalty or their revenge would continue.

274. The case of the police from the State of Andhra Pradesh is that the three attacks/killings which are subject matter of Crime no. 1/2009 P.S. Octopus and Crime no. 87/2010, Hussainialam, P.S. SIT have been committed by the same persons using a similar weapon. Reliance is placed upon FSL report (Exhb.PW55/B-1) dated 16th June, 2010 which was filed on a question being put by Mr. Ashok Aggarwal, advocate. Thus it is the case of the police that the accused-Viqaruddin, who is a close associate of Moutashim Billah was involved in these crimes. This witness has stated that Moutashim Billah was not arrested for four years as he was absconding and therefore not arrested in the two FIRs registered in the year 2004.

**Mr. V.N.V. Satyanarayana (PW-56), Deputy Superintendent of Police, P.S. Octopus, Hyderabad, Andhra Pradesh.**

275. Mr. V.N.V. Satyanarayana (PW-56), Dy. Superintendent of Police, OCTOPUS, Hyderabad, Andhra Pradesh in his affidavit has stated that he had investigated Crime No. 1/2008, 2/2008 and 3/2008 which were re-registered with P.S. OCTOPUS. He has stated that on 25th August, 2007, two bomb blasts had occurred inside the Lazerium Lumbini Park, Hyderabad resulting in the death of 12 persons and seriously injuring 21 others. On the said date, another bomb blast occurred in Gokul Chat Bhandar, Koti, Hyderabad resulting in the death of 32 persons and injuring 47 others. Initially FIRs were registered under Sections 302, 307 and 120(B) IPC and Sections 3 and 5 of the Explosive Substance Act by the concerned Police Station before the investigation was handed over to P.S. OCTOPUS. On the basis of the investigation conducted later on, Section 121A IPC and Sections 13, 16, 18, 19 and 20 of the Act were added. FIR No.2/2008, P.S. OCTOPUS was registered in respect of an unexploded bomb which was located near the foot over bridge at Dilsukhnagar, Hyderabad. It is stated that the provisions of the Act were added on the basis of confessional statements of witnesses, panchanamas, seizure reports, emails, etc.

276. As per the investigation Indian Mujahideen was responsible for the said offences. He has stated that these members were/are from ex-SIMI cadre and include Riyaz Bhatkal @ Roshan Khan @ Aziz @ Ahmed Bhai s/o Akrami Bhatkal, Iqbal Bhatkal @ Mohammed Bhai s/o Akrami Bhatkal, Mohd. Sadique Israr Ahmed Shaik @ Yaseer @ Imran and Amir Reza Khan (presently absconding), Anik Shafique Sayeed @ Anique @ Khaled @ Ashfaq, Mohd. Akbar Ismail Chowdhari @ Sayeed @ Yakub @ Vinod Patil and Farookh Sharfuddin Tarkash @ Abdullah are close followers of Riyaz Bhatkal. They entered into conspiracy to wage war against the State and create disharmony amongst the communities by bomb blasts in crowded places. They also wanted to take revenge for the blast in Mecca Masjid, Hyderabad in May, 2007. The details of the seven arrested accused have been given and it is stated that they are all ex-SIMI activists. The affidavit

sets out the entire modus operandi which was adopted to plant the said bombs. It is stated that as per the interrogation of the arrested terror suspects, a close link was found amongst Lashker-e-Taiba (LeT), Indian Mujahideen (IM) and SIMI. He has alleged that Mohd. Sadiq Shaikh, an ex-SIMI member has been attending terror training camp of LeT in Pakistan via Bangladesh border and on return has recruited ex-SIMI members who were also trained in explosives and other materials. He was acting on the instructions of Amir Raza Khan based in Pakistan. He has further stated that Riyaz Bhatkal, Iqbal Bhatkal and Sadiq Israr Shaikh are the active members of SIMI. Along with the affidavit (Exhb.PW-56/A), he has filed seizure panchanama (Exhb.PW-56/A-4) wherein it is recorded that Anique Sayeed, who had taken them to the premises at street no.8, Habsiguda, Hyderabad on 11th February, 2009 and led them to an open duct located on western side of the terrace from where left over materials after preparation of bombs were recovered and to another property being flat no.320, premises no.5-61, Banjara Nilayam, street no.8, Vivekananda Nagar, Habsiguda, Hyderabad from where books containing details of payment/collection books were recovered. Mr. V.N.V. Satyanarayana (PW-56) has filed some other seizure panchanamas as well.

277. Mr. V.N.V. Satyanarayana (PW-56) in his affidavit has filed the interrogation report (Exhb.PW-56/A-5) of Mohd. Mansoor Peerbhoy, a resident of Pune. The allegation made is that Mohd. Mansoor Peerbhoy was responsible and instrumental for sending the e-mails at the time of Mumbai Bomb Blasts, Ahmedabad blasts and Delhi blasts.

278. Copy of the chargesheets and the FIRs filed in the three cases have also been examined. Exhb.PW-56/A1 to the affidavit (Exhb.PW-56/A) is the statement of Shri Naveed Ahmad recorded under Section 164, Cr.P.C. before the Metropolitan Magistrate for Railways (Secunderabad). He has stated how he met Mohd. Anique at Pune and when he came to Hyderabad, he had shown Mohd. Anique around the various prominent places at Hyderabad city and the place where computer training could be taken. Shri Naveed Ahmad has stated that Mohd. Anique had bought a second hand mobile phone for which a SIM card was purchased on his identity papers. Mohd. Anique stated that he was leaving for Pune. The said witness-Shri Naveed Ahmad had stated that he had met Anique, Farooq and Akbar in Pune who then informed him that explosions had taken place in Hyderabad and they were responsible for the said blasts. Mohd. Anique had told the said witness that after meeting him in Hyderabad, he had not returned to Pune but had taken on rent a two bed room flat in Habsiguda, Hyderabad and Akbar had stayed with him. Both of them took admission in Doom Technology in Ameerpet. Riyaz Bhatkal had joined them in Hyderabad and guided them in planting bombs, etc.

279. Proceedings of TIP (Exhb.56/2A) has been placed on record. Mohd. Anique was recognized/identified in the TIP by three witnesses. There are two statements of Mohd. Sadiq Israr Ahmed Shaik. Statement (Exhb.PW-56/A-3) dated 14th April, 2009 was recorded by M. Dayananda Reddy, Inspector of Police, OCTOPUS. The earlier statement of Mohd. Sadiq Israr Ahmed Shaik dated 4th April, 2009 has also been placed on record and is marked Exhb.PW-56/D1. This statement was recorded by Mr. V.N.V. Satyanarayana (PW-56). Mr. Ashok Aggarwal, advocate has submitted that the two statements are substantially the same except for one material para pertaining to role of Riyaz Bhatkal and Ansar Ahmed Badshah Shaikh. It was accordingly submitted that the statements are therefore unreliable. The said para reads as under:—

"In pursuance of the conspiracy hatched by me, Riyaz Bhatkal and Ansar Ahmed Badshah Shaikh at the house of Anwar at Cheetah Camp, Mumbai, Riyaz Bhatkal and his team did blastings in Hyderabad on 25-8-2007. Later I came to know that the members of the Riyaz team, Anbique Shafique Sayyed, Akbar Ismail Chaudary and Riyaz Bhatkal went to Hyderabad and committed the blastings."

280. I have examined the said para. The aforesaid para may be relevant in the criminal trial but as far as this Tribunal is concerned in both the statements dated 4th April, 2009 (Exhb.PW-56/D1) and 14th April, 2009 (Exhb.PW-56/A-3), the material allegations are the same. Mohd. Sadiq Israr Ahmed Shaikh has stated that in 1996 while he was working in Godrej Company, he was impressed with the programme taken up by SIMI and he used to attend the weekly meetings along with several others including Riyaz Bhatkal. In these meetings they used to discuss current issues, Quran, Hadis, Jihad. He had also attended a SIMI camp in 1996-97 and he felt the emotional plight of the Muslims. Subsequently, he felt that SIMI was not taking up any activity and he started staying away from the said meetings.

**Dr. R. S. Praveen Kumar (PW-57), Joint Commissioner of Police, Special Branch, Hyderabad, Andhra Pradesh**

281. This Nodal Officer has referred to several FIRs from 2001 onwards till 2010. These FIRs have been also relied upon by other witnesses. He has however stated that the accused in Crime no. 198/2007, P.S. Gopalpuram have been acquitted.

**GUJARAT**

**Mr. Narayansinh Bhavansinh Parmar (PW-41), ACP, Surat, Gujarat**

282. He has stated that between the period of 27th July, 2008 and 9th August, 2008, 29 live bombs were found from different places in Surat. Two Wagon-R cars bearing forged numbers were also found loaded with bombs and explosive substances. In all, 15 cases have been registered in different Police Station and investigations were handed over to him. The accused in these 15 cases are common and almost identical charge sheets have been filed. Therefore one charge sheet in CR. No. 176/08 of P.S. Kapodara, Surat was being filed before the Tribunal.



283. He has stated that bombs were planted in thickly populated areas frequented by Hindus which had created a tense situation in Surat. An e-mail 'Rok Sako To Roklo' was sent through media with an intention to create hatred and communal tension. He has further stated that circulation of e-mail in the media was a pre-planned criminal conspiracy of the newly formed Indian Mujahidin. During the course of investigations of 15 cases, total no. of 54 accused persons have been arrested and 27 were still absconding. 93 charge sheets including supplementary charge sheets were filed and submitted before the Spl. Designated Court at Mirzapur, Ahmedabad. He has stated that SIMI is against Indian nationalism and aims to replace it with the International Islamic Order. He has also stated that SIMI is continuing with activities in the State. Earlier PS Athwa, Surat had registered CR. No. II 442/02 in which it is stated that SIMI activists held a seminar under a leadership of Ata Ullakhan Rehman Qureshi, resident of Saharanpur, U.P. In this case 132 accused were involved and out of these 127 were arrested and 5 are absconding. He has further stated that 6 out of these 132 accused of this case were involved in the 35 cases of bomb blast registered in Surat and Ahmedabad. Accused Sajid Mansuri resident of Surat is in the in list of absconders and is a key accused in Surat bomb plantation cases. The case is still pending trial.

284. The said witness has been extensively cross-examined on the three e-mails (annexure V to the affidavit and collectively marked Exhb.PW-41/A-6). He has stated that the Mumbai police had done investigation in respect of the three e-mails. It is apparent from his cross-examination that he was not aware and fully conscious about the investigation carried out in respect of the e-mails. His cross-examination reveals that he was uncertain even about the dates on which the said e-mails were sent. However, the dates of the respective e-mails are available and is a matter of record. These e-mails are not in dispute. The dates on which these e-mails were sent cannot as such be disputed as it is a matter of common knowledge. The I.P. addresses from where these e-mails were sent are a matter of record. In his cross-examination, he was asked questions in respect of Ken Heywood. It is the contention of the Central Government that Ken Heywood's wi-fi internet was hacked to send the e-mail dated 26th July, 2008. This witness was re-examined on behalf of the Central Government. In the cross-examination he has clarified the dates when the three e-mails were sent. Mr. Ashok Aggarwal, advocate had objected to the same and submitted that the witness was tutored about the dates of e-mails during the lunch break. This may be correct but to my mind this makes no difference as the dates on which the e-mails were sent cannot be disputed and are matter of record.

285. PW-41 has also filed truncated statement of star witness 'S' at pages 1419-1425 (Exhb. PW-41/A-8). This statement of star witness 'S' has been recorded by PW-41. It is also stated that a similar statement was also recorded by a Magistrate under Section 164, Cr.P.C. Certified copy of the said statement under Section 164 has not been filed on record. On an application filed by the Central Government, a request order was sent to the Magistrate in Gujarat but the statement under Section 164 Cr.P.C. has not been filed. Mr. N.B. Parmar (PW-41) has stated that he does not remember whether he has recorded the statement of the star witness 'S' in Gujarati or in English.

286. PW-41 has stated that SIMI got funds through donation, membership fee and financial assistance provided from Gulf Countries. Fundamentalist outfits like the Pakistan based Hizb-ul-Mujahideen and Lashkar-e-Toiba have penetrated into SIMI cadres to achieve their goal. In spite of the ban on SIMI, its activists organised a camp in December, 2007 at Wagaman Forest in Kerala State where training programme in firing practice, preparing petrol bomb, pipe bomb, swimming etc. was undertaken.

287. He has stated that the leaders of SIMI Gujarat such as Arif Kagzi, Sajid Mansuri, Kayamuddin Kapadia, Yunus Mansoori and the office bearers at national level Safdar Nagori, Kamruddin Nagori, Abdul Subhan etc. organised a training camp in January, 2008 in the forest of Halol-Pavagadh, Gujarat.

288. In the charge sheet it is alleged that the accused intended to take revenge for destruction of Babri Masjid and atrocities committed on Muslims during the Gujarat riots. They wanted/want to establish Islamic shariat rule. Accordingly, with the intention to spread terror and disturb law and order situation, they had taken resort to bomb blasts. They wanted to destroy the peace, prosperity, integrity and sovereignty of the country. Some of the accused were active members of SIMI which is a terrorist organisation and banned by the Central Government. Members have gathered together as Indian Mujahideen which is a new form of SIMI.

289. He has further stated that SIMI emphasises on the formation of Shariat based Islamic rule through Islamic Inqalab.

**Ms. Ushaben Bachubhai Rada (PW-42), S.D.P.O. Kalol, Gandinagar, Gujarat**

290. On 26th July, 2008, a series of bomb blast occurred in various areas of Ahmedabad which resulted in death of 56 persons and grievous injuries to 240 persons. In all 20 FIRs were registered at various Police stations. She has further stated that two major public hospitals were also targeted. Till date 64 persons have been arrested and others were absconding. During the interrogation of these accused it was found that members of SIMI and its new form Indian Mujahidin had played

a pivotal role in executing these blasts. She has stated that investigation of 6 cases out of 20 cases were given to her. She has stated that the accused were members of SIMI and to mislead their actual identity they had worked under the new name of Indian Mujahidin.

291. She has stated that inspite of ban on SIMI, the accused in order to carry out their illegal activities had convened meetings at Ahmedabad and different cities of Gujarat and jehadi speeches were made. In these meetings members were given training by showing videos, CDs, demonstrations how to prepare bombs etc. They entered into a conspiracy. She has stated that the accused in the 20 cases were common and the charge sheets were similar. She has stated that the charge sheet in CR.No. 236/08 was filed along with the affidavit of Mr. V.R. Toliya.

292. She has stated that SIMI got funds through donation, membership fee and financial assistance provided through Gulf Countries. Fundamentalist outfits like Pakistan based Hizb-ul-Mujahideen and Lashkar-e-Toiba has penetrated into SIMI Cadres to achieve their goal. He has further stated that organisation emphasises on the formation of Shariat based Islamic rule through Islamic Inqalab. Some of these accused were also involved in cases of unlawful activities in different States. Imposition of ban on SIMI is legally justified.

293. In the cross-examination, Ms. Ushaben B. Rada has denied the suggestion that the accused are not part of the conspiracy and members of SIMI. She has stated that the official records support this averment that accused were members of SIMI. She has denied the suggestion that SIMI is not a terrorist organization, that SIMI is not functional and operational or that she had added the name of SIMI to create fear in the minds of the public or for propaganda purpose to show that the police has solved cases in which members of SIMI were involved. She has denied the suggestion that she had stated that Indian Mujahideen and SIMI are same organization, to support the continued ban on SIMI.

294. Ms. Ushaben B. Rada (PW-42), was recalled for further cross examination after PW-44, Mr. Mayur Jagmalbhai Chavda had stated that she had investigated the e-mails with Mumbai Police. She was extensively cross examined on Ken Heywood. She has stated that Ken Heywood's system was unsecured and the log of the wi-fi system was disabled. But as per the investigations, the e-mail from Ken Heywood's wi-fi was sent by hacking the wi-fi. Even if the log of wi-fi system of Ken Heywood was disabled, investigation could have revealed whether it was hacked or not. As per Ms. Ushaben B. Rada (PW-42), Ken Heywood wi-fi was hacked for sending the e-mail.

**Mr. Vinod Ramjibhai Tolia (PW-43), ACP, 'A' Division, Ahmedabad, Gujarat.**

295. Mr. Vinod Ramjibhai Tolia (PW-43) has stated that on 26th July, 2008, a series of bomb blasts had occurred in different parts of Ahmadabad City between 18.15 hrs to 19.45 hrs which resulted in death of 56 persons and grievous injuries to 240 persons. He was the Investigating Officer of the 7 cases out of the 20 cases, which were registered after the blasts. As per his investigation, the accused involved in the blasts, some of whom have been arrested and others, who were absconding, were members of SIMI and they were trying to mislead their actual identity therefore they worked under the new name of Indian Mujahidin. He has stated that 64 accused have been arrested. He has stated that SIMI has re-grouped itself in the new form as Indian Mujahidin and has played a pivotal role in executing these blasts. He has proved on record the 3 e-mails sent by Indian Mujahidin. Two emails refer to SIMI and state that Indian Mujahidin is not associated with SIMI. At the same time, one newspapers has been threatened not to carry out untrue and deceptive propaganda about SIMI. The e-mails have been discussed separately. The FIRs in 7 cases have been proved on record as Exhb. PW-43/3. As per the said witness, he has during the course of investigation and interrogation of the accused formed an opinion that SIMI arranges for his finances from donations, membership fee and financial assistance from time to time from the supporters from Gulf countries, Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Members of SIMI are a group of students and youths and some of them are influenced by hard-core Muslim terrorist organizations including Pakistan based Hizbul-Mujahideen and Lashkar-e-Toiba. He has stated that the investigation revealed that SIMI activists had arranged camps in December, 2007 at Waghamon, Kerala and in January, 2008 in the forest of Halol Pavagadh, Gujarat for imparting training. In these camps jehadi speeches were delivered and physical training to use bombs and explosive material was given. These camps were used for delivering brain washing speeches and inciting Muslims against the secular spirit of the country. He has filed on record two panchnamas dated 27th August, 2008 and 17th November, 2008. Panchnama dated 27th August, 2008, states that the accused Jahid Kutubuddin Sheikh had taken them to the spot where on 13th, 14th and 15th January, 2008, a jehadi camp was organized in which several persons including Safdar Nagori, Kamruddin Nagori, Arif Kagzi etc. had given provocative speeches. He has also showed them the places where the persons who had come for training had stayed. The second panchnama is on the basis of the statement of Rafiyuddin Sarifuddin Kapadia, which is also on the same lines. He has stated that a camp was held on 13th, 14th and 15th January, 2008 in Pavagadh forest area in which Safdar Nagori and others had given provocative speeches. He had pointed out the places where the persons who had come for training had visited and stayed.

**Mr. Mayur Jagmalbhai Chavda (PW-44), ACP, Crime Branch, Ahmedabad, Gujarat**

296. Mr. Mayur Chavda (PW-44) is the Investigating Officer of 7 out of 20 cases registered after the Ahmedabad bomb blasts. He has reiterated what Mr. Vinod R. Tolia (PW-43) has stated. He has also relied upon the statements of witnesses which were recorded by him but has truncated names and details of the witnesses. He has relied upon the charge-sheet filed by Mr. Vinod R. Tolia (PW-43). He has denied that the statement of witnesses under Section 164, Cr.P.C. were recorded after pressurizing and threatening them. He has also denied that after the bomb blasts a number of persons were illegally detained. He has stated that he had not investigated the matter pertaining to hacking of Ken Heywood's wi-fi/computer.

297. Mr. Siddhrajsinh Bhati (PW-45), Dy. Inspector General of Police, CID (Intelligence Bureau), G.S. Gandhinagar, Gujarat is the Nodal Officer. He has stated that after the bomb blast 20 cases were registered in Ahmedabad city and after recovery of unexploded IEDs in Surat, 15 cases were registered in Surat city. In this case, SIMI activists have been arrayed as accused and in most of the cases the accused are common. He has stated that 14 cases were registered before 7th February, 2008 against SIMI and in one case there has been conviction and in two cases accused have been acquitted. 11 cases are pending.

298. In his cross examination he has denied that the accused in the cases mentioned at serial nos. 9, 12, 13 and 14 of Annexure 4 (Exhb.PW-45/A-4) do not relate to SIMI activists. He has however stated that he does not have personal knowledge. He has denied that case at serial no.10 was not connected or related to SIMI. However, he has stated that he does not know whether the case at serial no.11 is connected with serial no.10. Cases at serial nos. 1-6 are prior to the first ban on SIMI on 27th September, 2001.

**MADHYA PRADESH****Mr. B.P.S. Parihar (PW-58) Investigating Officer of the FIR No.12 dated 27th March, 2008**

299. Mr. B.P.S. Parihar (PW-58) is the Investigating Officer of the FIR No.12 dated 27th March, 2008 registered under Sections 122/124A/153A IPC, Sections 3, 10 and 13 of the Act and Sections 24/27 of the Arms Act, police station Pithampur Distt. Dhar, M.P. He has stated that on 26th March, 2008 information was received that a meeting had been convened by Safdar Nagori, Chief of SIMI at Silver Oak Factory situated in the forest of Pithampur. A police team was sent to raid the place but by the time they reached the place the meeting was over. A newspaper 'Maqtaal' in Urdu language published from Calcutta was found at the spot. On the basis of leads, a raid was conducted at Shyam Nagar, Indore in the house of Gaffar Khan Bakerywala. SIMI Chief Safdar Nagori and 12 other persons were found and following seizures were made:—

- (i) Accused-Safdar Nagori : 1 pistol 7.65 mm with 7 live cartridges, Cellphone, cash of Rs. 11,800/-, 3 masks and 4 books written in Urdu language with wrist watch mobile charger, one gunny bag containing 122 explosive gelatin rods, 100 detonators, documents/papers etc.
- (ii) Accused- Hafiz Hussain: 1 pistol 7.65 mm with 5 live cartridges, Cellphone, cash Rs. 3,000/-, visiting card in the name of D.M. Akhtar, 4 books written in Urdu language, black mask, mobile charger, wrist watch.
- (iii) Accused-Amil Parvaz: 1 pistol 7.65 mm with 5 live cartridges, Cellphone, cash Rs. 2,000/-, black coloured mask, 4 books written in Urdu language, wrist watch, mobile charger, Rexene bag etc.
- (iv) Accused-Shivli S/o Abdul Karim: 1 pistol 7.65 mm with 5 live cartridges, cash Rs. 4,000/-, black coloured mask, books written in Urdu language and mobile charger, wrist watch, Rexene bag etc.
- (v) Accused- Kamruddin : 1 pistol 7.65 mm with 5 live cartridges, one cell phone, black coloured mask, cash of Rs. 55,000/-, SIM card of Idea, 4 books written in Urdu language, Rexene bag, mobile charger, 105 pamphlets having Babri Masjid and Shirk printed on it, 140 pamphlets having printed on it " Jaari Rahegi Jaddojehad" etc.
- (vi) Accused- Shaduli S/o Abdul Karim : One letter of SIMI training programme, one black coloured mask, cash Rs. 2,200/- and books written in Urdu language.
- (vii) Accused- Yasin S/o Abdul Hamid: Cash Rs. 1,200/-, one black mask, one Rexene bag containing Kerala tourism's Map of India, 5 books in Urdu language, newspapers.
- (viii) Accused-Ansar S/o Abdul Razzak : One cellphone Vodafone, Cash Rs. 1,500/-, one black mask, one bag containing books written in Urdu language and timetable of Indian Railways.
- (ix) Accused-Munroz: Cash Rs. 1,300/-, First Aid Box, One black mask, Indian Railway Timetable, one bag containing 5 books in Urdu language.
- (x) Accused-Shami S/o Dade Shah : Cash Rs. 1,100/-, one black mask, 25 pairs of hand-gloves, one bag containing 4 books in Urdu, 8 copies of Urdu Newspaper 'Maqtaal'.
- (xi) Accused- Khalid Ahmed : Cahs Rs. 5,505/- cellphone Nokia made, Briefcase, one desktop computer with CPU and 10 CDs, 02 Pendrive, one black mask, one copy of SIMI training programme, 4 books of Urdu literature.



- (xii) Accused- Ahmed Beg: One pistol 7.65 mm with 5 live cartridges, one Nokia made Cellphone, Rs. 4,000/- cash, one Pendrive, 12 CDs, one TV Tuner Card, TFT computer with CPU, one bag and 4 books in Urdu literature.
- (xiii) Accused- Kamran S/o Hazi Shahid: One pistol 7.65 mm with 5 live cartridges, Cellphone Nokia made, cash Rs. 2,200/-, one black coloured mask."

300. On the basis of the disclosure statement made by Safdar Nagori, vide Exhb.PW-58/A-3 the following recoveries were made:—

- (i) Accused- Shehzad Khan : Documents of Registry of Agricultural Field.
- (ii) Accused- Safdar Nagori: one gunny bag containing 122 explosive gelatin rods, 100 detonators, documents/papers etc.
- (iii) Accused- Kamruddin: 105 pamphlets having Babri Masjid and Shirk printed on it, 140 pamphlets having printed on it "Jaari Rahegi Jaddojehad" etc."

301. The seized documents include pamphlets of Student Islamic Movement of India, Madhya Pradesh Zone. The documents recovered also include a donation card of Rs. 500/- in the name of SIMI, Madhya Pradesh Zone.

302. The documents (Exhb. PW-58/A-3) propagate hatred and instigate communal violence and killings as justified and required. It was submitted that these documents were printed prior to first ban on SIMI on 27th September, 2001. The said contention does not appear to be correct and has no merit as these documents were recovered as late as on 26th March, 2008. Obviously, the persons carrying the said documents were propagating and utilizing them. These documents were being used and utilized even on 26th March, 2008. The persons using and utilizing these documents were members of SIMI and the name of SIMI was prominently mentioned on it. The emblem of SIMI with a gun with blood is prominently displayed on these documents. Along with affidavit of PW-58, Mr. B.P.S. Parihar, statements of several witnesses like Kutbuddin, Shami Ulla, Amil Parwaz, Shaduli, Kamran, Shivli etc. have been filed.

303. On the basis of leads given by Safdar Nagori that he along with Kamruddin and Amil Parvaz used to train SIMI activists and have organized camps in the farm house of Shehzad, a resident of Mhow, M.P., search was conducted. Explosives and detonators recovered from the spot indicated in the farm house. Shehzad and Nafsher, owners of the farm house, were arrested and charge sheeted.

304. Safdar Nagori revealed that the pen drives, CDs and computers recovered were obtained from Javed and Yasir.

305. On the basis of material found from Safdar Nagori, a communication was addressed to the SPs of all other districts of Madhya Pradesh and various State Governments informing about the investigations made. Information was given to the districts on the basis of papers, diaries and call details recovered and unearthed from Safdar Nagori and others house. Charge sheet and supplementary charge sheets have been filed.

306. In the cross-examination, reference was made to the confessional statements collectively marked Exhb. PW-58/A-7 and it was stated that FIR numbers, name of the recording officer, date, signatures of the person concerned and witness were not mentioned. PW-58 stated that the name of the recording officer and the date was mentioned in the case diary. It was suggested that some of the statements were made to Karnataka and Haryana Police. This suggestion was denied. PW-58 has stated that except four statements of Kamruddin at page 93, Hafiz at page 109, Kamran at page 136 and Mirza at page 149 of the affidavit, all other statements were recorded by him. My attention was drawn to question and answer at page 334 of the cross-examination file, which reads as under:

"Q. Is it correct that no incriminating material except the alleged newspaper was seized from the site of the meeting?

A. Detonators and pamphlets were seized from the site at a later stage. Vol. The first meeting was held on 26.3.2008 and in that meeting a newspaper was seized. Another meeting was held in October, 2007. After interrogation detonators and pamphlets were seized on 2.4.2008."

307. It was submitted that as per this answer the detonators, etc., were recovered from meeting point at Silver Oak factory and the answer is very confusing. A newspaper was recovered from Silver Oak Factory as stated above. The witness has stated that detonators and pamphlets were seized subsequently. He does not answer about the site. He, however, gives the date of seizure as 2nd April, 2008. The seizure documents mention the spot from where the seizure was made. Huge recoveries in form of 122 explosive gelatine rods, 100 detonators, etc. have been shown from the accused. It was submitted that the accused had thrown away the SIM cards and only one SIM card was recovered. It was submitted that this makes recovery of pistols, etc. at the time of arrest from Safdar Nagori is doubtful. It is not possible to accept the said submission. It is easy to throw away and destroy a SIM card than a pistol or other weapons. Further, SIM card contains data, which can be used and can furnish leads for investigation and result in arrest of others.

**Mr. Manoj Kumar Rai (PW-59), Additional Superintendent of Police, Khandwa, Madhya Pradesh**

308. Mr. Manoj Kumar Rai has referred to three FIRs. Two of them were registered in the year, 2001 and one was registered in 2006. In FIR No. 467/2001, P.S. Kotwali, Amin Khan was arrested for distributing literature, publications and other paper cuttings. A letter of SIMI circle Khandwa was also found. By this letter, a meeting was invited on 2nd October, 2001. A list of members and post holders of Khandwa circle of SIMI was seized. Interrogation revealed that Amin Khan was Finance Secretary of Khandwa unit of SIMI.

309. PW-59 also refers to a fourth FIR being FIR No. 6/2009, registered at STF, Bhopal on 4th November, 2009. However, copy of the said FIR has not been enclosed with the affidavit. The affidavit also states that another FIR No. 15/2008 was registered by Police Station S.O.G., Rajasthan. Copy of the said FIR has also not been enclosed. However, it is noticed that this witness was extensively cross-examined on recoveries of pamphlets, etc. which were seized in FIR No. 256/2006. PW-59 has stated that on 16th March, 2006, three persons were arrested for promoting and propagating SIMI. On the basis of the statement made by the three persons, Ashiya and Rafiya two sisters were arrested from their house and some material was seized including copies of April and June, 2004 editions of the magazine Tehrik-e-Millat and February, 2006 edition of magazine Tehrik. A receipt number 003359 dated 25th January, 2006 in the name of Kumari Ashiya Khan was also seized. This witness has stated that the word 'Ashiya' on the magazine in Hindi Tehrik-e-Millat was written on all the three copies of April, 2004 edition. The word 'Rafiya' was written by hand in Hindi in the February, 2006 edition and June, 2004 edition of magazine Tehrik-e-Millat seized from Rafiya. PW-59 has stated that he cannot answer whether the word 'Rafiya' was already written when the magazine was seized and IO can answer the same. He has also stated that the word 'Rafiya' has been mentioned to distinguish them from other documents recovered from other accused. It does appear that copies of the same magazines with the name Ashiya has been recovered by Mumbai police and relied upon in several other cases. Reference can be made to affidavit of PW-32, Mr. Sunil Mane, PW-33, Mr. Rahimatullah Inayat Sayeed, PW-36, Mr. Milind Bhikaji Khetle, PW-37, Mr. Sadashiv, and PW-63, Mr. Surendra Singh Baghel, who has registered FIR No. 202/2008. Prima facie, there appears to be some merit in the submission made by Mr. Ashok Aggarwal, Advocate. However, this question will have to be adjudicated and decided in the criminal trial. For the purpose of present proceedings, I am completely disregarding these recoveries. In any case, I am not relying upon statement of PW-32, 33, 36 and 37. I am also, therefore, not relying upon the statement of PW-63, Mr. Surendra Singh Baghel.

**Mr. Chandrashekhar Wagh (PW-60), Investigating Officer of FIR No. 05/2009**

310. Mr. Chandrashekhar Wagh (PW-60) is the Investigating Officer of FIR No. 05/2009 registered under Sections 147, 153 A, 153 B Indian Penal Code and Sections 3, 10 and 13 of the Act, police station Khajrana, Madhya Pradesh. Copy of the said FIR has been marked as Exhb. PW-60/A-1. The witness has stated that on 20th October, 2009 they had received information that members of SIMI would visit Khajrana, Indore. He led a team and found that 5 persons in a meeting near Iran Wale Baba Ki Dargah, Khajrana. A provocative audio cassette was being played. These people were making anti-national and inflammatory statements when they were arrested. On search, a CD, Urdu books etc. containing inflammatory materials were found. On the basis of the statements made, objectionable material was also found from their residence. However, copy of the said inflammatory material has not been filed on the ground that the same has been filed before the Court and they have not kept photocopy of the same. However, the said witness during the course of cross-examination has stated that pamphlets of SIMI were seized from the spot.

**Mr. Vikram Singh Bhadoria (PW-61), Inspector, P. S. AJK, Shivpuri, Madhya Pradesh**

311. Mr. Vikram Singh Bhadoria has stated that FIR No. 142/2008 was registered under Section 153A IPC and Sections 3, 10 and 13 of the Act against Faizal, Irfan and Shakir. From the residence of Shakir on 6th April, 2008 pamphlets with the name Babri Masjid and Shirk were recovered. In the bottom of these pamphlets, the words Student Islamic Movement of India, Madhya Pradesh zone is printed. Audio cassettes were also recovered. Similarly, 35 pamphlets were seized from the residence of Irfan and Faizal.

312. During the course of arguments, my attention was drawn to FIR at page 35 and the word used therein. It appears that there is some translation error. One of the papers recovered from the residence of Faizal was anti-muslim article allegedly printed on behalf of 'Hindu Rioters Forum'. This article as per the Central Government was being misused to instigate Muslims to take revenge and indulge in violence.

**Mr. M. K. Tiwari (PW-62) Inspector, P.S. Kareli, Narsinghpur, Madhya Pradesh**

313. He has stated that FIR No. 399/08 Exhb. PW-62/A-3 was registered on the basis of the statement of Mohd. Ali Exhb. PW-62/A-2 and also on the basis of an earlier case registered against Modh. Irfan by Ahamedabad Police in 2001. He has admitted that the FIR No. 399/08 Exhb. PW-62/A-3 was not registered on the basis of any specific incident and volunteered that the FIR was registered because of the connection. In response to the Tribunal Question as to what did he mean by the term "connection" he stated that in the statement of Mohd. Ali it was mentioned that he used to meet Irfan in Kareli and also take money from him. He has stated that he was aware of one other case i.e. Crime No. 120/08 which was registered by the Pithampur police, Madhya Pradesh.

314. He has stated that at page 28 A, he had mentioned the name of Irfan in absconders' list because at that he was not arrested and was absconding. He has denied the suggestion that the papers seized by him in the present case have no connection with SIMI. He has stated that he had not made any verification from any independent documentary source whether the accused arrested in his case were members of SIMI. He has denied the suggestion that the case against the accused was false or that accused were not members of SIMI at any time. He has stated that sanction letter was still awaited.

**Mr. Surendra Singh Baghel (PW-63), ASI, P.S. Misrod, Bhopal, Madhya Pradesh**

315. Mr. Surendra Singh Baghel has relied upon recovery of June, 2004 edition of Tehrik-e-Millat and photocopy of receipt in the name of Kumari Ashiya Khan. On the receipt, signature of Mohd. Ali appears at point 'A'. The magazines are photocopies of the original. In June, 2004 edition of Tehrik-e-Millat, the word 'Rafiya' in Hindi by hand is also seen. Doubts have been created about the alleged recovery of these magazines. In these circumstances, I am not inclined to take into consideration this affidavit and evidence. It may be stated here that PW-62, Mr. M.K. Tiwari in his cross-examination has stated that FIR No. 399/2008 was registered on the basis of statement made by Mohd. Ali. This does not mean that FIR No. 399/2008 itself is doubtful or incorrect. The question raised is whether documents in question were planted on Mohd. Ali. It is debateable and doubtful.

**Mr. Shalendra Singh Jadon (PW-64), Sub-Inspector, Police Station, Mahakal, Ujjain, Madhya Pradesh**

316. He has stated that he has made recoveries on the basis of disclosure statement of Kayamuddin. The recoveries include copy of membership form, Ansar membership form of SIMI and coupons and receipts for donations of Rs. 10, Rs. 25 and Rs. 50 for SIMI. Photocopies of fund collection receipts and literature and publication of SIMI were found. Papers listing aims and objects of SIMI, its organizational structure and history were found. Some of the papers contain inflammatory and offensive articles. He has denied that the material seized was printed and published before SIMI was banned on 27th September, 2001. He has denied that the statement of Kayamuddin has been fabricated by the police. He has stated that Kayamuddin was arrested by Daulat Singh, SHO, Police Station, Mahakal, District Ujjain. It is further stated that Kayamuddin was handed over to Delhi Police on transit remand. Gujarat Police had also asked for transit remand of Kayamuddin.

**Mr. Ray Singh Narwaria (PW-65), Additional Superintendent of Police, District Ujjain, Madhya Pradesh**

317. Mr. Ray Singh Narwaria has referred to FIRs which were registered against SIMI activists in 1997 onwards till 2006. He has stated that Kayamuddin used to organize meetings and instigate people to follow Jihad. Despite ban on SIMI, Kayamuddin has continued with the said activities. Kayamuddin is an accused in FIR No. 236/2008 registered at Ahmedabad. In this FIR, he was arrested in Ujjain city on 10th December, 2008. He has stated that he has given details of 33 SIMI activists in Ujjain district against whom cases have been registered. He has stated that 6 SIMI activists from Ujjain district were absconding.

**Mr. D.S. Yadav (PW-66), Superintendant of Police (OPS), ATS, Bhopal, Madhya Pradesh**

318. Mr. D.S. Yadav was examined in the Chamber. He has submitted four CDs. The CDs have live video/audio statements recordings of two of the accused, who are members of SIMI. Transcript of the said statements has also been given. The accused in their statements have admitted their association with SIMI and that they have indulged in violent acts. The recorded interrogations are elaborate and detail. They show how wide the tentacles of SIMI have spread. Young boys of impressionable age, who have been swayed and swept.

**Other witnesses from the State of Madhya Pradesh**

319. After arrest of Safdar Hussain Nagori and on the basis of interrogation and materials like personal diary, mobile phones, telephone numbers, call details, investigation done, 18 cases have been registered in different police stations in Madhya Pradesh in March and April, 2008. Four more cases were registered thereafter. It is the contention of Mr. Ashok Aggarwal, advocate that these cases are fictitious, false and material has been planted. Accused are being prosecuted because their names figure in one document or other or in the call details. It is alleged that several FIRs are identically worded and allegations are vague and a make-belief. I have examined these cases and the affidavits filed in support thereof. There is some merit in the submission of Mr. Ashok Aggarwal, advocate. These cases require a re-look. As I have doubt, I am not relying upon these affidavits/witnesses, except to the extent indicated below. Most of these affidavits even if accepted only show that printed material of SIMI was available with the accused. Some of the material may also be inflammatory and objectionable. Out of these affidavits I am only inclined to rely upon the following affidavits :

- (a) Mr. Omesh Sharma (IW-83) is the Investigating Officer in FIR 239/2008, P.S. Kotwali, Sehore. In this case during search, substantial number of pamphlets and other materials were recovered. A diary in urdu pertaining to the year 2001 was recovered. It has names of SIMI members and posts held by them is mentioned. The diary may have been written in 2001 but was retained by the accused till 2008.



- (b) Mr. Hari Shanker Tiwari (IW-101), has stated that he was posted at police station Chachoda Distt. Guna as SHO since 19th March, 2010 and has been appointed as a Nodal Officer. He has stated that FIR No.104/2008 was registered on 7th April, 2008 under Sections 3, 10 and 13 of the Act and copy of the said FIR is marked Exhibit-2 to the affidavit. He has stated that offending material was seized during the course of search on 7th April, 2008 from the residence of Rafeeq Molana where a meeting was attended by 9 persons, who were members of SIMI. 5 persons were arrested but 4 persons fled away. Copy of the offending material relating to SIMI has been placed on record as Exhibit-4 from page Nos. 32 to 52A of the affidavit. It is pointed out that after the charge sheet was filed, the case has resulted in conviction by the judgment dated 8th February, 2010 passed by Judicial Magistrate and the accused, who were facing trial were awarded two years' rigorous imprisonment under Sections 3 and 10 of the Act and three years rigorous imprisonment under Section 13 of the Act. Appeal, however, is pending.
- (c) Mr. Ritesh Sahu (IW-102), SI, ATS Unit Jabalpur, Madhya Pradesh has stated that on 3rd November, 2009 a raid was conducted near Dada Miyan ki Dargah in Kabristan, Madar Tekri in Jabalpur as a meeting was being held there to propagate views and ideology of SIMI. Four persons were arrested. Before arrest these persons were searched/frisked and 4 CDs containing inflammatory songs about the Babri Masjid and copies of SIMI magazines were seized. Thereafter, FIR No. 06/2009 was registered under Sections 153A, 153B, 120 B IPC and Sections 3, 10, 13A and 13B of the Act was registered. Copy of the FIR is Exhibit-A. He has further stated that Inamurrahman, Secretary of SIMI with the help of others was trying to collect funds for SIMI and for this reason he had come to Jabalpur. They were trying to brain wash and convince the youths to indulge in unlawful activities by making provocative speeches. It is stated that the accused used to organize picnics and convince youth to engage in unlawful activities in the name of religion. It is also stated that the accused in the said case had visited several places to recruit new members in SIMI. The accused had set up a network for collection of funds for SIMI organization. The case is still pending trial. Along with the affidavit the witness has enclosed as exhibits B and C, the panchanama and a hindi translation of the book which describes why and when suicide attacks should be undertaken.
- (d) Mr. Daulat Singh (IW-93), Inspector, Police Station Mhow, District Indore, Madhya Pradesh has stated that FIR No.699/2008 under Sections 3, 10 and 13 of the Act was registered at Police Station Mahakal, Ujjain City against Kayamuddin. It is stated that the area in question was cordoned off to arrest the accused. The accused emerged out after some time. Copies of membership form of SIMI and large amount of literature of SIMI and other literature were recovered from the possession of these accused. However, along with the affidavit the seized material or copy thereof has not been filed. Thus the Central Government gets limited support from this affidavit.

**Mr. Yashpal Dabas (PW-67), Director, Ministry of Home Affairs, Government of India.**

320. He has filed an affidavit and produced in sealed covers files of the Ministry of Home Affairs relating to the issue of Notification dated 5th February, 2010. He has been extensively cross examined by Mr. Ashok Aggarwal, advocate though he has deposed only on the basis of official records. Even in the written submissions a number of pages have been devoted to his evidence. As held by the Supreme Court in the Jamait-e-Islami Hind (supra) the Tribunal is required to adjudicate the lis between the Central Government and the Association and whether there is a sufficient cause to ban the association. The Tribunal's jurisdiction is circumscribed by Section 4(3) read with Section 3(3) and other provisions of the Act. This has been repeatedly held by the first three Tribunals, after referring to provisions of the Act.

321. Even otherwise I have examined the files of the Central Government produced before me in sealed covers. I am satisfied that there was due and adequate application of mind before the order under Section 3(1) of the Act was made on whether or not ban on SIMI should be reimposed. After considering the information and details furnished by the State Governments and the Intelligence Bureau the Order under Section 3(1) was passed. It may be noted that not even a single State Government had objected or stated that ban on SIMI should not be re-imposed. All State Governments who had responded had reservation and had stated that they would support reimposition of ban. They have furnished their reasons and grounds for the same. Decision of the Central Government under Section 3(1) of the Act is an administrative decision and not a judicial decision.

**Evidence and e-mails**

322. SIMI has been declared to be a terrorist organization and is included to the First Schedule to the Act. This declaration has not been challenged before any court at any time. In this regard, it may be appropriate to refer to the following observations of the Supreme Court in the case of *Zameer Ahmed Vs. State of Maharashtra* (2010) 5 SCC 246 :-

"72. The precise reason why we have extracted the list of terrorist organizations under UAPA hereinbefore is to bring to the fore the contrast between the two legislations which are in question before us. The exhaustive list of terrorist organizations in the First Schedule to UAPA has been before us. The exhaustive

list of terrorist organizations in the First Schedule to UAPA has been included in order to show the type and nature of the organizations contemplated under the Act. A careful look of the same would indicate that all the organizations mentioned therein have as their aims and objects undermining and prejudicially affecting the integrity and sovereignty of India.....

XXXXX

77. The offence of terrorist act under Section 15 and the offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential elements in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons etc, Section 2 (1) (o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India..”

323. Even if we completely disregard and do not take into account confessional statements recorded under Section 161 Cr.P.C. or the interrogation reports of the police, there is sufficient material to show and establish both existence and continuance of SIMI as well as indulgence in unlawful activities by the office bearers and members, if not for and on behalf of SIMI. After the first ban on 27th September, 2001 SIMI has gone underground and it is operating in a clandestine manner.

324. Bomb blasts in different parts of India during the period post 2007 is a matter of public knowledge. The details of bomb blasts are as under :

- (1) Jaipur : On 13th May, 2008 in which 70 persons were killed and 186 were injured.
- (2) Bengaluru : On 5th July, 2008, bomb blasts took place in Bengaluru city and 8 FIRs were registered.
- (3) Ahmedabad: On 26th July, 2008, when 56 people were killed and 240 persons suffered grievous and serious injuries. Surat city : between 27th July, 2008 and 8th September, 2008, 29 live bombs were defused and two cars loaded with bombs were also found.
- (4) Delhi: on 13th September, 2008, when 26 persons were killed and 133 persons received injuries in various bomb blasts. Some IEDs were also found and were defused.

325. Connected with these bomb blasts in Ahmadabad, Delhi, Jaipur and Bengaluru city and recovery of IEDs at Surat, five e-mails were sent to the media. Again, the dates on which these e-mails were sent cannot be disputed and denied as it is a matter of public knowledge. The contents of the e-mails disclose that these were sent by the persons who had planted the bombs and no one else. In these e-mails, certain specific details and even photographs or video clips of the bombs or the vehicles/cycles used are shown. Obviously, these pictures were taken before the bomb blasts actually took place. These e-mails were sent either immediately before or after the bomb blasts had taken place. The question whether the police has done proper investigation in this regard is not wholly material and relevant for the purpose of the present limited inquiry. Further, there can be hardly any doubt about the source, i.e. wifi or the computer used to send these e-mails.

326. The e-mails along with their headers are part of the charge sheet dated 17th December, 2008 filed along with the affidavit of PW-10, Mr. Sanjeev Kumar Yadav. The first e-mail dated 23rd November, 2007 sent to media channels was in respect of blasts in courts of Uttar Pradesh. This e-mail states that Gujarat riots of 2002 have forced them (the author of the e-mail) to take a strong stand against injustice and all other wounds. It was alleged that this is a war of civilization between two communities and they want to empower the society from injustice and corruption. The second e-mail dated 14th May, 2008 was in respect of Jaipur blast on 13th May, 2008. The third e-mail dated 26th July, 2008 was regarding the Ahmadabad and Surat blasts. The fourth e-mail sent on 23rd August, 2008 was again regarding Gujarat blasts. This e-mail has photographs of the cars, which were used in the said blasts. The fifth e-mail was received only a few minutes after the blasts in Delhi on 13th September, 2008. This e-mail was sent to a number of e-mail IDs. The covering letter received from a TV channel is also enclosed.

327. Mr. Ashok Aggarwal, Advocate had referred to the e-mail dated 23rd November, 2007 in which the words “Bismillah-Ar-Rahmanir-Raheem” are used. Some other documents were also referred to where different spellings were used. He has also referred to the last portion of this e-mail and drew my attention to the words “Allah-O-Akbar” and some other documents wherein the words “Allah-Hu-Akbar” were used. It was submitted that these phrases/words have been misspelled and no Muslim can misspell the said words. Per contra, it is submitted on behalf of the Central Government that this is merely an assumption. English is an imperfect language and names and words are spelt differently by different people. My attention was drawn to the internet print outs wherein the words “Bismillah-Ar-Rahmanir-Raheem” have been spelled in different ways and it is stated that all of them are correct. There is merit in the contention raised by the Central Government.

328. The e-mails speak for themselves. As they are extremely offensive, I refrain from reproducing them in my report. However, they may be treated as part of this report. Two relevant portions which make specific reference to SIMI are quoted below.

329. A portion of the e-mail dated 26th July, 2008 reads:-

“We call you, O Hindus, O enemies of Allah, to take an honest stance with yourselves lest another attack of Ibn-e-Qasim sends shivers down your spines, lest another Ghauri shakes your foundation, and lest another Ghaznawi massacres you, proving your blood to be the cheapest of all mankind! Have you forgotten your history full of subjugation, humiliation, and insult? Or do you want us to repeat it again? Take heed before it is too late!”

(a) You agitated our sentiments and disturbed us by arresting, imprisoning, and torturing our brothers in the name of SIMI and the other outfits in Indore, Ujjain, Mumbai, and in other cities of Karnataka. We hereby notify you, especially the ATS and the STF and the governments of Madhya Pradesh and Andhra Pradesh, to release them all, lest you become our next targets and victims of our next attack. Don't consider us heedless about the crimes you have committed in recent Indore riots and all this will be, Insha-Allah brought to account very soon.

(b) We warn the Andhra Pradesh government, specifically the Hyderabad Police, to release the imprisoned Muslim youth immediately, and to be wise with yourselves. We are watching you, and our ground-work to gun you down has already begun. Insha-Allah, we will be rid of you very soon.” (emphasis supplied)

330. A portion of the e-mail dated 23rd August, 2008, reads:—

“..... To make it plainer to you, the Indian Mujahideen (IM only) is in no way associated with the Students Islamic Movement of India (SIMI). We are an absolutely self-reliant and self sufficient group with each and every individual committed only to the cause of Islam and Jihad, with our fundamentals of intense hostility to kufr (disbelief) and utmost affection for Muslims. The more you harass us by your countrywide arrests and tortures in the name of SIMI, the more you assist us to accomplish our targets. This is only going to smooth the progress of our fight against you and add to your agony. Your oppression can by no means stop our advance.

Our heartfelt gratitude to Mr. Ken Heywood and his associate for their complete cooperation and guidance to make our attack a huge success.

The Times of India, we warn again, that your untrue and deceptive propaganda against SIMI and your bogus bragging about ATS is definitely going to lead you to the bloodiest massacre ever witnessed by history. Just hold on! The count down to your devastation has begun.” (emphasis supplied)

331. The two e-mails (i.e. e-mails dated 26th July, 2008 and 23rd August, 2008) make specific reference to SIMI. There is merit in the contention of the Central Government that this is because most of the members of Indian Mujahiddin are from SIMI as repeatedly stated by the witnesses. The fourth e-mail specifically states that if more countrywide arrests are made in the name of SIMI, the more the government would assist them in their target. It was a warning to the government. The fourth e-mail warns a newspaper against the alleged untrue and deceptive propaganda against SIMI.

332. It was stated that these e-mails cannot be relied upon as these are in different sizes and pages. The difference in size is due to font etc. The contents of the e-mails filed by different witnesses are the same and identical.

333. Arrest of Safdar Nagori and the recoveries made from him at the time of arrest and thereafter also reflect that members of SIMI have been engaged in unlawful activities and SIMI continues to exist though underground and in a clandestine manner. Safdar Nagori was Secretary of SIMI on the date when it was banned and thereafter absconded and evaded arrest till he was arrested in March, 2008.

334. In addition, we have recovery of various evidence in form of digital, written and printed material recovered in several States which are related to SIMI and connected with SIMI. These materials were found and seized post 2007. As held above, it is not possible to believe that this material was printed prior to the ban but was kept and retained for over seven years. Further, even retaining this material shows that there was objective and purpose behind keeping the said material. We have recoveries of weapons etc. made on the basis of disclosure statements and statements recorded under MCOCA. Though MCOCA is not strictly applicable, but these statements carry more evidentiary value and weight (see, evidence of Mr. Ashok Tukaram Duraphe (PW-38). The Central Government has relied on statement of Naveed Ahmad PW 56/A-1, recorded under Section 164 Cr.P.C. We also have the judgment of conviction under the Act dated 15.2.2010 filed by Hari Shankar Tiwari (IW 101) and the judicial order dated 8.2.2010 filed by PW 29 Punjabrao Deshmukh.



335. It was submitted on behalf of Mr. Misbahul Islam and Mr. Human Ahmad Siddiqui that there was no independent verification of membership of SIMI. This argument has to be rejected. After SIMI was banned in 2001, it does not function and operate in open. Obviously, it will not be maintaining a list of members, which is open to scrutiny and can be examined. Operations are clandestine and underground. They cannot be unearthed except on the basis of interrogation and statements by persons who are associated with SIMI. Accomplices in such cases are rare and members of public do not come forward out of fear. Central Government, therefore, per se has to rely upon the reports submitted by various State Governments including intelligence agencies. Direct evidence in such cases is difficult to procure and get.

336. The proceedings before this Tribunal are a lis and have to be decided on the basis of preponderance of probability. Union of India has led evidence and the police officers have come in the witness box and have been cross-examined. Mr. Humam Siddiqui and Mr. Misbahul Islam have not entered the witness box and have not led any evidence. They were content and satisfied by cross-examination of witnesses but were reluctant to get themselves examined. Witnesses produced by the Central Government have named SIMI and their members alongwith documents, in form of recoveries of various kinds and statements. Mr. Humam Siddiqui and Mr. Misbahul Islam did not lead evidence to rebut their statements. No evidence has been led by them. It is apparent from the cross-examination that they have sufficient information, if not substantial information and details about the criminal cases relied upon by the Central Government. The proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in *Jamait-e-Islami Hind* (supra). This lis has to be decided by objectively examining which version is more acceptable and credible. In this regard, reference may be made to following observation made in para 30 of *Jamait-e-Islami Hind* (supra), which reads:

“30. The allegations made by the Central Government against the Association — Jamaat-E-Islami Hind — were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute “unlawful activity” within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained.” (emphasis supplied)

337. Thus, on the basis of evidence led by the parties and evaluating the same, it is held that conditions of Section 2(p)(i) and (ii) of the Act are satisfied in the present case.

338. In view of the aforesaid findings, it is held that there is sufficient cause for declaring Students Islamic Movement of India as an unlawful association and an order is passed under Section 4(3) confirming the declaration made in the Notification of the Ministry of Home Affairs S.O. No. 260(E) dated 5th February, 2010, read with the Notification S.O. No. 544(E) dated 5th March, 2010, issued under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

SANJIV KHANNA, J.  
UNLAWFUL ACTIVITIES  
(PREVENTION) TRIBUNAL

## ANNEXURE I

## STATEWISE DETAILS OF CASES REGISTERED AGAINST SIMI BEFORE 7th FEBRUARY 2003

Sl. No.	F.I.R. No.	Section/Act
<b>ANDHRA PRADESH</b>		
1.	51/2001 dt. 30.9.2001, PS-Kalapathar	u/s 153A, 153B IPC and section 10, 13(1)(b) r/w 3 of Unlawful Activities (Prevention) Act 1967
2.	52/2001 dt. 30.9.2001, PS-Kalapathar	u/s 10 r/w 3 of Unlawful Activities (Prevention) Act 1967
3.	54/2001 dt. 2.1.2001 Kalapathar PS-Hyderabad	u/s 10 r/w 3 Unlawful Activities (Prevention) Act 1967
4.	55/2001 dt. 2.10.2001 PS-Kalapathar	u/s 153 (A)(B) IPC and 10, 13(1)(b) r/w 3 of Unlawful Activities (Prevention) Act 1967
5.	835/2002 dt. 21.11.2002, PS-Saroornagar	u/s 302, 307 IPC and 3, 4, 5 ES Act and Section 3(3) of POT Act
6.	618/2004 dt. 30.8.2004; PS-CCSDD, Hyderabad	u/s 120B, 379, 153A IPC, Section 5,7,6 of ES Act and Section 25 and 27 I.A. Act 7
7.	882/2004 dt. 31.10.2004, PS-Saifabad	u/s 147, 148, 307, 332, 224, 427 and 149 IPC
8.	410/2004 dt. 1.11.2004, PS-Saidabad	u/s 147, 148, 335, 307, 427 I.P.C. Sec. 3, 5 & 8 ES Act.
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46. 3819/2001 dt. 28.9.2001, PS-Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
47. 3823/2001 dt. 28.9.2001, Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
48. 3824/2001 dt. 28.9.2001, Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
49. 3825/2001 dt. 28.9.2001, Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
50. 3826/2001 dt. 28.9.2001, Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
51. 3827/2001 dt. 28.9.2001, Sadar Bazar, Solapur u/s 10 Unlawful Activities (Prevention) Act, 1967
52. 3028/2001 dt. 28.9.2001, Aundhanagnath, Hingoli u/s 3(1) Unlawful Activities (Prevention) Act, 1967
53. 3029/2001 dt. 04.10.2001, Aundhanagnath, Hingoli u/s 3(1), 7, 8, 10, 13 Unlawful Activities (Prevention) Act, 1967
54. 3010/2003 dt. 24.2.2003, Thane Nagar, Thane City u/s 10,13,15 Unlawful Activities (Prevention) Act, 1967
55. 211/2001 dt. 29.9.2001, Mumbra, Thane City u/s 10 Unlawful Activities (Prevention) Act, 1967
56. 3122/2001 dt. 29.9.2001 PS-Thane Nagar, Thane City u/s 10 Unlawful Activities (Prevention) Act, 1967
57. 134/2001 dt. 29.9.2001, PS-Shanti Nagar, Thane City u/s 10 Unlawful Activities (Prevention) Act, 1967
58. 3047/2001 dt. 29.9.2001, PS-Bazar Peth, Thane City u/s 10 Unlawful Activities (Prevention) Act, 1967
59. 71/2001 dt. 28.9.2001, PS-Ambajogai, Beed u/s 10 Unlawful Activities (Prevention) Act, 1967
60. 114/2001 dt. 28.9.2001, PS-Ramdas Peth, Akola u/s 10 Unlawful Activities (Prevention) Act, 1967
61. 116/2001 dt. 02.10.2001, PS-Ramdas Peth, Akola u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
62. 117/2001 dt. 03.10.2001, PS-Ramdas Peth, Akola u/s 10, 13(A) (2) Unlawful Activities (Prevention) Act, 1967
63. 3177/2001 dt. 17.12.2001, PS-Civil Line, Akola u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
64. 3055/2001 dt. 02.10.2001, PS-Patur, Akola u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
65. 3071/2001 dt. 27.9.2001, PS-City Chowk, Aurangabad u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
66. 3043/2001 dt. 29.9.2001, PS-Nanal Peth, Parbhani u/s 10 Unlawful Activities (Prevention) Act, 1967
67. 3042/2001 dt. 29.9.2001, PS-Pathri, Parbhani u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
68. 107/2001 dt. 29.9.2001, PS-Itwara, Nanded u/s 10 Unlawful Activities (Prevention) Act, 1967
69. 80/2001 dt. 29.9.2001, PS- Shivaji Nagar, Nanded u/s 3, 10, 13 Unlawful Activities (Prevention) Act, 1967
70. 3038/2001 dt. 28.9.2001, PS-Ardhapur, Nanded u/s 3, 10, 13 Unlawful Activities (Prevention) Act, 1967
71. 103/2001 dt. 28.9.2001, PS-Shirpur, Dhule u/s 3, 10, 13 Unlawful Activities (Prevention) Act, 1967
72. 3118/2001 dt. 28.9.2001, PS-Nagpuri Gate, Amravati City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
73. 3080/2001 dt. 28.9.2001, PS-Washim, Washim u/s 10 Unlawful Activities (Prevention) Act, 1967
74. 32/2001 dt. 05.10.2001, PS-Bhingar Camp, Ahmednagar u/s 10 Unlawful Activities (Prevention) Act, 1967
75. LAC No. 2/2006 dt. 31.1.2006, PS- ATS, Mumbai u/s 4, 5 ES Act, 3, 25 Arms Act, 5, 6, 9B Explosive Act, 16, 18, 20, 23 Unlawful Activities (Prevention) Act, 1967, Amendment 2004.
76. Spl. AC 877/2001, PS-Park Site, Mumbai City u/s 3 (1), 10, 13 Unlawful Activities (Prevention) Act, 1967
77. LAC No. 1692/2001, PS-Dharavi, Mumbai City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
78. LAC No. 1448/2001, PS-Bhandup, Mumbai City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
79. Spl. LAC 27/2001, PS- Andheri, Mumbai City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
80. Spl. AC 26/2001, PS-Andheri, Mumbai City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
81. 275/2001, PS-Kurla, Mumbai City u/s 143 to 147, 353, 34 IPC r/w 37(3), 135 BP Act, r/w 10, 13 Unlawful Activities (Prevention) Act, 1967
82. 1839/2001, PS-Kurla, Mumbai City u/s 10, 13 Unlawful Activities (Prevention) Act, 1967
83. Spl Pota Case No. 2/2003 (21/2003 and 9/2003) PS-DCB, CID, Unit 6 & 10, Mumbai u/s POTA Act
84. 34/2006 (1106/2006), PS-Ghatkopar Unit-X, Mumbai u/s 10, 13 Unlawful Activities (Prevention) Act, 1967.





**WEST BENGAL**

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| 1. 403/2001 dt. 27.9.2001, PS-Taltala, Kolkata             | u/s 153A, 153B, 10B IPC & 10, 11, 12, 13 of Unlawful Activities (Prevention) Act, 1967    |
| 2. 335/2001 dt. 27.9.2001, PS-Berhampur, Murshidabad       | u/s 153A, 153B, 295A, 298, 505, 10B/11A IPC   |
| 3. 110/2001 dt. 27.9.2001, PS-Harishchandrapur, Malda      | u/s 121A, 124A, 153A, 153B IPC  |
| 4. 327/2001 dt. 27.9.2001, PS-Englishbazar, Malda          | u/s 153A, 153(B), 121(A), 124(A) IPC  |
| 5. 124/2001 dt. 27.9.2001, PS-Asansol North, Burdwan       | u/s 153, 153A, 120B IPC   |
| 6. 84/2001 dt. 27.9.2001, PS-Chakulia, Uttar Dimajpur      | u/s 121, 121A, 124A, 153(a)(b), 120B IPC  |
| 7. 97/2001 dt. 28.9.2001, PS-Bangshihari, Dakshin Dimajpur | u/s 153, 153A, 124A IPC and 3(1) Unlawful Activities (Prevention) Act, 1967               |
| 8. 171/2001 dt. 28.9.2001, PS-Basirhat, North 24 Parganas  | u/s 153, 153A, 153B, 120B IPC and 10, 13(a)(b) Unlawful Activities (Prevention) Act, 1967 |
| 9. 111/2001 dt. 2.10.2001, PS-Mathabhanga, Coochbehar      | u/s 124A, 120B, 153A, 153B IPC and 10, 13 Unlawful Activities (Prevention) Act, 1967      |
| 10. 67/2001 dt. 9.10.2001, PS-Minakha, North 24 Pargana    | u/s 153, 153A, 120B IPC   |
| 11. 31/2002 dt. 02.2.2002, PS-Howrah GRPS                  | u/s 120B, 121, 121A, 122, 123, 124, 153 IPC and 3, 4, 5 ES Act                            |

**CASES REGISTERED AGAINST SIMI ACTIVISTS AFTER 7TH FEBRUARY, 2008**

Sl. No.	F.I.R. No.	Section/Act
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**ANDHRA PRADESH**

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| 1. 73/2008 dt. 5.3.2008, PS-Saidabad (AP)          | u/s 147, 148, 458, 333, 384, 506 r/w 149 IPC Section 7 CRLA and 3 & 4 PDPP Act |
| 2. 213/2008 dt. 1.9.2008, PS-SIT, Hyderabad        | u/s 120(B), 124A, 125 and 126 of IPC   |
| 3. 358/2008 dt. 3.12.2008, of Kanchanbagh PS       | u/s 307, 324 IPC and 25(1)(A) Arms Act r/w 34 IPC                              |
| 4. 157/2009 dt. 18.5.2009, PS-Falaknuma, Hyderabad | u/s 302, 307 IPC, 25 & 27 of Arms Act, 1959 r/w 34 of IPC                      |

**DELHI**

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|---|--|
| 1. 166/2008 dated 13.9.2008, PS-Karol Bagh, Delhi                             | u/s 302/307/323/121 IPC 3/4/5 Explosive Substances Act, & 10/ 12/13of Unlawful Activities (Prevention) Act, 1967 |
| 2. 130/2008 dated 13.9.2008, PS-Greater Kailash New Delhi                     | u/s 3/4/5 Explosive Substances Act & 12/13of Unlawful Activities (Prevention) Act, 1967, 307/323/12120-B/427 IPC |
| 3. 418/2008 dated 13.9.2008, PS-Connaught Place, New Delhi (Bara Khamba Road) | u/s 302/307/121/121A/120 IPC 3/4 Explosive Substances Act & 13of Unlawful Activities (Prevention) Act, 1967      |
| 4. 419/2008 dated 13.9.2008, PS-Connaught Place, New Delhi (Central Park)     | u/s 302/307/323/121/121A/120 IPC 3/4 Explosive Substances Act & 13 of Unlawful Activities (Prevention) Act, 1967 |
| 5. 293/2008 dated 13.9.2008, PS-Tilak Marg, New Delhi                         | u/s 120/120B/121/121A/122/123 IPC & 4/5 Explosive Substances Act   |

**GUJARAT**

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|----------------------------|---|
| 1. 236/2008 Shahibaug PS-I | u/s 120B, 121, 122, 302, 307, 326, 427 IPC and u/s 3, 7 of Exp. Sub. Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967   |
| 2. 206/2008 Maninagar PS-I | u/s 307, 326, 120B, 427, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967 and u/s 3, 4 of Damages of Public Property Act |
| 3. 273/2008 Amraiwadi PS-I | u/s 307, 120B, 121, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967  |
| 4. 400/2008 Naroda PS-I    | u/s 120B, 121, 121A, 122, 153A, 307 of IPC, 4, 5, 6, 7 of Explosives Substances Act, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967   |
| 5. 401/2008 Naroda PS-I    | u/s 120B, 121, 121A, 122, 153A, 302, 307 of IPC, 3, 4, 5, 6, 7 of Explosives Substances Act 15, 16, 18, 20 of Unlawful Activities (Prevention) Act 1967   |
| 6. 220/2008 Bapunagar PS-I | u/s 302, 307, 120B, 121, 121A, 122, 153A, 127, 124A of IPC and u/s 3, 4, 5, 6, 7 of Exp. Sub. Act and 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967  |

7. 203/2008 Maninagar PS-I u/s 302, 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3,4,5,6,7 of Explosive Substances Act and 3, 4 of Damages to Public Property Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
8. 204/2008 Maninagar PS-I u/s 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 3,10, 13, 15,16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
9. 205/2008 Maninagar PS-I u/s 307, 120B, 124A, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of Explosive Substances Act and u/s 3, to, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
10. 71/2008 Khadia PS-I u/s 302, 307, 120B, 121, 121A 122, 153A, 127 of IPC and 3, 4, 5, 6, 7 of Explosives Substance Act & 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
11. 140/2008 Danilimda PS-I u/s 302, 307, 337, 120B, 121, 121A, 122, 153A, 124(A); 34, 427 IPC and 3, 4, 5, 6, 7 of ES act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
12. 123/2008 Kalupur PS-I u/s 307, 120B, 121, 121A, 122, 153 of IPC and 3,4,5,6,7 of ES Act and u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
13. 218/2008 Vatwa PS-I u/s 307, 333, 12011, 121, 121A, 122, 153A, 124A IPC and u/s 3, 4, 5, 6, 7 of ES Act u/s 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
14. 321/2008 Ramol PS-I u/s 302, 307, 326, 324, 120B, 212, 121A, 122, 153A IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act 1967
15. 322/2008 Ramol PS-I u/s 153, 153A, 120B, 121, 121A, 124A, 427 IPC and 3,4,5,6 of ES Act u/s 3, 10, 13, 15,16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
16. 190/2008 Ishanpur PS-I u/s 302, 307; 120B, 121, 121A, 124A, 427 of IPC and u/s 3, 4, 5, 6,7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
17. 338/2008 Odhav PS-I u/s 307, 120B, 121A, 122, 123, 153A of IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15,16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
18. 339/2008 Odhav PS-I u/s 307, 120B, 121A, 122, 123, 153A of IPC and u/s 3, 4, 5, 6, 7 of ES Act and u/s 3, 10, 13, 15, 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967
19. 200/2008 Kalol Taluka PS-I u/s 120B, 121, 121A, 123, 124A of IPC and u/s 4, 5,7 of ES Act and u/s 3, 4 of Prevention of Damages to Public Property Act and u/s 17, 18, 19, 23(1), 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967
20. 181/2008 Sarkhej PS-I u/s 302, 307, 337, 338, 120B, 121, 121A of IPC and u/s 3, 4, 5, 6 of ES Act and u/s 3,4 of Prevention of Damages to Public Property Act and u/s 16, 18 of Unlawful Activities (Prevention) Act, 1967.
21. 175/2008 Kapodra PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
22. 176/2008 Kapodra PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10; 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
23. 179/2008 Kapodra PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15,16,18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act

24. 180/2008 Kapodra PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
25. 363/2008 Varacha PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
26. 364/2008 Varacha PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
27. 365/2008 Varacha PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
28. 366/2008 Varacha PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
29. 367/2008 Varacha PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
30. 208/2008 Mahedharpura PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
31. 209/2008 Mahedharpura PS U/S 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
32. 203/2008 Katargam PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
33. 208/2008 Katargam PS u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
34. 3019/2008 DCB u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act
35. 651/2008 Umara u/s 4, 5 of Explosive Substances Act and u/s 307, 120B, 121A, 124A, 201, 465, 467, 471, 153(A)(1)(B), 188 of IPC and u/s 10, 13, 15, 16, 18, 20, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967 and u/s 65, 66 of I.T. Act

**KARNATAKA**

1. 05/2008, dt. 11.1.08 Honnali PS Davangere District (Case merged with 14/2008) u/s 102 Cr.PC and 379, 120(B), 123(A), 511 IPC, Sections 10, 12, 13 of Unlawful Activities (Prevention) Act, 1967 r/w Section 4 & 5 Explosive Substances Act, Section 7 of the Indian Arms Act.
2. 14/2008 dt. 30.1.2008 Gokul Road PS Hubli Dharwad City u/s 41(d), 102 Cr.PC and 120(B), 121, 121(A) 122, 124(A), 153A & B(1), 379, 116, 465, 468, 471, 201, 511 IPC, Sections 10, 12, 13 of Unlawful Activities (Prevention) Act, 1967 and Section 4 & 5 Explosive Substances Act

3. 104/2008 dated 14.05.08 Malamaruthi PS Belgaum Distt. u/s 153(A), 473, 476, 109, 465, 120(B) 511 IPC sections 10,13 of Unlawful Activities (Prevention) Act 1967
4. 88/2008 dt. 27.5.2008 APMC Yard, PS Belgaum Distt. u/s 143, 149, 153(A)(B), 120(B) IPC and sections 13, 18, 15 of Unlawful Activities (Prevention) Act, 1967 & sections 4 & 5 of Indian Explosive Act, 1908
5. 177/2008 dt. 25.7.2008 Kengeri, PS Bangalore City u/s 121, 121(A), 307, 435, 201 IPC, sections 3,4,5,6 Explosive Substances Act, 1908 and 4 of Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act 1967.
6. 92/2008 dt. 25.7.2008 Sampangiram Nagar PS Bangalore City, u/s 120(B), 121, 121A, 307, 324, 201, 435 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
7. 483/2008 dt. 25.7.2008 Madivala, PS Bangalore City u/s 120(B), 121(A), 326, 307, 302, 435, 201 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and 4, Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
8. 217/2008 dt. 25.7.2008 Adugodi, PS Bangalore City u/s 120(B), 121(A), 326, 435, 201, 153(A), 307, IPC Sections 3, 4, 5, 6 Explosive Substances Act, 1908 and section 9B, Explosive Act & 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
9. 260/2008 dt. 25.7.2008 Ashok Nagar, PS Bangalore City u/s 120(B), 121(A), 307, 337, 435, 201, 326 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and section 4, Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
10. 261/2008 dt. 25.7.2008 Ashok Nagar, PS Bangalore City u/s 120(B), 307, 121, 121(A), 153(A), 435, 201 IPC, sections 3, 4, 5, Explosive Substances Act, 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
11. 314/2008 dt. 25.7.2008 Byatarayana Pura PS Bangalore City u/s 120(B), 121, 121(A), 307, 435, 201 IPC, sections 3, 4, 5, 6 Explosive Substances Act 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
12. 315/2008 dt. 25.7.2008 Byatarayana Pura PS Bangalore City u/s 120(B), 121, 121(A), 307, 435, 201 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and section 4 Prevention of Destruction Loss of Public Property Act, 1984 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
13. 297/2008 dt. 26.7.2008 Koramangala, PS Bangalore City u/s 120(B), 121, 121(A), 201, 506, 307, 511 IPC, sections 3, 4, 5, 6 Explosive Substances Act, 1908 and Sections 3, 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
14. 242/2008 dt. 4.10.2008 Ullala, PS Dakshina Kannada Distt. u/s 120(B), 121(A), 122, 123, 153 (A), 212, 420, 468, 471 IPC, sections 5, 6 Explosive Substances Act, 1908, section 9 (B)(B) Explosive Act, section 3, 25 of Indian Arms Act and Sections 10, 11, 13, 16, 17, 18, 19, 20 of Unlawful Activities (Prevention) Act, 1967.
15. 260/2008 dt. 4.12.2008 Golgumbaj PS Bijapur Distt. u/s 153(A),(B), 120(B), 124(A), 149 IPC and sections 11,13,15,18 of UAPA

**KERALA**

1. 257/2008 dt. 19.6.2008 Mundakayam Distt. Kottayam u/s 122, 124(a), 153A, 120(b), I.P.C., 3, 5, 10, 13 of Unlawful Activities (Prevention) Act 1967.
2. 356/2008 dt. 18.10.2008 Kannur Edakkad u/s 3 r/w 13(2) 16,18,38 and 39 of Unlawful Activities (Prevention) Act, 1967, 129(B), 121, 121(A), 134(b), 465, 471 IPC



**MADHYA PRADESH**

1. 95/2008 dt. 19.4.2008 PS- Kotwali, Bhopal u/s 419, IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
2. 205/2008 dt. 20.4.2008 PS-Shahjahanbad, Bhopal u/s 419, IPC and Unlawful Activities (Prevention) Act, 1967
3. 244/2008 dt. 4.4.2008, PS-Gohalpur, Jabalpur u/s 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
4. 104/2008 dt. 07.4.2008, PS-Chachoda, Guna u/s 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
5. 180/2008 dt. 8.4.2008, PS-Neemuch, MP u/s 153A, 124A, IPC & 3, 10, 13 (A)(B) of Unlawful Activities (Prevention) Act, 1967
6. 120/2008 dt. 27.3.2008, PS-Pithampur, Dhar, MP u/s 122, 124A, 153A IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967, 25 & 27 Arm. Act, 3, 5, Explosive Substances Act
7. 202/2008 dt. 1.4.2008, PS-Kotwali, Khandwa, MP u/s 153 IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967.
8. 142/2008 dt. 5.4.2008, PS-Narshingharh, Rajgarh, MP u/s 153 A, I.P.C. and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
9. 177/2008 dt. 8.4.2008, PS-Biaora, Rajgarh, MP u/s 153(A) (B), IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act 1967
10. 159/2008 dt. 30.3.2008, PS-MG Road, Indore u/s 3, to, 13 of Unlawful Activities (Prevention) Act 1967
11. 184/2008 dt. 30.3.2008, PS- Khajrana, Indore u/s 10, 11, 12, 13 of Unlawful Activities (Prevention) Act 1967
12. 181/2008 dt. 1.4.2008, PS-Aero Drome, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
13. 101/2008 dt. 2.4.2008, PS-Chhoti Gwalan Toli, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
14. 129/2008 dt. 2.4.2008, PS-Sadar, Bazar, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
15. 35/2008 dt. 2.4.2008, PS-Sarafa, Indore u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
16. 192/2008 dt. 7.4.2008, PS-Khajrana, Indore u/s 153, IPC and sections 10,11,13 of Unlawful Activities (Prevention) Act, 1967.
17. 135/2008 dt. 10.4.2008, PS-Sadar Bazar, Indore, MP u/s 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
18. 62/2008 dt. 31.3.2008, PS-Unhel, Ujjain u/s 153A, 124A IPC and 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967
19. 239/2008 dt. 7.4.2008, PS-KoLwali, Sehore, MP u/s 153A, 153B IPC and 13, 10, 13 of Unlawful Activities (Prevention) Act, 1967
20. 302/2008 PS Misrod, Bhopal 19.9.08 u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
21. 399/2008 PS Kareli Narsingpur 22.10.08 u/s 3(1),10,13 of Unlawful Activities (Prevention) Act, 1967
22. 523/2008 dt. 22.10.08 PS Kotwali Seoni u/s 3(1),10,13 of Unlawful Activities (Prevention) Act, 1967
23. 200/2008 dt. 11.4.08 PS Juni Indore u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
24. 200/2008 dt. 19.8.08 PS-Chhotigwaltoli, Indore u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
25. 699/2008 dt. 10.11.08 PS-Mahakal, Ujjain u/s 3,10,13 of Unlawful Activities (Prevention) Act, 1967
26. 5/2009 dt. 21.10.09 PS-STF Bhopal u/s 147, 153 A/B I.P.C. & 3,10,13 of Unlawful Activities (Prevention) Act, 1967.
27. 6/2009 dt. 4.11.2009 PS-STF Bhopal u/s 153 A/B, I.P.C. & 3,10,13(A)(B) of Unlawful Activities (Prevention) Act, 1967
28. 703/2009 dt. 28.11.2009 PS-Moghat Road, Khandwa u/s 302, 379 I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act, 1967
29. 728/2009 dt. 28.11.2009 PS-Kotwali, Khandwa u/s 302, I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act 1967
30. 729/2009 dt. 28.11.2009 PS-Kotwali, Khandwa u/s 302, I.P.C. & 15 & 16A of Unlawful Activities (Prevention) Act, 1967

**MAHARASHTRA**

1. 3036/2008 dt. 1.4.2008, PS-Vijaypur Naka, Solapur City u/s 2(C), 10, 13 of Unlawful Activities (Prevention) Act, 1967
2. 17/2008 dt. 21.8.2008, PS-ATS, Mumbai u/s 10,13 of Unlawful Activities (Prevention) Act 1967, Amendment 2004.
3. 3065/2009 dt. 02.10.2009, PS-Murtijapur, Akola u/s 10,13 of Unlawful Activities (Prevention) Act, 1967.

**RAJASTHAN**

1. 15/08 dated 23.8.2008 PS- SOG CID(CB) Rajasthan Jaipur u/s 153A, 120B, IPC and sections 3, 10, 13, 17, 18 of Unlawful Activities (Prevention) Act, 1967.



**INDEX NO. 1**  
**LIST OF PROSECUTION WITNESSES BEFORE THE UNLAWFUL**  
**ACTIVITIES(PREVENTION) TRIBUNAL-2010**

Sr. No.	PW No.	Name of the Officer	(1)	(2)	(3)
(1)	(2)	(3)			
1.	PW-1	Mr. V.K. Akber	34.	PW-34	Mr. Atul Sabnis
2.	PW-2	Mr. S. Sasidaran	35.	PW-35	Mr. Udaysingh Rathod
3.	PW-3	Mr. K.R. Kannan	36.	PW-36	Mr. Milind Bhikaji Khetle
4.	PW-4	Mr. T.K. Vinodkumar	37.	PW-37	Mr. Sadashiv Patil
5.	PW-5	Mr. C.B. Sharma	38.	PW-38	Mr. Ashok Duraphe
6.	PW-6	Mr. Hukam Chand	39.	PW-39	Mr. K.N. Shengal
7.	PW-7	Mr. Govind Sharma	40.	PW-40	Mr. Ajay Kumar Singh
8.	PW-8	Mr. Ramesh Chander Lamba	41.	PW-41	Mr. Narayansinh Bhavansinh Parmar
9.	PW-9	Mr. L.N. Rao	42.	PW-42	Ms. Ushaben Bachubhai Rada
10.	PW-10	Mr. Sanjeev Kumar Yadav	43.	PW-43	Mr. Vinod Ramjibhai Tolia
11.	PW-11	Mr. Sishu Ranjan Pal; Mr. Sishu Ranjan Pal	44.	PW-44	Mr. Mayur Jagmalbhai Chavda
12.	PW-12	Mr. Manish Agarwal	45.	PW-45	Mr. Siddhrajsinh Bhati
13.	PW-13	Mr. Rajendra Ojha	46.	PW-46	Mr. Jayanth Vasudev Shetty
14.	PW-14	X	47.	PW-47	Mr. V.V. Kumbar
15.	PW-15	X	48.	PW-48	Mr. V.A. Pujar
16.	PW-16	Mr. Satyendra Singh Ranawat Mr. Satyendra Singh Ranawat	49.	PW-49	Mr. H.M. Omkaraiah
17.	PW-17	Mr. Thangkhanlal Guite	50.	PW-50	Mr. Jagadish Basalingappa Khot
18.	PW-18	Mr. Ajinath Satpute	51.	PW-51	Mr. S.S. Khot
19.	PW-19	Mr. Satish Desmukh	52.	PW-52	Mr. S. Srinivasa Rao
20.	PW-20	Mr. Dnyaneshwar Ganore	53.	PW-53	Mr. P. Devender
21.	PW-21	Mr. Vishnu Baburao Jagtap	54.	PW-54	Mr. S. John Wesley
22.	PW-22	Mr. Dattatraya Bapurao Patil	55.	PW-55	Mr. K. Srinivasa Rao
23.	PW-23	Mr. Prakash Hingmere	56.	PW-56	Mr. V.N.V. Satyanarayana Mr. V.N.V. Satyanarayana Mr. V.N.V. Satyanarayana Mr. V.N.V. Satyanarayana
24.	PW-24	Mr. Anil Lambate	57.	PW-57	Dr. R.S. Praveen Kumar
25.	PW-25	Mr. Sunil D. More; Mr. Sunil D. More	58.	PW-58	Mr. B.P.S. Parihar
26.	PW-26	Mr. Sangram Sangle	59.	PW-59	Mr. Manoj Kumar Rai
27.	PW-27	Mr. Subhash Panse	60.	PW-60	Mr. Chandrashekhar Wagh
28.	PW-28	Mr. Chhagan	61.	PW-61	Mr. Vikram Singh Bhadoria
29.	PW-29	Mr. Punjabrao Deshmukh,	62.	PW-62	Mr. M.K. Tiwari
30.	PW-30	Mr. Shivajirao Tambare	63.	PW-63	Mr. Surendra Singh Baghel
31.	PW-31	Mr. V.D. Satav	64.	PW-64	Mr. Shelendra Singh Jadon
32.	PW-32	Mr. Sunil Mane	65.	PW-65	Mr. Ray Singh Narwaria
33.	PW-33	Mr. Rahimatullah Inayat Sayeed	66.	PW-66	Mr. D.S. Yadav
			67.	PW-67	Mr. Yashpal Dabas

Earlier affidavit stands withdrawn. File No. 8A Pages 285 to 427.

\* PW-66 was examined in the Chamber and his statement was not recorded.

## INDEX NO. 2

LIST OF FILES AND INTERROGATORIES WITNESSES BEFORE THE  
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

Sl. No.	File No./ IWNNo.	Name of the Officer	Sl. No.	File No./ IWNNo.	Name of the Officer
1.	9a	Mr. Khema Ram, Sub-Inspector, SHO P.S. Bapawar Kalan, Distt. Kota (Rural) Raj.	16.	53	Mr. Sanjay Jairam Sonwane, API with SPU, Jalgaon Unit, Maharashtra
2.	9b	Mr. Vinod Singh, ASI, P.S. Kotwali, Distt. Bikaner, Rajasthan	17.	54	Mr. Jadgeo Mahadeo Akhare, SDPO, Washim Distt., Maharashtra (C.R.3103/01)
3.	12	Mr. K.S. Narenthiran Nayar, Nodal Officer, Tamil Nadu	18.	55	Mr. Mohan Anant Khirsagar, Dy.S.P., SDPO Deolgaoniraja, Distt. Buldhana, Maharashtra
4.	12A	Mr. K.S. Narendhiran Nayar (this affidavit is not on record)	19.	56	Mr. Jagdeo Mahadeo Akhare, SDPO, Washim Distt., Maharashtra (C.R.3080/01)
5.	27 <sup>2</sup>	Mr. Ambadas Pate, Dy. Commissioner of Police, Zone-II, Nagpur, Presently at Mumbai	20.	57	Mr. Namdeo Mashnajirao Mittewad, Dy. S.P., Baramati, Distt. Pune (Rural), Maharashtra
6.	31	Mr. Vikram Karkud, Dy. S.P. Police Training School, Nanveej, Daund, Distt. Pune, Maharashtra	21.	58	Mr. Uttam Shankarrao Pawar, Police Inspector, Ambejogai P.S., Distt. Beed, Maharashtra
7.	33	Mr. Yashwant Sambhaji Sabale, Police Sub-Inspector, Nafhad P.S. Nashik (R), Maharashtra.	22.	59	Mr. Madhukar Gopal Tupare, Police Inspector, Kurla P.S., Mumbai, Maharashtra
8.	34	Mr. S.S. Nave, Police Inspector, Bhosari P.S., Distt. Pune City, Maharashtra	23.	60	Mr. Dattatray Tukaram Naikodi, Police Inspector, Crime Branch, Mumbai City, Maharashtra
9.	46	Mr. Vinayak Saindane, Police Inspector, DSB Malegaon, Distt. Nashik, Maharashtra (C.R.3053/01)	24.	61 <sup>3</sup>	Mr. Shivajirao, ACP, D-1 (East) Detection of Crime Branch, CID, Mumbai, Maharashtra
10.	47	Mr. Vinayak Saindane, Police Inspector, DSB Malegaon, Distt. Nashik, Maharashtra (C.R.3053/01)	25.	68	Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh
11.	48	Mr. Vishnu Bhimashankar Mahinderkar, Police Inspector, P.S. Jail Road, Sholapur City, Maharashtra.	26.	68A	Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 52/01)
12.	49	Mr. Madhukar Waghalkar, ASI, Old City P.S. Akola, Maharashtra	27.	68B	Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 54/01)
13.	50	Mr. Balu Gaigole, Police Inspector, Yeotmal City Police Station, Maharashtra	28.	68C	Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 55/01)
14.	51	Mr. Volas Namdeo Medhe, Dy. S.P. CID Crime, Computer Section Nasik Range, Nasik, Maharashtra	29.	68D	Mr. S. Khaja Moinuddin, Inspector of Police, Kalapathar P.S., Hyderabad City, Andhra Pradesh (FIR No. 51/01)
15.	52	Mr. Shantaram Namdeo Borse, Police Inspector, Nandurbar Control Room, Distt. Nandurbar, Maharashtra			

<sup>2</sup> Witness not produced for cross-examination. Affidavit/Evidence not considered. Files of IW 9a and IW 9b are tagged with the file of PW 12, & PW 13.

<sup>3</sup> Witness not produced for cross-examination. Affidavit/Evidence not considered.

Sl. No.	File No./ IWNNo.	Name of the Officer	Sl. No.	File No./ IWNNo.	Name of the Officer
30.	75	Mr. D. Anand Kumar, Inspector of Police, Chaderghat P.S., Hyderabad, Andhra Pradesh	47.	95	Mr. B.L. Meena, Police Inspector, P.S. Gandhwani, Distt. Dhar, Madhya Pradesh (F.I.R. 101/08)
31.	76	Mr. K. Hanumantha Rao, Police Inspector Patamata P.S., Vijayawada City, Krishna Distt, Andhra Pradesh.	48.	96	Mr. S.N. Solanki, ASI, P.S. Shahjahanabad, Distt. Bhopal, Madhya Pradesh
32.	77	Mr. Satish Kumar, Inspector of Police CID, A.P. Hyderabad	49.	98	Mr. Ajay Sangar, Inspector DGP Office, PHQ Bhopal, Madhya Pradesh (C.R184/08)
33.	78	Mr. R.K. Puri, SDOP Nepa Nagar, Distt. Burhanpur, Madhya Pradesh	50.	99	Mr. Ajay Pandey, Dy. S.P. Chief Security Officer, Vallah Bhawan, Bhopal, Madhya Pradesh
34.	79	Mr. Devesh Kumar Pathak, Inspector (Police Line), Jabalpur, Madhya Pradesh	51.	100	Mr. G.S. Chadar, SHO, P.S. Annapurna, Indore, Madhya Pradesh
35.	80	Mr. Navrattan Singh, City S. P., Kotwali Division, Ujjain, Madhya Pradesh	52.	101	Mr. Hari Shankar Tiwari, Inspector, SHO, P.S. Chachoda, Distt. Guna, Madhya Pradesh
36.	81	Mr. V. S. Arora, Dy. SP. AJK Neemuch, Distt. Neemuch, Madhya Pradesh	53.	102	Mr. Ritesh Sahu, SI/ATS, M.P. Unit, Jabalpur, Madhya Pradesh
37.	83	Mr. Umesh Sharma, Special Assistant of Agriculture Minister, Govt. of Madhya Pradesh, at Bhopal	54.	103	Mr. B.L. Meena, Police Inspector, P.S. Gandhwani, Distt. Dhar, Madhya Pradesh (F.I.R. 219/08)
38.	84	Mr. Jitendra Singh, Dy.S.P., Crime Branch, Indore, Madhya Pradesh	55.	105	Mr. Bharat Singh Chauhan, Dy. S.P., SDOP Shajapur, Madhya Pradesh
39.	85	Mr. Mohan Singh Yadav, Inspector SHO, P.S. MIG Colony, Indore, Madhya Pradesh	56.	107	Mr. N.K. Parihar, Nodal Officer, DSP (Crime) Jabalpur, Madhya Pradesh
40.	87	Mr. Sanjay Sahu, CSP, Omti, Jabalpur, Madhya Pradesh	57.	108	Mr. B.P. Chauhan, Sub-Inspector, P.S. Sondwa, Distt. Alirajpur, Madhya Pradesh
41.	88	Mr. Ajay Sangar, Inspector DGP Office, PHQ Bhopal, Madhya Pradesh (C.R192/08)	58.	109	Mr. U.P. Singh, Sub-Inspector, P.S. Madhavnagar, Ujjain City, Madhya Pradesh
42.	90	Mr. C.S. Parihar, Town Inspector, P.S. Bhanpura, Distt. Mandsour, Madhya Pradesh	59.	111	Mr. Ravishankar Deharia, Addl. S.P. Seom, Madhya Pradesh
43.	91	Mr. J.D. Bhonsle, TI, P.S. Depalpur, Distt. Indore, Madhya Pradesh (F.I.R. 135/08)	60.	114	Mr. K.N. Vijayavargiya, 114, Kaifash Park Colony, Behind Geeta Bhawan, Indore, Madhya Pradesh, (Public witness).
44.	92	Mr. J.D. Bhonsle, TI, P.S. Depalpur, Distt. Indore, Madhya Pradesh (F.I.R. 129/08)			
45.	93	Mr. Daular Singh, Inspector, P.S. Mhow, Distt. Indore, Madhya Pradesh			
46.	94	Mr. Naveen Kumar Awasthi, (SHO) P.S. Kotwali, Inspector SPE Lokayukta Org. Bhopal, Madhya Pradesh			

[F.No. 14017/13/2010-NI-III]

ARUN KUMAR YADAV, Jt. Secy.



# भारत का राजपत्र

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अधिसूचना

नई दिल्ली, 3 फरवरी, 2012

का.आ. 224(अ).— जबकि स्टूडेन्ट्स इस्लामिक मूवमेंट आफ इंडिया (यहां इसके बाद 'सिमी' के रूप में निर्दिष्ट) ऐसे क्रियाकलापों में संलिप्त रहे हैं जो देश की सुरक्षा के लिए खतरनाक हैं और जिनमें देश की शांति एवं सांप्रदायिक सौहार्द को भंग करने और धर्मनिरपेक्ष ढाँचे को छिन्न-भिन्न करने की शक्ति है;

और जबकि, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जो यहां इसके बाद 'अधिनियम' के रूप में निर्दिष्ट) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार ने अधिसूचना संख्या क्रमशः (i) का.आ. 960 (अ), दिनांक 27 सितम्बर, 2001; (ii) का. आ. 1113 (अ), दिनांक 26 सितम्बर, 2003; (iii) का. आ. 191 (अ), दिनांक 8 फरवरी, 2006; (iv) का. आ. 276 (अ), दिनांक 7 फरवरी, 2008 और (v) का. आ. 260 (अ) दिनांक 5 फरवरी, 2010 द्वारा सिमी को एक विधिविरुद्ध संगठन घोषित किया;

और जबकि, यह निर्णय करने के प्रयोजनार्थ कि सिमी को विधिविरुद्ध संगठन घोषित करने का पर्याप्त कारण है या नहीं, विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जो यहां इसके बाद 'अधिकरण' के रूप में निर्दिष्ट) गठित किया गया और अधिकरण ने आदेश संख्या क्रमशः (i) का.आ. 397 (अ) दिनांक 8 अप्रैल, 2002; (ii) का. आ. 499 (अ), दिनांक 16 अप्रैल, 2004; (iii) का. आ. 1302 (अ), दिनांक 11 अगस्त, 2006; और (iv) का.आ. 1990 (अ) दिनांक 12 अगस्त, 2010 द्वारा प्रतिबंध को उचित ठहराया;

और जबकि, अधिकरण ने दिनांक 4 अगस्त, 2010 के आदेश द्वारा यह फैसला दिया कि उपर्युक्त दिनांक 5 फरवरी, 2010 की अधिसूचना स. का. आ. 260 (अ), अधिनियम की धारा 3 और धारा 4 के संदर्भ में अपेक्षा को पूरी करती है और उन्होंने सिमी को विधिविरुद्ध संगठन घोषित करने की पुष्टि की;

और जबकि विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा (6) की उप-धारा (1) द्वारा प्रदत्त अधिसूचना की तारीख से 2 वर्ष के प्रतिबंध की अवधि, 4 फरवरी 2012 को समाप्त हो जाएगी;

और जबकि केंद्रीय सरकार की अन्य बातों के साथ-साथ निम्नलिखित आधारों पर यह राय है कि सिमी ऐसे क्रियाकलापों में संलिप्त है जो देश की अखंडता एवं सुरक्षा के लिए खतरनाक हैं; नामतः-

- (क) 13 फरवरी, 2010 को जर्मन बेकरी, नोर्थ मेन रोड, कोरेगांव पार्क, पुणे में एक अत्यधिक शक्तिशाली बम विस्फोट हुआ जिसमें सत्रह (17) व्यक्ति (पुरुष एवं महिलाएं) मारे गए एवं अन्य छप्पन (56) व्यक्ति घायल हुए जिनकी गम्भीरता अलग-अलग थी। मौके से एकत्र किए गए नमूने जांच के लिए राज्य विधि विज्ञान प्रयोगशाला (एफ एस एल) और केंद्रीय विधि विज्ञान प्रयोगशाला (सी.एफ.एस.एल), केंद्रीय अन्वेषण ब्यूरो (सी बी आई), नई दिल्ली को भेजे गए हैं। विधिविज्ञान प्रयोगशाला ने मत व्यक्त किया है कि "पेट्रोलियम हाइड्रोकार्बन तेल सहित साइक्लोनाइट (आर.डी.एक्स), अमोनियम नाइट्रेट के अवशेषों की पहचान की गई है। आर डी एक्स को उच्च विस्फोटक के रूप में इस्तेमाल किया जाता है।" इस मामले से यह उदघाटित हुआ कि गिरफ्तार किए गए अभियुक्त मिर्जा हिमायत इनायत गैंग उर्फ अहमद बेग इनायत मिर्जा उर्फ युसुफ ने वांछित अभियुक्त मोहसिन चौधरी, अहमद सिद्दिकप्पा उर्फ यासीन भटकल, इकबाल भटकल, रियाज़ भटकल के साथ मिलकर बम बनाने तथा दिनांक 13 फरवरी, 2010 को जर्मन बेकरी, पुणे में विस्फोट करने का एक षड्यंत्र रचा था। उपर्युक्त व्यक्तियों ने विद्रोह भड़काने के लिए विधिविरुद्ध तरीके से बम विस्फोट करने का यह अपराध किया था। आतंकी विरोधी दल (ए.टी.एस), मुंबई, महाराष्ट्र ने विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18, 21 के साथ पठित एवं विस्फोटक पदार्थ अधिनियम की धारा 3, 4, 5 के साथ पठित भारतीय दंड संहिता (आई.पी.सी) की धारा 302, 307, 326, 325, 324, 427, 120-ख के तहत एक आपराधिक मामला सं. 6/2010 (बंद गार्डन पुलिस थाना अपराध सं. 83/2010) दर्ज कराया है। दोषी व्यक्ति सिमी के सक्रिय सदस्य हैं।
- (ख) आपराधिक मामला सं. 21/2010, ए.टी.एस मुंबई थाने में विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3, 4, 5, 6 के साथ पठित भारतीय दंड संहिता की धारा 419, 420 के साथ पठित धारा-120 ख, 465, 467, 468 के साथ पठित विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा-10, 13, 15, 18, 18(क) और 18 (ख) के अंतर्गत दर्ज किया गया था। दो सिमी कार्यकर्ताओं को गिरफ्तार किया गया था। ये अभियुक्त नागरिकों तथा सुरक्षा स्थापनाओं के विरुद्ध आतंकी क्रियाकलापों की योजना तैयार कर रहे थे और इनका समन्वय कर रहे थे। दिए गए कार्य को पूरा करने के लिए उन्होंने आर.डी.एक्स, डेटोनेटर्स आदि प्राप्त कर लिए थे लेकिन इससे पहले कि वे विस्फोट करते उन्हें गिरफ्तार कर लिया गया था;
- (ग) दिनांक 22 अगस्त, 2011 को ए.टी.एस, थाणे यूनिट द्वारा एक अभियुक्त गिरफ्तार किया गया था। इस अभियुक्त को सत्तानवे हजार पाँच सौ रुपये की भारतीय जाली मुद्रा के साथ पकड़ा गया था। उसे इंडियन मुजाहिदीन के सदस्य रियाज़ भटकल द्वारा वर्ष 2000 में अवैध तरीके से पाकिस्तान भेजा गया था। इस अभियुक्त ने अफगानिस्तान के कांधार सहित पाकिस्तान में आतंकी प्रशिक्षण प्राप्त किया था। एक और अभियुक्त की गिरफ्तारी की गई थी जिसके पास से तीस हजार रुपये की जाली भारतीय मुद्रा प्राप्त हुई थी। ए.टी.एस, मुंबई,



महाराष्ट्र ने विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (2008 में संशोधित) की धारा 15, 17 के साथ पठित भा.द. संहिता की धारा 489-क, 489-ख, 489-ग के तहत आपराधिक मामला सं. 31/2011 दर्ज किया है। दोनों अभियुक्त प्रतिबंधित सिमी संगठन के सदस्य हैं;

- (घ) आबिद रोड पुलिस थाने में भा.द. संहिता की धारा 420, 468, 120-ख के तहत आपराधिक मामला सं.274/2011 तथा भारतीय दंड संहिता की धारा 120-ख, 121-क, 125, 126 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3 के साथ पठित धारा-10, 13 के तहत आपराधिक मामला सं. 312/2011 दर्ज किया गया था। एक अभियुक्त, सैयद अफाक इकबाल उर्फ दानिश इकबाल, सिमी का एक सदस्य, निवासी-रांची, झारखंड जो मानीनगर पुलिस थाना, अहमदाबाद (गुजरात) के आपराधिक मामला सं. 203/2008 में दोषी है, को गिरफ्तार किया गया था। उसने यह रहस्योद्घाटन किया कि वह वर्ष 2008 से हैदराबाद के विभिन्न स्थानों में रह रहा है। अहमदाबाद के श्रृंखलाबद्ध बम विस्फोटों सहित परीक्षाधीन विभिन्न मामलों में गिरफ्तारी से बचने के लिए उसने फर्जी नामों से सिम कार्ड्स हासिल किए थे;
- (ड) 24 नवम्बर, 2010 को मध्य प्रदेश की पुलिस द्वारा सिमी के पूर्ववर्ती अखिल भारतीय सचिव, मुनीर देशमुख की गिरफ्तारी की गई थी जो मध्य प्रदेश के सात मामलों में शामिल था, ये सभी मामले सिमी के क्रियाकलापों से संबंधित थे। भारतीय दंड संहिता की धारा 177, 419 के तहत पुलिस थाना नारायणगुडा, पुलिस थाना हैदराबाद, आंध्र प्रदेश में आपराधिक मामला सं.245/2011 दर्ज किया गया है।
- (च) पिकेट इयूटी के दौरान पुलिस कार्मिकों पर अभियुक्त द्वारा गोली चलाए जाने के आरोप में पुलिस थाना हुसैनी आलम, हैदराबाद, आंध्र प्रदेश में भा.द. संहिता की धारा-34 के साथ पठित धारा 302, 120-ख, 122, 123, 124-क तथा शस्त्र अधिनियम, 1959 की धारा 25 (i) (क) और 27 एवं विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18 और 20 के तहत आपराधिक मामला सं. 87/2010 दर्ज किया गया है।
- (छ) दिनांक 15 मई, 2010 को पुलिस थाना सुन्तिकोप्पा, कोडगू जिला (कर्नाटक) में भा.द. संहिता की धारा 143, 147, 148, 120-ख, 121, 121(क), 153 (क), 201, 149; विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा-10, 11, 13, 16, 18, 18(क) (ख) तथा विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3 और 5 के अंतर्गत आपराधिक मामला सं. 37/2010 दर्ज किया गया है;
- (ज) अदर बुक्स, कोझीकोड पर मारे गए छापे में पुलिस ने एक कंप्यूटर हार्ड डिस्क जब्त किया था जिसमें ऐसी सामग्री पाई गई जो साम्प्रदायिक सौहार्द्र के लिए हानिकारक हैं। पुस्तकों की दूकान का मालिक एक पूर्व-सिमी कार्यकर्ता है। टाउन पुलिस थाना, कोझीकोड, केरल में दंड प्रक्रिया संहिता (सी पी सी) की धारा 102 के तहत एक आपराधिक मामला सं. 424/2010 दर्ज किया गया है तथा दोषी को गिरफ्तार किया गया है;



- (झ) ननमा बुक्स, कोझीकोड पर मारे गए छापे में पुलिस ने ऐसी वस्तुएं जब्त कीं जो साम्प्रदायिक सौहार्द्र के लिए हानिकारक हैं। एक अभियुक्त को गिरफ्तार किया गया है तथा भा.दं. संहिता की धारा 124 क, 153 क के तहत टाउन पुलिस थाना, कोझीकोड, केरल में एक आपराधिक मामला सं. 448/2010 दर्ज किया गया है;
- (ञ) कोलेनगोड पुलिस थाने की सीमा के अंदर इदुक्कापारा मस्जिद, मुथालामाडा में स्टडी-क्लास संचालित करने के लिए दंड प्रक्रिया संहिता की धारा 151 के तहत कोलेनगोडा पुलिस, पलक्काड जिला, केरल में आपराधिक मामला संख्या 159/2011 दर्ज किया गया है। इक्कीस व्यक्तियों ने यह क्लास अटेंड की थी। पूछताछ करने पर यह उदघाटित हुआ था कि इक्कीस व्यक्तियों में से बीस व्यक्ति कोयम्बतूर के रहने वाले थे और एक व्यक्ति चेन्नै का रहने वाला था। मस्जिद में अध्ययन/कक्षा आयोजित करने का उद्देश्य, इबादत कैसे की जाए तथा निस्कारा आदि किस प्रकार किया जाए, के बारे में धार्मिक कक्षाओं में भाग लेने के लिए बताया गया था। इन इक्कीस व्यक्तियों में सिमी के कुछ पूर्व कार्यकर्ता भी सम्मिलित थे। सभी इक्कीस व्यक्तियों को गिरफ्तार किया गया था और वर्द्धित जमानत पर रखा गया था;
- (ट) पुलिस थाना जी.आर.पी, रतलाम, मध्य प्रदेश में भा.दं.संहिता की धारा 34 के साथ पठित धारा 307 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 15 के तहत आपराधिक मामला सं. 35/2011 दर्ज किया गया है। दिनांक 03 जुलाई, 2011 को ए.टी.एस पुलिस दल पर गोलीबारी करने के आरोप में दो अभियुक्तों को गिरफ्तार किया गया था, इस घटना में एक इंस्पेक्टर की मौत हो गई थी। दोषी व्यक्ति सिमी संगठन के सदस्य हैं;
- (ठ) पुलिस थाना कोतवाली, खंडवा, मध्य प्रदेश में विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16, 18, 20 तथा शस्त्र अधिनियम, 1959 की धारा 25, 27 के साथ पठित भा.दं. संहिता की धारा 153-क के तहत आपराधिक मामला सं. 819/2011 दर्ज किया गया है। बारह अभियुक्तों को गिरफ्तार किया गया है तथा राज्य पुलिस द्वारा पाँच पिस्तौलें, दो रिवाल्वर, सोलह बुलेट और चार मोटर साइकलें, सिमी साहित्य तथा सी.डी बरामद की गईं एवं जब्त की गईं। सभी अभियुक्त प्रतिबंधित सिमी संगठन के सदस्य हैं।
- (ड) भारतीय दंड संहिता, शस्त्र अधिनियम, 1959 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की विभिन्न धाराओं के तहत कोतवाली, खंडवा, मध्य प्रदेश के आपराधिक मामला सं. 14/2009 और 164/2009 में जून-जुलाई, 2011 के बीच ग्यारह दोषी सिमी सदस्यों को विधिविरुद्ध क्रियाकलापों की योजना बनाने के लिए गिरफ्तार किया गया है। पुलिस ने अभियुक्तों के पास से दो पिस्तौलें, तीन बुलेट सहित एक पिस्तौल मैगजीन तथा एक मोटर साइकिल बरामद की और जब्त की;

- (ढ) पुलिस थाना स्टेशन रोड, रतलाम, मध्य प्रदेश में भा.दं. संहिता की धारा-307, शस्त्र अधिनियम, 1959 की धारा-25, 27 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा-10, 13, 16ख, 19 के तहत आपराधिक मामला सं. 224/2011 दर्ज किया गया है। तीन अभियुक्तों की गिरफ्तारी की गई है। सभी दोषी सिमी के सदस्य हैं। पुलिस ने उनके पास से एक रिवाल्वर, खाली कारतूस और सिमी साहित्य बरामद और जब्त किया।
- (ण) विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10,13,17,19 के साथ पठित भारतीय दण्ड संहिता की धारा 153क के अंतर्गत मामला अपराध संख्या 290/2011 को पुलिस स्टेशन मानक चौक, रतलाम, मध्य प्रदेश में दर्ज किया गया है। पाँच-आरोपी गिरफ्तार किए गए हैं। आरोपियों में एक सिमी का सदस्य है तथा अन्य आरोपी उसे उसकी गतिविधियों में सहयोग कर रहे हैं अर्थात् संगठन के लिए धन एकत्रित करना, सिमी के लिए नए सदस्य बनाना तथा सिमी संगठन के प्रसार के लिए सामग्री उपलब्ध कराना। पुलिस ने जेहाद से संबंधित 4 सीडी, सिमी पर पाठ्य सामग्री, सरल कुरान पैरा 1 से 4, समाज सुधार पत्रिका अहदमाना बराहे आवाज के लिए सिमी की सदस्यता का फॉर्म, बम बनाने के लिए सूचना, तीन सिम तथा एक मोबाइल फोन आरोपी से बरामद किए।
- (त) ए. टी. एस, भोपाल, मध्य प्रदेश द्वारा आठ आरोपी व्यक्तियों को विधिविरुद्ध तथा राष्ट्र विरोधी गतिविधियों, धन एकत्रित करने, बैंक, डकैतियों, महत्वपूर्ण व्यक्तियों को निशाना बनाने तथा सिमी की गतिविधियों में सलिप्तता के लिए गिरफ्तार किया गया। मामला अपराध संख्या 04/2011 तथा 05/2011 को भारतीय दंड संहिता, शस्त्र अधिनियम, 1959 तथा विधिविरुद्ध गतिविधियां (निवारण) अधिनियम, 1967 की विभिन्न धाराओं के अंतर्गत दर्ज किया गया। पुलिस ने सोना, पिस्टल, अवैध दस्तावेज तथा संगठन के क्रियाकलापों से संबंधित पाठ्य सामग्री बरामद एवं जब्त की है।
- (थ) मामला अपराध संख्या 431/2010 को शस्त्र अधिनियम, 1959 की धारा 25, भारतीय दण्ड संहिता की धारा 395, 397 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16, 17, 18 के अंतर्गत हनुमानगंज पुलिस स्टेशन, भोपाल, मध्य प्रदेश में दर्ज किया गया। पाँच आरोपी गिरफ्तार किए गए तथा अकोला से एक सौ पचास ग्राम सोना, भूसवाल से 80 ग्राम सोना, कोलगाटा से 240 ग्राम सोना बरामद एवं जब्त किया गया। आरोपी सिमी के सदस्य हैं तथा सिमी संगठन को मजबूत करने के लिए तथा हथियार खरीदने के लिए डकैतियां कर रहे हैं।
- (द) पुलिस स्टेशन, एटारसी होशंगाबाद में मामला अपराध संख्या 168/2010 में पुलिस स्टेशन बिरलाग्राम, उज्जैन में अपराध संख्या 112/2011 में तथा पुलिस स्टेशन बी.एन.पी. देवास में अपराध संख्या 456/2009 में 17 आरोपियों को गिरफ्तार किया जो कि शस्त्र अधिनियम 1959, भारतीय दंड संहिता तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की

विभिन्न धाराओं के अंतर्गत दर्ज किए गए थे। आरोपी प्रतिबंधित सिमी संगठन के सदस्य हैं तथा संगठन को मजबूत करने, हथियार खरीदने, नए सदस्य बनाने तथा सफदर नागोरी एवं उसके सहयोगियों की जमानत के लिए धन एकत्रित करने हेतु डकैतियां कर रहे हैं।

- (ध) पुलिस स्टेशन, अपराध पहचान शाखा, अहमदाबाद शहर, गुजरात में शस्त्र अधिनियम, 1959 की धारा 25(1) (क) तथा (ड) तथा 29 के साथ पठित आतंकवाद निवारक अधिनियम, 2002 की धारा 3 (3); 4, 20, 21 (2) (ख), 22 (3) (क) (ख) के साथ पठित भारतीय दंड संहिता की धारा 120 (ख), 121 (1), 122 के अंतर्गत 11 दिसम्बर, 2003 को मामला अपराध संख्या आई-16/2003 में छः सिमी कार्यकर्ताओं को अभिशस्त किया गया है। इन आरोपी व्यक्तियों को गुजरात में गोधरा दंगों के पश्चात बदले की कार्रवाई करने के प्रयास के लिए गिरफ्तार किया गया।
- (न) नौ सिमी कार्यकर्ताओं को दो वर्ष का कारावास दिया गया है तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3 के साथ पठित धारा 10 के अंतर्गत प्रत्येक पर 500 रु. का जुर्माना लगाया गया है तथा पुलिस स्टेशन-चाचौरा गुना, मध्य प्रदेश में विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 11, 13 के अंतर्गत दर्ज, मामला अपराध संख्या 104/2008 में विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13 के अंतर्गत प्रत्येक को तीन वर्ष का कारावास दिया गया है तथा 500/- रु. का जुर्माना लगाया गया है।
- (प) पुलिस स्टेशन-सदर बाजार, इंदौर, मध्य प्रदेश में विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13 तथा भारतीय दंड संहिता की धारा 153 क के अंतर्गत मामला संख्या 135/2008 में एक सिमी कार्यकर्ता मोहम्मद युनूस को दो वर्ष का कारावास दिया गया है तथा 25 हजार रुपये का जुर्माना लगाया गया है।
- (फ) पुलिस स्टेशन-उन्हेल, जिला-उज्जैन, मध्य प्रदेश में मामला अपराध संख्या 62/2008 में पाँच सिमी कार्यकर्ताओं को भारतीय दंड संहिता की धारा 124क के अंतर्गत प्रत्येक को 3 वर्ष का कारावास तथा 1 हजार पाँच सौ रुपये का जुर्माना, भारतीय दंड संहिता की धारा 153क के अंतर्गत प्रत्येक को दो वर्ष का कारावास और एक हजार रुपए का जुर्माना, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत प्रत्येक को एक वर्ष का कारावास तथा पाँच सौ रुपये का जुर्माना तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13 के अंतर्गत पाँच वर्ष का कारावास तथा 2500/- रु. का जुर्माना लगाया गया है;
- (ब) पुलिस स्टेशन हबीबगंज, भोपाल, मध्य प्रदेश में विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 11, 13 के साथ पठित भारतीय दण्ड संहिता की धारा 153ख, 295क के

अंतर्गत दर्ज मामला अपराध संख्या 626/2001 में एक सिमी कार्यकर्ता मुनीर देशमुख को तीन वर्ष का कारावास दिया गया है तथा 500/- रु. का जुर्माना लगाया गया है।

- (भ) पुलिस स्टेशन शाहजहाबाद, भोपाल, मध्य प्रदेश में दर्ज भारतीय दंड संहिता की धारा 153 क, 153ख के अंतर्गत अपराध संख्या 663/2000 में मुनीर देशमुख सहित छः सिमी कार्यकर्ताओं में प्रत्येक को तीन वर्ष का कारावास दिया गया है तथा 500/- रु. का जुर्माना लगाया गया है। अभियोग पक्ष ने यह तर्क दिया था कि आरोपियों ने साम्प्रदायिक उपद्रव उत्पन्न करने की मशा से भोपाल के शाहजहाबाद इलाके में 22 अक्टूबर, 2000 को पोस्टर चिपकाए।
- (म) विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13 के साथ पठित भारतीय दंड संहिता की धारा 147, 149, 153क, 153ख के अंतर्गत दर्ज पुलिस स्टेशन ए.टी.एस/एस.टी.एफ-इंदौर, मध्य प्रदेश के मामला अपराध संख्या 5/2009 में 30 अगस्त, 2011 को प्रथम श्रेणी न्यायिक मजिस्ट्रेट, जिला तथा सत्र न्यायालय इंदौर के न्यायालय द्वारा तीन सिमी कार्यकर्ताओं को तीन वर्ष सख्त कारावास की सजा सुनाई गई।
- (च) पुलिस स्टेशन-गोहालपुर, जबलपुर, मध्य प्रदेश में भारतीय दंड संहिता की धारा 153क के अंतर्गत मामला अपराध संख्या 637/1998 में 31 अक्टूबर, 2011 को जे, एम, एफ. सी न्यायालय ने दो सिमी कार्यकर्ताओं को दोषी ठहराया तथा उनको गोहालपुर क्षेत्र में 1998 में साम्प्रदायिक सदभाव में विघ्न उत्पन्न करने के उद्देश्य से विध्वंसात्मक गतिविधियों के लिए प्रत्येक को दो वर्ष का कारावास दिया गया तथा 500/- रु. का जुर्माना किया।

और जबकि केन्द्रीय सरकार का उपर्युक्त उल्लिखित के आधार पर यह मत है कि सिमी ऐसी गतिविधियों में संलिप्त है जो देश की एकता तथा सुरक्षा के लिए हानिकारक है।

अतः, अब केन्द्रीय सरकार विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप धारा (1) द्वारा प्रदत्त शक्तियों के प्रयोग में एतद्वारा "स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को "विधिविरुद्ध संगठन" घोषित करती है।

और जबकि केन्द्रीय सरकार इसके आगे यह मत रखती है कि यदि सिमी की विधिविरुद्ध गतिविधियों को तत्काल नहीं रोका गया अथवा उस पर नियंत्रण नहीं किया गया तो वह

- (i) अपनी विध्वंसात्मक गतिविधियां निरंतर रखने तथा भगौड़े कार्यकर्ताओं को पुनः संगठित करने में;
- (ii) साम्प्रदायिक सदभाव बिगाड़कर लोगों के मस्तिष्क को प्रदूषित करके देश के धर्म निरपेक्ष ढांचे को चरमराने;
- (iii) राष्ट्रद्रोही भावनाएं प्रसारित करने; तथा

- (iv) उग्रवाद का सहयोग करके अलगाववाद को बढ़ावा देने में;  
 (v) देश की एकता तथा सुरक्षा के लिए हानिकारक गतिविधियों द्वारा

इस अवसर का फायदा उठा सकते हैं।

और जबकि केन्द्रीय सरकार का यह भी मत है कि सिमी की गतिविधियों का ध्यान रखते हुए सिमी को तत्काल प्रभाव से एक विधिविरुद्ध संगठन घोषित करना आवश्यक है तथा तदनुसार धारा 3 की उप-धारा (3) के प्रावधानों द्वारा प्रदत्त शक्तियों के प्रयोग में केन्द्रीय सरकार एतद्वारा निर्देश देती है कि यह अधिसूचना, उक्त अधिनियम की धारा 4 के अंतर्गत किसी भी आदेश के अध्यक्षीन, सरकारी राजपत्र में इसके प्रकाशन की तिथि से लागू होगी।

[फा. सं. 14017/5/2011-एन आई-III]

भगवान शंकर, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 3rd February, 2012

**S.O. 224(E).**— Whereas the Students Islamic Movement of India (hereinafter referred to as the 'SIMI') has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

**And whereas**, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the 'Act') the Central Government declared the SIMI as an unlawful association *vide* notification numbers, (i) S.O. 960 (E), dated the 27<sup>th</sup> September, 2001; (ii) S.O. 1113 (E), dated the 26<sup>th</sup> September, 2003; (iii) S.O. 191 (E), dated the 8<sup>th</sup> February, 2006; (iv) S.O. 276(E), dated the 7<sup>th</sup> February, 2008; and (v) S.O. 260 (E), dated 5<sup>th</sup> February, 2010, respectively;

**And whereas**, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the 'Tribunal') was constituted for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal upheld the ban *vide* Order numbers, (i) S.O. 397 (E), dated 8<sup>th</sup> April, 2002; (ii) S.O. 499 (E), dated 16<sup>th</sup> April, 2004; (iii) S.O.



1302 (E), dated the 11<sup>th</sup> August, 2006; and (iv) S.O. 1990 (E) dated 12<sup>th</sup> August, 2010, respectively;

And whereas, the Tribunal *vide* Order dated 4<sup>th</sup> August, 2010 held that the notification number S.O. 260 (E), dated 5<sup>th</sup> February, 2010 mentioned above satisfy the requirement of section 3 of the Act and in terms of section 4 of the Act, confirmed declaration of the SIMI as an unlawful association;

And whereas the duration of ban of 2 years from the date of notification conferred by sub-section (1) of section (6) of the Unlawful Activities (Prevention) Act, 1967 will cease on 4<sup>th</sup> February, 2012;

And whereas the Central Government is of the opinion based, inter alia, on the following grounds that SIMI is indulging in the activities which are prejudicial to the integrity and security of the country, namely:-

- (a) On 13<sup>th</sup> February, 2010, a high intensity bomb blast occurred at German Bakery, North Main Road, Koregaon Park, Pune, in which seventeen persons (Male and Female) died and fifty-six others sustained injuries of different magnitude. The Samples collected from the spot have been sent for examination to the State Forensic Science Laboratory (FSL) and Central Forensic Science Laboratory (CFSL), Central Bureau of Investigation (CBI), New Delhi. The Forensic Science Laboratory (FSL) has opined that "Traces of Cyclonite (RDX), Ammonium Nitrate ions along with Petroleum Hydrocarbon oil are detected. RDX is used as High explosive". This case revealed that, the arrested accused Mirza Himayat Inayat Baig alias Ahmed Baig Inayat Mirza alias Yusuf had conspired with wanted accused Mohasin Choudhary, Ahmed Siddipappa alias Yasin Bhatkal, Iqbal Bhatkal, Riyaz Bhatkal to prepare and explode bomb at German Bakery, Pune on 13<sup>th</sup> February, 2010. The above persons by unlawful means had committed this offence of the

- bomb blast for promoting insurgency. The Anti Terrorist Squad (ATS), Mumbai, Maharashtra have registered a case crime No. 6/2010 (Bund Garden Police Station Cr. No. 83/2010) under section 302, 307, 326, 325, 324, 427, 120B of Indian Penal Code (IPC) read with section 3, 4, 5 of the Explosive Substances Act read with section 16, 18, 21 of the Unlawful Activities (Prevention) Act, 1967. The accused persons are active members of SIMI;
- (b) Case Crime No. 21/2010, at ATS Mumbai PS under section 10, 13, 15, 18, 18(a) and 18(b) of the Unlawful Activities (Prevention) Act, 1967 read with section 120B, 465, 467, 468 read with section 419, 420 of I.P.C. read with section 3, 4, 5, 6 of the Explosive Substances Act, 1908 was registered. Two SIMI activists were arrested. The accused were planning, preparing and coordinating terrorist activities against civilian and security establishments. To accomplish the given task they received RDX, detonators, etc., but before they could strike they were apprehended;
- (c) On 22<sup>nd</sup> August, 2011, one accused person was arrested by ATS, Thane Unit. The accused was found with Indian fake currency notes of ninety-seven thousand five hundred rupees. He was sent illegally to Pakistan in the year 2000 by Indian Mujahiddin member Riyaz Bhatkal. The accused had taken terrorist training in Pakistan as well as Kandhar in Afghanistan. Another accused was arrested and was found in possession of thirty thousand rupees fake Indian currency notes. The ATS, Mumbai, Maharashtra has registered Case Crime No. 31/2011 under section 489A, 489B, 489C of I.P.C. read with section 15, 17 of the Unlawful Activities (Prevention) Act, 1967 (amended in 2008). Both accused persons are members of banned SIMI organisation;
- (d) Case Crime No. 274/2011 under section 420, 468, 120B of I.P.C. of Abid Road PS and Crime No. 312/2011 under section 120B, 121A, 125, 126 of I.P.C. and section 10, 13 read with section 3 of the Unlawful

Activities (Prevention) Act, 1967, was registered. One accused, Syed Afaque Equbal alias Danish Iqbal, a member of SIMI, resident of Ranchi, Jharkhand who is an accused in Case Crime No. 203/2008 of Maninagar PS, Ahmedabad (Gujarat) was arrested. He revealed that he resided at different places in Hyderabad since 2008. To avoid arrest in different cases under trial including Ahmedabad serial bomb blast, he obtained SIM cards under fictitious names;

- (e) On 24<sup>th</sup> November, 2010, Muneer Deshmukh, former all India Secretary of SIMI was arrested by Madhya Pradesh Police for his involvement in seven cases in Madhya Pradesh, all pertaining to SIMI activities. Case Crime No. 245/2011, at PS Narayangudda PS, Hyderabad, Andhra Pradesh, has been registered under section 177, 419 of I.P.C.;
- (f) Case Crime No. 87/2010, at PS Hussainialam, Hyderabad, Andhra Pradesh, has been registered under sections 302, 120B, 122, 123, 124A read with section 34 of I.P.C., section 25 (i)(A) and 27 of the Arms Act, 1959, section 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 for opening fire by accused on the police personnel on picket duty;
- (g) On 15<sup>th</sup> May, 2010, case crime No. 37/2010, at PS Suntikoppa, Kodagu district (Karnataka), has been registered under section 143, 147, 148, 120B, 121, 121(A), 153(A), 201, 149 of I.P.C., section 10, 11, 13, 16, 18, 18(A)(B) of the Unlawful Activities (Prevention) Act, 1967 and section 3 and 5 of the Explosive Substances Act, 1908;
- (h) In a raid conducted at Other Books, Kozhikode, police seized a computer hard disk containing materials which are harmful to communal harmony. The owner of the book shop is an ex-SIMI activist. A case crime No. 424/2010, at Town PS, Kozhikode, Kerala has been registered under section 102 of Criminal Procedure Code (Cr.P.C.) and accused has been arrested;
- (i) In a raid conducted at Nanma Books, Kozhikode, police seized articles which are harmful to communal harmony. One accused has been

- arrested and a case crime no. 448/2010 registered at Town PS, Kozhikode, Kerala under section 124A, 153A of I.P.C.;
- (j) Case Crime No. 159/2011, at Kollengoda Police, Palakkad District, Kerala has been registered under section 151 of Cr.P.C. for conducting a study class at Idukkappara Mosque, Muthalamada within Kollengode Police Station limits. Twenty one persons had attended the class. On enquiry, it was revealed that out of twenty-one persons, twenty belonged to Coimbatore and one belonged to Chennai. Their purpose of study/class in the mosque was said to be for attending religious classes regarding how to pray and how to perform Niskara, etc. Among the twenty-one persons some former activists of SIMI were also involved. All the twenty-one persons were arrested and enlarged on bail;
- (k) Case Crime No. 35/2011, at PS GRP, Ratlam, Madhya Pradesh, has been registered under section 307 read with 34 of I.P.C. and section 10, 13, 15 of the Unlawful Activities (Prevention) Act, 1967. Two accused were arrested for firing on ATS Police Party on 3<sup>rd</sup> July, 2011, in which one Inspector died. The accused are members of SIMI organisation;
- (l) Case Crime No. 319/2011, at PS Kotwali, Khandwa, Madhya Pradesh, has been registered under section 153A of I.P.C. read with section 3, 10, 13, 16, 18, 20 of the Unlawful Activities (Prevention) Act, 1967 and section 25, 27 of Arms Act, 1959. Twelve accused have been arrested and five pistols, two revolvers, sixteen bullets, four motor cycles, SIMI literatures and CD's have been recovered and seized by the State Police. All the accused are members of banned SIMI organisation;
- (m) Eleven accused SIMI members have been arrested for planning unlawful activities between June-July, 2011 in case crime no. 14/2009 and 164/2009 of Kotwali, Khandwa, Madhya Pradesh under various sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. The Police recovered and seized two

- pistols, one pistol magazine with three bullets and one motorcycle from the accused;
- (n) Case Crime No. 224/2011, at PS Station Road, Ratlam, Madhya Pradesh has been registered under section 307 of I.P.C., sections 25, 27 of the Arms Act, 1959 and sections 10, 13, 16B, 19 of the Unlawful Activities (Prevention) Act, 1967. Three accused have been arrested. All the accused are members of SIMI. Police recovered and seized a Revolver, Blank Cartridge and SIMI literature from them;
- (o) Case Crime No. 290/2011, at PS Manak Chawk, Ratlam, Madhya Pradesh, has been registered under section 153A of I.P.C. read with sections 10, 13, 17, 19 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested. One of the accused is a member of SIMI and other accused have been helping him in his activities, i.e., collection of money for organisation, enrolling new members for SIMI and providing materials for advertising the SIMI organisation. Police recovered and seized four CDs related to Jihad, SIMI literature, Easy Quran Para 1 to 4, Samaz Sudhar Patrika, SIMI membership form for Ahadmana Barahe Awaz, information about making Bomb, three SIM and one mobile phone from the accused;
- (p) Eight accused were arrested by ATS, Bhopal, Madhya Pradesh for doing unlawful and anti-national activities, collection of money, doing bank robberies and targeting important persons. Case Crime No. 04/2011 and 05/2011 were registered under various sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. Police recovered and seized gold, pistol, illegal documents and literature related to activities of organisation;
- (q) Case Crime No. 431/2010, at Hanhumanganj PS, Bhopal, Madhya Pradesh was registered under section 395, 397 of I.P.C., section 25 of the Arms Act, 1959 and sections 3, 10, 13, 16, 17, 18 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested and



- one hundred fifty gram Gold from Akola, eighty gram Gold from Bhusawal, two hundred forty gram Gold from Kolgata have been recovered and seized. The accused are member of SIMI and doing robbery for purchasing arms and strengthening the SIMI organisation;
- (r) Seventeen accused were arrested in Case Crime Nos. 168/2010 at PS Etarasi, Hoshangabad; Crime No. 112/2011 at PS Birlagram, Ujjain; and Crime No. 456/2009 at PS BNP, Dewas which were registered under various sections of the Arms Act, 1959, the Indian Penal Code and the Unlawful Activities (Prevention) Act, 1967. Accused are members of banned SIMI organisation and doing robbery to collect money for strengthening the organisation, purchasing arms, making new members as well as for taking bail of Safdar Nagori and his supporters;
- (s) Six SIMI activists have been convicted in case crime no. I-16/2003 dated the 11<sup>th</sup> December, 2003, registered under section 120B, 121(1), 122 of I.P.C. read with section 3(3), 4, 20, 21(2)(b), 22(3)(A), (B) of the Prevention of Terrorism Act, 2002 read with section 25(1) (a) and (e) and 29 the Arms Act, 1959, at PS Detection of Crime Branch, Ahmedabad City, Gujarat. These accused persons have been arrested for attempting to take revenge of post Godhara riots in Gujarat;
- (t) Nine SIMI activists have been sentenced to two years imprisonment and a fine of five hundred rupees has been imposed on each under section 10 read with section 3 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to three years imprisonment and a fine of five hundred rupees has been imposed on each under section 13 of the Unlawful Activities (Prevention) Act, 1967, in case crime no. 104/2008, registered under sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Chachaura, Guna; Madhya Pradesh;
- (u) One SIMI activist, Md. Yunus had been sentenced to two years imprisonment and a fine of twenty-five thousand rupees has been imposed in case crime no. 135/2008, registered under section 153A of

- the Indian Penal Code and sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Sadar Bazar, Indore, Madhya Pradesh;
- (v) Five SIMI activists have been sentenced to three years imprisonment and a fine of one thousand five hundred rupees has been imposed on each under section 124A of I.P.C.; sentenced to two years imprisonment and a fine of one thousand rupees has been imposed on each under section 153A of I.P.C.; sentenced to one year imprisonment and a fine of five hundred rupees has been imposed on each under section 10 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to five years imprisonment and a fine of two thousand five hundred rupees has been imposed on each under section 13 of the Unlawful Activities (Prevention) Act, 1967 in case crime no. 62/2008 of PS-Unhel, District-Ujjain, Madhya Pradesh;
- (w) One SIMI activist, Muneer Deshmukh had been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed in case crime no. 626/2001, registered under sections 153B, 295A of I.P.C. read with sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Habibganj, Bhopal, Madhya Pradesh;
- (x) Six SIMI activists including Muneer Deshmukh have been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed on each, in case crime no. 663/2000, registered under section 153A, 153B of I.P.C. at PS Shahjehanabad, Bhopal, Madhya Pradesh. The prosecution had contended that the accused have pasted posters in Shahjehanabad locality of Bhopal on 22<sup>nd</sup> October, 2000 with an intention to create communal disturbance;
- (y) Three SIMI activists were sentenced to three years rigorous imprisonment by the Court of First Class Judicial Magistrate, District and Sessions Court, Indore on 30<sup>th</sup> August, 2011 in case crime no. 5/2009 of PS-ATS/STF, Indore, Madhya Pradesh, registered under sections 147, 149, 153A, 153B of I.P.C. read with sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967;
- (z) On 31<sup>st</sup> October, 2011, JMFC Court convicted two SIMI activists and sentenced them to two years imprisonment and fine of five hundred rupees has been imposed on each for destructive activities to disturb

communal harmony in Gohalpur area in 1998 in case crime No. 637/1998 registered under section 153A of I.P.C. at PS-Gohalpur, Jabalpur, Madhya Pradesh;

**And whereas** the Central Government, based on the aforesaid grounds, is of the opinion that SIMI is believed to be indulging in activities which are prejudicial to the integrity and security of the country;

**Now, therefore,** in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association";

**And whereas,** the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to —

- (i) continue its subversive activities and re-organise its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country;

**And whereas,** the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect from the date of its publication in the Official Gazette.

[F. No. 14017/5/2011-NI-III]

BHAGWAN SHANKAR, Jt. Secy.



# भारत का राजपत्र

## The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 1446]  
No. 1446]

नई दिल्ली, सोमवार, अगस्त 6, 2012/श्रावण 15, 1934  
NEW DELHI, MONDAY, AUGUST 6, 2012/SHRAVANA 15, 1934

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 6 अगस्त, 2012

**का.आ. 1745(अ).**—जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा जाएगा) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 3 फरवरी, 2012 की अधिसूचना सं. का.आ. 224(अ) (जिसे इसके बाद उक्त अधिसूचना कहा जाएगा) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 1 मार्च, 2012 की अधिसूचना सं. का.आ. 362(अ) के तहत विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायविद् श्री जी. के. शाली थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि-विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 2 मार्च, 2012 को उक्त अधिनियम को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिनियम ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 3 फरवरी, 2012 की अधिसूचना संख्या का.आ. 224(अ) में की गई

घोषणा की पुष्टि करते हुए दिनांक 1 अगस्त, 2012 को एक आदेश पारित किया था।

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात् :

(आदेश अंग्रेजी भाग में छपा है)

[फा. सं. 14017/13/2012-एन.आई.-III]

रश्मि गोयल, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 6th August, 2012

**S.O. 1745(E).**—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as said Act), declared the Students Islamic Movement of India (SIMI) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 224 (E) dated the 3rd February, 2012 herein (hereinafter referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act constituted *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 362 (E) dated 1st March, 2012, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice V.K. Shali, Judge of the High Court of Delhi;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 2nd March, 2012 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of Section 4 of the said Act, made an order on the 1st August, 2012, confirming the declaration made in the notification number S.O. 224 (E), dated the 3rd February, 2012.

Now, therefore, in pursuance of sub-section (4) of Section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

**UNLAWFUL ACTIVITIES (PREVENTION)  
TRIBUNAL, NEW DELHI**

Date of decision : August 01, 2012

In the matter of:

Gazette Notification No. S.O. 224(E) dated 3rd February, 2012 declaring Students Islamic Movement of India as Unlawful Association under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

**CORAM:**

**HON'BLE MR. JUSTICE V. K. SHALI**

**Present :**

Mr. A. S. Chandhiok, Additional Solicitor General with Mr. Sanjay Katyal, Central Govt. Senior Counsel, Mr. Ravinder Agarwal, Mr. Sachin Datta, Central Govt. Standing Counsels and Dr. Shailender Sharma, Central Govt. Pleader.

Mr. V.K. Sharma, Director, Mr. M.P. Singh, Under Secretary and Mr. Manoj Kumar Singh, Investigator from Ministry of Home Affairs, Government of India.

Mr. Ashok Aggarwal, Mr. Mobin Akhtar and Ms. Sridevi Panniker, Advocates for Mr. Humam Ahmed Siddiqui & Mr. Misbah-Ul-Islam, former members of SIMI.

**ORDER**

1. In exercise of powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) (hereinafter referred to as the 'Act') and *vide* Notification No. S.O. 224(E) dated 3rd February, 2012, the Government of India declared Students Islamic Movement of India [for short 'SIMI'] as 'Unlawful Association'.

2. The Government of India came to the conclusion that SIMI was an Unlawful Association, inter alia, on the grounds that SIMI is indulging in activities which are prejudicial to the integrity and security of the country; that SIMI has been indulging in unlawful and violent activities, including involvement in high intensity bomb blast which occurred on 13th February, 2010 at German Bakery, North

Main Road, Koregaon Park, Pune, in which seventeen persons (male and female) died and fifty-six others sustained injuries of different magnitude; firing on ATS police party on 3rd July, 2011, in which one inspector died and also planning, preparing and coordinating other terrorist activities, which are against civilian, security establishment and also harmful to communal harmony. Further, several SIMI members were arrested by the police at various places in India and large numbers of arms, ammunitions, illegal documents etc. were seized from these members and various criminal cases have been registered against them. These activists also indulged in robbery of gold etc. for the purpose of purchasing arms and strengthening the banned organization SIMI.

3. Exercising the powers conferred by sub-section (1) of Section 5 of the Act, Ministry of Home Affairs, Government of India, *vide* Notification No. S.O. 362(E) dated 1st March, 2012 constituted this Tribunal for the purpose of adjudicating as to whether there were sufficient grounds for declaring the SIMI as an Unlawful Association under the Act and a reference was made to this Tribunal under Section 4 of the Act. The reference was received by this Tribunal on 5th March, 2012.

4. Along with the aforesaid Notification, the Central Government has furnished a background note on SIMI stating the various activities of the organization before imposition of the first ban in the year 2001, till the imposition of this ban in the year 2012. As per the background note, the objectives of SIMI are as under :

- (i) Governing of human life on the basis of Quran;
- (ii) Propagation of Islam;
- (iii) "Jihad" (religious war) for the cause of Islam; and
- (iv) Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

5. The background note states the following activities of SIMI after February, 2010 and before imposition of sixth ban in February, 2012 as the grounds for continuation of the ban :—

- (a) Regrouping under the garb of various banners;
- (b) Radicalizing, brainwashing the minds and indoctrination of Muslim youth by Jehadi propaganda and through provocative taqreers (lectures/speeches), CDs, etc.;
- (c) Instigating Muslims on the Ram Janambhumi-Babri Masjid (RJB-BM) verdict delivered by the Lucknow Bench of the Allahabad High Court;
- (d) Furthering the objectives of SIMI through cover organizations;
- (e) Besides, arrest of SIMI activists during 2011 have revealed several nefarious designs of SIMI, including their plans to physically eliminate targeted individuals, establish nexus with like-minded jihadi outfits in India and abroad, etc.

6. The background note further states that SIMI has been active through various front/cover organizations in



different States; prominent amongst which is the Wahadat-e-Islami (WeL) in States of Maharashtra, Tamil Nadu, Uttar Pradesh, Kerala, Delhi and Rajasthan. The said organization provides a platform to ex-SIMI activists to expand their militant reach amongst Muslim youth under the guise of spreading Islamic ideology. It is further stated that to avoid legal scrutiny and publicity of its activities, SIMI tried to carry out its activities under the garb of cover organizations in several States of the country like, in Kerala, SIMI is carrying out its activities under the banner of 'Minority Rights Watch' (MRW); in Madhya Pradesh, an organization named 'Nagori Lashkar' was floated by pro-SIMI elements of Nagori community; in Karnataka, it established an organization called 'Ansarullah'; in Uttar Pradesh, it has established 'Muslim Muttahida Mihaad' etc. and all these organizations were used by ex-SIMI activists to counter the alleged threats/campaign against Islam. It is further stated that SIMI has been making constant efforts to establish links with terrorist outfits operating in Jammu and Kashmir and abroad, including Jaish-e-Mohammad (JeM) and Lashkar-e-Toiba (LeT), to expand its network and to carry out violent actions. It is further stated that SIMI activists continue to circulate subversive and provocative material since February, 2010, including CDs, cassettes, leaflets, books and magazines, which were circulated in various States, generally containing inflammatory jehadi speeches, revenge for Babri Masjid demolition, and the so-called conspiracy of Zionist forces, 'Jehad' and 'Khilafat'. The background note further mentioned various other illegal activities of SIMI and the inputs received from various States about the activities of SIMI.

7. The Central Government in their Gazette Notification dated 3rd February, 2012 has summarized the cases involving SIMI, alleging that its activists were indulging in activities which are prejudicial to the integrity and security of the country. The cases have been summarized as under :—

- (a) On 13th February, 2010 a high intensity bomb blast occurred at German Bakery, North Main Road, Koregaon Park, Pune, in which seventeen persons (male and female) died and fifty-six others sustained injuries of different magnitude. The samples collected from the spot were sent for examination to the State Forensic Science Laboratory (FSL) and for investigation to CBI, New Delhi. The Forensic Science Laboratory (FSL) has opined that "Traces of Cyclonite (RDX), "Ammonium Nitrate ions along with Petroleum Hydrocarbon oil are detected. RDX is used as High explosive". This case revealed that the arrested accused Mirza Himayat Inayat Baig alias Ahmed Baig Inayat Mirza alias Yusuf had conspired with wanted accused Mohasin Choudhary, Ahmed Siddipappa alias Yasin Bhatkal, Iqbal Bhatkal, and Riyaz Bhatkal to prepare and explode the bomb at German Bakery, Pune on 13th February, 2010. The

above persons by unlawful means had committed this offence of the bomb blast for promoting insurgency. The Anti Terrorist Squad (ATS), Mumbai, Maharashtra registered a Case Crime No. 6/2010 (Bund Garden Police Station Cr. No. 83/2010) under Sections 302, 307, 326, 325, 324, 427, 120B of Indian Penal Code (IPC) read with Sections 3, 4, 5 of the Explosive Substances Act read with Sections 16, 18, 21 of the Unlawful Activities (Prevention) Act, 1967. The accused persons are active members of SIMI;

- (b) Case Crime No. 21/2010, at ATS Mumbai PS under Sections 10, 13, 15, 18, 18(a) and 18(b) of the Unlawful Activities (Prevention) Act, 1967 read with Sections 120B, 465, 467, 468 read with Section 419, 420 of IPC read with Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 was registered. Two SIMI activists were arrested. The accused were planning, preparing and coordinating terrorist activities against civilian and security establishments. To accomplish the given task they received RDX, detonators, etc. but before they could strike they were apprehended;
- (c) On 22nd August, 2011, one accused person was arrested by ATS, Thane Unit. The accused was found with Fake Indian currency notes of ninety-seven thousand five hundred rupees. He was sent illegally to Pakistan in the year 2000 by Indian Mujahiddin member Riyaz Bhatkal. The accused had taken terrorist training in Pakistan as well as Khandhar in Afghanistan. Another accused was arrested and was found in possession of thirty thousand rupees fake Indian currency notes. The ATS, Mumbai, Maharashtra has registered Case Crime No. 31/2011 under Section 489A, 489B, 489C of IPC read with Section 15, 17 of the Unlawful Activities (Prevention) Act, 1967 (amended in 2008). Both accused persons are members of banned SIMI organization;
- (d) Case Crime No. 274/2011 under Section 420, 468, 120B of I.P.C. of Abid Road PS and Crime No. 312/2011 under Section 120B, 121A, 125, 126 of I.P.C. and Section 10, 13 read with Section 3 of the Unlawful Activities (Prevention) Act, 1967, was registered. One accused, Syed Afaq Iqbal alias Danish Iqbal, a member of SIMI, resident of Ranchi, Jharkhand who is an accused in Case Crime No. 203/2008 of Maninagar PS, Ahmedabad (Gujarat) was arrested. He revealed that he resided at different places in Hyderabad since 2008. To avoid arrest in different cases under trial including Ahmedabad serial bomb blasts, he obtained SIMI cards under fictitious names;
- (e) On 24th November, 2010, Muneer Deshmukh, former All India Secretary of SIMI was arrested by Madhya Pradesh Police for his involvement in seven cases in Madhya Pradesh, all pertaining to SIMI activities. Case Crime No. 245/2011, at PS Narayangudda, Hyderabad, Andhra Pradesh, has been registered under Section 177, 419 of I.P.C.;

- (f) Case Crime No. 87/2010, at PS Hussainialam, Hyderabad, Andhra Pradesh, has been registered under Sections 302, 120B, 122, 123, 124A read with Section 34 of I.P.C., Section 25(i)(A) and 27 of the Arms Act, 1959, Section 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 for opening fire by accused on the police personnel on picket duty;
- (g) On 15th May, 2010, Case Crime No. 37/2010, at PS Suntikoppa, Kodagu district (Karnataka), has been registered under Section 143, 147, 148, 120B, 121, 121(A), 153(A), 201, 149 of I.P.C., Sections 10, 11, 13, 16, 18, 18(A)(B) of the Unlawful Activities (Prevention) Act, 1967 and Sections 3 and 5 of the Explosive Substances Act, 1908;
- (h) In a raid conducted at 'Other Books', Kozhikode, police seized a computer hard disk containing materials which are harmful to communal harmony. The owner of the book shop is an ex-SIMI activist. A Case Crime No. 424/2010, at Town PS, Kozhikode, Kerala has been registered under Section 102 of Criminal Procedure Code (Cr.P.C.) and accused has been arrested;
- (i) In a raid conducted at Nanma Books, Kozhikode, police seized articles which are harmful to communal harmony. One accused has been arrested and a Case Crime No. 448/2010 registered at Town PS, Kozhikode, Kerala under Section 124A, 153A of I.P.C.;
- (j) Case Crime No. 159/2011, at Kollengode Police Station, Palakkad District, Kerala has been registered under Section 151 of I.P.C. for conducting a study class at Idukkappara Mosque, Muthalamada within Kollengode Police Station limits. Twenty-one persons had attended the class. On enquiry, it was revealed that out of twenty-one persons, twenty belonged to Coimbatore and one belonged to Chennai. Their purpose of study/class in the mosque was said to be attending religious classes regarding how to pray and how to perform Niskara, etc. Among the twenty-one persons, some former activists of SIMI were also involved. All the twenty-one persons were arrested and enlarged on bail;
- (k) Case Crime No. 35/2011, at PS GRP, Ratlam, Madhya Pradesh, has been registered under Section 307 read with 34 of I.P.C. and Section 10, 13, 15 of the Unlawful Activities (Prevention) Act, 1967. Two accused were arrested for firing on ATS Police Party on 3rd July, 2011, in which one Inspector died. The accused are members of SIMI organization;
- (l) Case Crime No. 319/2011, at PS Kotwali, Khandwa, Madhya Pradesh, has been registered under Section 153A of I.P.C. read with Section 3, 10, 13, 16, 18, 20 of the Unlawful Activities (Prevention) Act, 1967 and Section 25, 27 of Arms Act, 1959. Twelve accused have been arrested and five pistols, two revolvers, sixteen bullets, four motor cycles, SIMI literature and CD's have been recovered and seized by the State Police. All the accused are members of banned organization SIMI;
- (m) Eleven accused SIMI members have been arrested for planning unlawful activities between June-July, 2011 in case Crime No. 14/2009 and 164/2009 at Kotwali, Khandwa, Madhya Pradesh under various Sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. The Police recovered and seized two pistols, one pistol magazine with three bullets and one motorcycle from the accused;
- (n) Case Crime No. 224/2011, at PS Station Road, Ratlam, Madhya Pradesh, has been registered under Section 307 of I.P.C., Sections 25, 27 of the Arms Act, 1959 and Sections 10, 13, 16, 19 of the Unlawful Activities (Prevention) Act, 1967. Three accused have been arrested. All the accused are members of SIMI. Police recovered and seized a Revolver, Blank Cartridge and SIMI literature from them;
- (o) Case Crime No. 290/2011, at PS Manak Chowk, Ratlam, Madhya Pradesh, has been registered under Section 153A of I.P.C. read with Sections 10, 13, 17, 19 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested. One of the accused is a member of SIMI and other accused have been helping him in his activities, i.e., collection of money for organization, enrolling new members for SIMI and providing materials for advertising the SIMI organization. Police recovered and seized four CDs related to Jihad, SIMI literature, Easy Quran Para I to 4, Samaz Sudhar Patrika, SIMI membership form for Ahadmana Barahe Awaz, information about making Bomb, three SIM cards and one mobile phone from the accused;
- (p) Eight accused were arrested by ATS, Bhopal, Madhya Pradesh for doing unlawful and anti-national activities, collection of money, doing bank robberies and targeting important persons. Case Crime Nos. 04/2011 and 05/2011 were registered under various Sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. Police recovered and seized gold, pistol, illegal documents and literature related to activities of organization;
- (q) Case Crime No. 431/2010, Hanumanganj PS, Bhopal, Madhya Pradesh was registered under Section 395, 397 of I.P.C. Section 25 of the Arms Act, 1959 and Sections 3, 10, 13, 16, 17, 18 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested and one hundred fifty gram Gold from Akola, eighty gram Gold from Bhusawal, two hundred forty gram Gold from Kolkata have been recovered and seized. The accused are members of SIMI and doing robbery for purchasing arms and strengthening the SIMI organization;
- (r) Seventeen accused were arrested in Case Crime Nos. 168/2011 at PS Itarasi, Hoshangabad; Crime No. 112/2011 at PS Birlagram, Ujjain; and Crime No. 456/2009 at PS BNP, Dewas which were registered under

- various Sections of the Arms Act, 1959, the Indian Penal Code and the Unlawful Activities (Prevention) Act, 1967. Accused are members of banned SIMI organization and doing robbery to collect money for strengthening the organization, purchasing arms, making new members as well as for taking bail of Safdar Nagori and his supporters;
- (s) Six SIMI activists have been convicted in case Crime No. 1-16/2003, dated the 11th December, 2003, registered under Sections 120B, 121(1), 122 of I.P.C. read with Sections 3(3), 4, 20, 21(2)(b), 22(3)(A), (B) of the Prevention of Terrorism Act, 2002 read with Sections 25(1)(a) and (e) and 29 of the Arms Act, 1959, at PS Detection of Crime Branch, Ahmedabad City, Gujarat. These accused persons were arrested for attempting to take revenge for post Godhara riots in Gujarat;
- (t) Nine SIMI activists have been sentenced to two years imprisonment and a fine of five hundred rupees has been imposed on each under Section 10 read with Section 3 of the Unlawful Activities (Prevention) Act, 1967; and sentence of three years imprisonment and a fine of five hundred rupees has been imposed on each under Section 13 of the Unlawful Activities (Prevention) Act, 1967, in case Crime No. 104/2008, registered under Sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Chachaura, Guna, Madhya Pradesh;
- (u) One SIMI activist, Md. Yunus had been sentenced to two years imprisonment and a fine of twenty-five thousand rupees has been imposed in case Crime No. 135/2008, registered under Section 153A of the Indian Penal Code and Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Sadar Bazar, Indore, Madhya Pradesh;
- (v) Five SIMI activists have been sentenced to three years imprisonment and fine of one thousand five hundred rupees has been imposed on each under Section 124A of I.P.C.; sentence of two years imprisonment and a fine of one thousand rupees has been imposed on each under Section 153A of I.P.C.; sentence of one year imprisonment and a fine of five hundred rupees has been imposed on each under Section 10 of the Unlawful Activities (Prevention) Act, 1967; and sentence of five years imprisonment and a fine of two thousand five hundred rupees has been imposed on each under Section 13 of the Unlawful Activities (Prevention) Act, 1967 in case Crime No. 62/2008 of PS-Unhel, District-Ujjain, Madhya Pradesh;
- (w) One SIMI activist, Muneer Deshmukh had been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed in case Crime No. 626/2001, registered under Sections 153B, 295A of I.P.C. read with Sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Habibganj, Bhopal, Madhya Pradesh;
- (x) Six SIMI activists including Muneer Deshmukh have been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed on each, in case Crime No. 663/2000, registered under Sections 153A, 153B of I.P.C. at PS Shahjehanabad, Bhopal, Madhya Pradesh. The prosecution had contended that the accused have pasted posters in Shahjehanabad locality of Bhopal on 22nd October, 2000 with the intention to create communal disturbance;
- (y) Three SIMI activists were sentenced to three years rigorous imprisonment by the Court of First Class Judicial Magistrate, District and Sessions Court, Indore on 30th August, 2011 in case Crime No. 5/2009 of PS-ATS/STF, Indore, Madhya Pradesh, registered under Sections 147, 149, 153A, 153B of I.P.C. read with Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967;
- (z) On 31st October, 2011, JMFC Court convicted two SIMI activists and sentenced them to two years imprisonment and fine of five hundred rupees has been imposed on each for destructive activities to disturb communal harmony in Gohalpur area in 1998 in case Crime No. 637/1998 registered under Section 153A of I.P.C. at PS-Gohalpur, Jabalpur, Madhya Pradesh.
8. On the afore-noted grounds, the Central Government formed an opinion that the activities of SIMI, for fulfilling its objectives, are unlawful, detrimental to and disruptive of the territorial integrity of India, promote enmity between different communities and seriously threaten the security of the State. The Central Government formed the opinion that if the 'unlawful activities' of the SIMI are not curbed and controlled immediately, it will take the opportunity to:
- (i) continue its subversive activities and re-organize its activists who are still absconding;
  - (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
  - (iii) propagate anti-national sentiments;
  - (iv) escalate secessionism by supporting militancy; and
  - (v) undertake activities which are prejudicial to the integrity and security of the country.
- Thus, in exercise of powers conferred by sub-section (1) of Section 3 of the Act, the Central Government declared SIMI as an 'unlawful association' with immediate effect, within the meaning of Section 2(p) of the Act for carrying 'unlawful activity' within the meaning of Section 2(O) of the Act. This was followed by a Notification under Section 4 of the Act, constituting the Unlawful Activities (Prevention) Tribunal, which was received on 5th March, 2012. The Tribunal listed the reference for preliminary hearing on 6th March, 2012.
9. On 6th March, 2012, on consideration of the material placed on record by the Central Government, the Tribunal



issued notice under sub-section (2) of Section 4 of the Act to SIMI and some other activists of the organization to Show Cause as to why it be not declared an 'unlawful association' on the cause being shown by Union of India. The notice was directed to be served in the following manner:

- I. By affixing a copy of the notification to some conspicuous part of the office(s), if any, of the Association;
  - II. By serving a copy of the notification, wherever possible, on the principal office-bearers, if any, of the Association;
  - III. The notice be also served by registered post/speed post/courier;
  - IV. By proclaiming by beat of drums or by means of loudspeakers, the contents of the notification in the area in which the activities of the Association are ordinarily carried on;
  - V. By making an announcement over the radio from the local or nearest broadcasting station of the All India Radio;
  - VI. By pasting the notification on the Notice Board of the office of the Deputy Commissioners at the Headquarters of each of the Districts in the States, where the activities of the Association are undertaken; and
  - VII. By publication in two National Newspapers in English and in two vernacular newspapers of the respective States in which the activities of SIMI are ordinarily carried on.
10. Pursuant to the directions given by the Tribunal, the States of Andhra Pradesh, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, Uttarakhand, West Bengal, Tamil Nadu and Chhattisgarh filed their respective affidavits of service, putting on record the factum of service of notice.
11. On 11th April, 2012, Mr. Ashok Aggarwal along with Mr. S. M. Khan, Mr. Mobin Akhtar and Ms. Sridevi Panikker, Advocates, entered appearance on behalf of two erstwhile members of the banned organization SIMI, namely Mr. Humam Ahmed Siddiqui, former President of SIMI (UP zone); and Mr. Misbah-UI-Islam, former member of SIMI (West Bengal unit). It was stated by the learned counsel that Mr. Humam Ahmed Siddiqui was served with a copy of the notice whereas Mr. Misbah-UL-Islam got the knowledge of these proceedings through the public notice. It was further submitted that since the organization has been banned since 2001, it has not been in existence thereafter and there are no office bearers or members of the organization.
12. The appearance on behalf of the two erstwhile members of SIMI was objected to by Mr. A. S. Chandhok learned Additional Solicitor General on the ground that Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam in their individual capacities are not entitled to be represented in these proceedings since it is only the association, its

office bearers or members who can object to the ban on the association. The question of appearance of Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam was taken up on 16th April, 2012 and after hearing the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam and the learned Additional Solicitor General, this Tribunal, having regard to the facts of the case and the observations made in the previous report, permitted Mr. Humam Ahmed Siddiqui and Mr. Misbah-UL-Islam to join and participate in the proceedings although it was observed that the question of their locus will be decided in the final report after hearing the parties. Pending the final adjudication, they were also granted permission by the Tribunal to cross-examine the witnesses produced by the Central Government and to lead their evidence opposing the ban.

13. On 18.5.2012, they filed their reply/statement of objections/written statement under Section 4(2) of the Act. It may, however, be pertinent to note, at this stage, that the said reply/statement of objections/written statement was neither signed nor verified, so as to meet the basic legal requirements for it to be taken on record, although it was supported by the affidavits of the applicants.

14. However, de-hors, this technical deficiency and legality of the said reply/statement of objections/written statements, it is, inter alia, stated in the preliminary submissions that SIMI was never a criminal organization, none of its aims and objects, as stated in its constitution, are unlawful or illegal. It is further claimed that as a lawful and law abiding association of persons, SIMI ceased to exist the moment it was banned by the Central Government in September, 2001. They have claimed that merely because some members or former members of an organization or association of persons are found to have been involved in illegal or even criminal activities, the entire organization or association does not become tainted or suspected. It is further claimed that the material relied upon by the Central Government to justify the ban on SIMI under Section 3(1) of the Act, comprises of alleged confessions/disclosure statements by persons arrested in connection with various offences in several States. It is submitted that such statements cannot be taken as 'evidence' in any sense of the expression, being merely statements made to or recorded by police officers under Section 161/162 of the Code of Criminal Procedure, 1973. It is stated that such statements can only be used for contradiction as per Section 145 of the Evidence Act, 1872. It is also claimed that Notification dated 3.2.2012 suffers from lack of fresh and/or any relevant grounds justifying the existence of 'sufficient cause' and that grounds or cause once used to exercise powers under Section 3 of the Act cannot be used repeatedly to invoke the said powers.

15. It is further claimed that the grounds narrated in the Notification banning SIMI are not valid. The allegations in the background note are also claimed to be full of imaginary names and places and devoid of authentic details. In the absence of these details, notice of these proceedings to

the respondents is neither effective nor adequate. It is also stated that the notice issued by the Tribunal does not fulfil the requirements of Section 4(2) of the Act as there is no 'disclosure of the basis of the action', as mandated by Section 4(2) of the Act, and as explained by the Supreme Court in *Jamaat-e-Islami Hind Vs. Union of India*, (1995) 1 SCC 428 case. It is submitted that the said notice does not constitute 'effective notice of the basis on which the declaration is made' and a reasonable opportunity to show cause against the same, as required by virtue of the said judgment is not given. It is, thus, claimed that in the absence of such disclosure the impugned Notification is bad in law and is liable to be quashed, inter-alia, for violating the fundamental right of the answering respondents under Article 19(1)(c), not being a reasonable restriction permissible under Article 19(4) of the Constitution of India.

16. It is also claimed in the reply that the background note makes allegations against a large number of Muslim organizations and that none of these allegations are substantiated in any manner. In these circumstances, the only reasonable inference is that these allegations indicate the bias of the Central Government against the Muslim community. It is also claimed that one such organization, namely, *Khair-e-Ummat Trust*, which has been called a front organization of SIMI, has publicly protested against these allegations and that this fact was even reported in the Press, wherein the said Trust denied having any relationship with SIMI.

17. Another objection raised by the applicants/intervenors is with regard to the absence of valid and justifiable ground in the impugned Notification/background note. It is claimed that the background note is full of unnecessary and scandalized averments that can serve no purpose, other than to embarrass the applicants/intervenors. It is submitted that the background note contains allegations, averments and insinuations pertaining to the period prior to 5.2.2010 and thus offends the principles of *res judicata* and constructive *res judicata*, apart from being, against the canons of judicial propriety. It is claimed that such a repetition of allegations, averments and insinuations amounts to inviting this Hon'ble Tribunal to sit in judgment/review over the findings of the earlier Tribunal.

18. It is further claimed that the allegations in the background note are mala-fide and have been resorted to for two purposes, viz. (i) to prejudice this Tribunal against SIMI and (ii) to target other organizations, unconnected to SIMI, from taking up any issues or causes that the Government considers inconvenient. It is stated that there is no material in the background note that would bring SIMI within the mischief of Sections 2(o) and (p) of the Act. The ban, it is claimed, is intended to insinuate an aura of suspicion around the essential practices of Islam as if the practices themselves constitute unlawful activities and/or that every person who performs these practices is guilty of criminal conduct until proven innocent. It is submitted that such conduct violates the letter and spirit of the constitutionally guaranteed Fundamental Rights.

19. It is claimed that the activities of SIMI were always open and lawful. There was not even an iota of secrecy or unlawful nature in its activities. There was no occasion in about 25 years of SIMI's existence where any violence or even strife or disturbance had occurred in any part of the country as a result of any of its activities. It undertook several programmes, such as scholarship to the needy students, career guidance to the students for admission in higher courses and several other social events. It is claimed that SIMI, while it was in existence, never challenged the territorial integrity of the country, nor did it state anything which would incite communal violence in the country. The most outstanding contribution of SIMI has been in the field of social services and in the field of relief work during natural and manmade calamities. It has served all classes of people, irrespective of caste or creed. SIMI has full faith in Indian judiciary and is a law abiding and lawful association. It is claimed that from 1977 to 2001, SIMI has a distinguished record of outstanding services to all communities in the context of a secular India, the object of which it unswervingly believes.

20. In the parawise reply, the answering applicants/intervenors have denied the allegations against them as given in the background note. It is also denied that SIMI is active in Andhra Pradesh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal or Delhi. It is also denied that SIMI has undertaken any activity in the States of Assam, Bihar, Jharkhand or Uttarakhand.

21. The answering applicants/intervenors have also denied, the allegations as false and fabricated, that SIMI has managed to keep itself alive through clandestine activities or that SIMI regrouped its cadres and revived the organization through front organizations, clandestine meetings or through circulation of leaflets, posters or magazines. It is claimed that these allegations are completely devoid of any material particulars that would enable the applicants/intervenors to answer the same. No details have been provided of the alleged clandestine activities or how SIMI regrouped its cadres or revived the organizations which were the front organizations, floated to keep the SIMI organization alive.

22. The contents of paragraph 34 are also labelled as malicious and are denied. It is denied that during the period, since 5-2-2010, the activists/sympathizers of SIMI undertook any activities. It is claimed that no activities have been undertaken by or on behalf of SIMI since the imposition of first ban in September, 2001. It is further specifically denied that the alleged SIMI activists or sympathizers tried to regroup and/or were radicalizing and brainwashing and/or instigating Muslims on account of *Ram Janam Bhoomi/Babri Masjid* verdict delivered by the Lucknow Bench of the Allahabad High Court and/or furthering the objectives of SIMI. The applicants/intervenors have also denied the assertions of SIMI operating through the front organizations so as to continue to work for the fulfilment of the objects of SIMI.



23. It is, therefore, prayed that in the interest of justice, the reference and the Notification of Central Government dated 3-2-2012 declaring SIMI as an 'unlawful association' be cancelled.

24. Learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misban-Ul-Islam also filed various interlocutory applications seeking, inter-alia, a direction to hold the proceedings of the Tribunal at Delhi; supply of legible, typed and English translated copy of all documents relied upon by the Central Government; to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 along with notification dated 3rd February, 2012; to supply a complete list of witnesses along with documents sought to be relied upon or proved by the Central Government at least 15 days in advance of the date on which the said witnesses are to be examined; and also objecting to the manner in which, privilege is being claimed by the Central Government in respect of documents submitted to the Tribunal in sealed cover and non-disclosure of the contents of the sealed envelope to them. The said interlocutory applications were heard and disposed of by the Tribunal from time to time.

25. The Central Government, in their background note claimed that the activities of the banned organization are still continuing and the inputs were stated to have been received from the following State Governments/Union Territory Administration regarding the activities of SIMI:

- (i) Andhra Pradesh,
- (ii) Madhya Pradesh,
- (iii) Maharashtra,
- (iv) Gujarat,
- (v) Delhi,
- (vi) Karnataka,
- (vii) Kerala,
- (viii) Rajasthan,
- (ix) Tamil Nadu,
- (x) Uttar Pradesh,
- (xi) West Bengal,
- (xii) Assam,
- (xiii) Bihar,
- (xiv) Chhattisgarh,
- (xv) Uttarakhand, and
- (xvi) Jharkhand

26. Apart from 30 new cases, the Union of India also placed reliance on (i) certain old cases which, even though cited & considered by the previous Tribunals, have witnessed certain developments and progress after the report of the previous Tribunal, and (ii) cases which have earlier been cited and considered by the previous Tribunals wherein there is no progress in their status. It is stated that the relevance of the old cases in these proceedings is to

show the continuity of unlawful activities by the banned organization and its members in different parts of the country.

27. With a view to invite public representation in support of or against the ban on SIMI, this Tribunal held its sittings, apart from Delhi, at Trivandrum in Kerala; Udaipur in Rajasthan; Kolkata in West Bengal; Bangalore in Karnataka; Aurangabad and Mumbai in Maharashtra; Jabalpur and Indore in Madhya Pradesh; Hyderabad in Andhra Pradesh; Ahmedabad in Gujarat; and Madurai in Tamil Nadu, for the purposes of recording of evidence on behalf of the respective States and/or from members of the public. The witnesses deposing before the Tribunal were cross-examined by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam.

28. Before advert to the appreciation of evidence brought on record before the Tribunal, it would be appropriate to deal with some of the legal submissions advanced by the parties on the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to be represented in these proceedings; the relevancy and the extent of admissibility of the confessional statements or even admissions purported to be made by the accused persons recorded before the police officers or while in police custody and the claims of Privilege by the Union of India in respect of secret documents. Each of these submissions are dealt with separately as under:—

**(I) Locus-Standi of Humam Ahmed Siddiqui and Misbah-Ul-Islam :**

One of the main issues raised by the learned ASG, Mr. Chandhiok, is with regard to the locus of the applicants/intervenors, Misbah-Ul-Islam and H.A. Siddiqui to participate in these proceedings and their right to cross-examine the witnesses produced by the UOI. In this regard, the learned ASG has referred to the definition of the terms 'unlawful activity' as given in Section 2(o) of the Act and 'unlawful association' as given in Section 2(p) of the Act. The said definitions are reproduced for convenience of reference:

"2(o) "Unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise).—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;

- 2 (p) "unlawful association" means any association,—
- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
  - (ii) which has for its object any activity which is punishable under Section 153A or Section 153B of the Indian Penal Code (45 of 1860), or which encourages; or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir."

29. The learned ASG also referred to Section 4 of the Unlawful Activities (Prevention) Act, 1967, which provides for publication and service or notice on such association and in such manner as the Central Government may think fit. The learned ASG also referred to Section 4(2) of the Act, especially emphasizing the word 'shall call upon the association affected by notice in writing to show cause'; and the words 'after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association', used in Section 4(3) of the Act to submit that it can only be an 'office bearer' or 'a member of the association' or the association itself, which can claim the right to be represented in the proceedings before the Tribunal constituted in terms of Section 4 of the Act. It is contended by the learned ASG that individuals, who may have had an association with the banned organization earlier and have since ceased to be associated or claim to have detached themselves from the association, cannot be permitted to be represented in these proceedings as is being sought to be contended by Mr. Aggarwal on behalf of Humam Ahmed Siddiqui and Misbah-UI-Islam. It was also contended that alternatively, if one sees the reply filed by these two applicants and the line of cross-examination conducted by them, it will leave no manner of doubt that they are actively representing the banned organization itself.

30. The learned ASG also argued that the same applicants/intervenors had appeared before the previous Tribunal also, wherein on the plea of locus of these applicants/intervenors, the Hon'ble Tribunal had treated the objections/reply and cross-examination by the applicants/intervenors as objections and cross-examination for and on behalf of SIMI. Reference in this regard can be made to para 92 of the notification dated 12-8-2010.

31. Mr. Ashok Aggarwal, the learned counsel for the applicants/intervenors, on the other hand, submitted that the provisions of the Act expressly permit not only an office bearer or the member of the association but any person, who may claim to be 'aggrieved' by an order banning the organization to seek representation before the Tribunal. It was submitted that Misbah-UI-Islam and H.A. Siddiqui are entitled, not only on the basis of their being

members of the organization prior to the first ban in September, 2001 but also on account of their being members of the Muslim community and thus being 'persons aggrieved' by the notification banning SIMI, are entitled to challenge the continuation of the ban in these proceedings and to cross-examine the witnesses being produced by the Central Government in support of the notification.

32. Mr. Aggarwal, learned counsel, in support of his contention that applicants/intervenors, H.A. Siddiqui and Misbah-UI-Islam, would fall within the definition of 'aggrieved person' to seek participation in the proceedings before this Tribunal, relied upon the judgment in the case titled **Prafulla Samantra Vs. Ministry of Environment & Forest & Ors.**, 159 (2009) DLT 604.

33. The learned ASG while replying to this submission of Mr. Aggarwal contended that so far as the application for revocation of ban on the organization and the representation by any 'person aggrieved', as contemplated in Section 6(2) of the Act, is concerned, it refers to the post upholding of the ban by the Tribunal. In this regard he has drawn the attention of the Tribunal to the language of Section 6(2) of the Act.

34. It is argued by the learned ASG that their objection to the locus of the applicants stems from their denial of the alleged anti-national and secessionist activities attributable to the Association and its members. It is submitted that the applicants/intervenors must accept continuity of the organization and its activities to claim the right to participate in these proceedings. Referring to Section 41 of the Act, learned ASG argued that the existence of an Association does not come to an end merely on the issue of a Notification under Section 3(1) of the Act. The Association is deemed to continue to exist so long as any actual continuation for the purposes of such association continues between any members thereof. It is argued that SIMI has continued to indulge in anti-national activities, as is evidenced by the large number of cases registered against its members especially even after the last ban imposed on it and therefore, the applicants/intervenors must identify themselves as members of a continuing organization to claim the right to appear in these proceedings and cross-examine the witnesses and to further lead any evidence, which they might want, to oppose the notification issued under Section 3(1) of the Act.

35. The learned counsel for the applicants/ intervenors, on the other hand, has submitted that Misbah- UI-Islam and H.A. Siddiqui are seeking participation in these proceedings as independent 'aggrieved persons' and they acquire this right from the explicit provisions of the Act and the principle of natural justice. It is further contended by him that the proceedings before the Tribunal are public proceedings and even the procedure adopted by the Tribunal invites public representation in support of or against the imposition of ban on the organization. It was contended that the continued ban affects the fundamental right of the petitioners to form an association under Article

19(1)(C) of the Constitution. He, thus, contends that the applicants'/ intervenors' right to be represented in these proceedings must be upheld.

**FINDING:**

36. I have carefully considered the submissions made by the respective sides. Section 3 of the Act clearly lays down that the Central Government on forming an opinion that any association is or has become an unlawful association has the discretion to notify in the Official Gazette, declaring such an association to be unlawful. Once this exercise is done, it has the option to submit the said Notification to the Tribunal constituted by it under Section 4(1) within a period of thirty days for the purpose of adjudication as to the correctness of its notification which, in legal jargon, is called 'sufficient cause' for banning the organization and it is only on the approval by the said Tribunal that the notification will have the effect. However, the Central Government also has the option to give immediate effect to the notification by invoking the proviso to Section 3(3) of the Act. Under Section 4(2) of the Act, the Tribunal, on receipt of a reference, is required to call upon the association by notice in writing to 'show cause' within a period of thirty days from the date of service of such notice as to why the association should not be declared unlawful. Section 4(3) of the Act lays down that after considering the cause shown by such association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in Section 9 of the Act and after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring an association to be unlawful.

37. A plain reading of the aforesaid section would show that it is only the association, the office-bearers or the members of the association who have the 'locus' to show cause in response to the notice issued by the Tribunal.

38. The contention of Mr. Ashok Aggarwal that the words 'office bearers' or 'the members' would also include the ex-office bearers or the members thereof of the association which is sought to be banned or which has been banned is not at all plausible and convincing. This is on account of the fact that the foremost rule of interpretation of a statute is the 'literal rule'. The literal rule of interpretation is that if the legislature, in its wisdom, has passed a legislation, it should be read in the way it has been passed without adding or subtracting from the said statute or a provision thereof. Thus, a provision or a section must be interpreted literally in the first instance. If the literal interpretation leads to any ambiguity or any absurdity, only then the applicability of the other rules of interpretation would arise. In the instant case, in case Sections 4(2) and 4(3) of the Act are read literally, they do not admit of any ambiguity or absurdity. Therefore, there is no occasion to follow any rule other than literal interpretation so as to assume that the word 'office-bearers' or 'the members thereof' includes the ex office-bearers or the ex-members.

By doing this, the Tribunal would not only be doing violence to the Statute but would be adding something which was perhaps not intended by the legislature.

39. A perusal of Section 6 of the Act shows that the use of the term 'any person aggrieved' is in the context of post confirmation of the notification by the Tribunal. The said Section 6 reads as under:—

"6. Period of operation and cancellation of notification.

- (1) Subject to the provisions of sub-section (2), a notification issued under Section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under Section 4, remain in force for a period of two years from the date on which the notification becomes effective.
- (2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under Section 3, whether or not the declaration made therein has been confirmed by the Tribunal."

The jurisdiction under the aforesaid section to cancel the notification is vested in the Central Government and not with the Tribunal. Therefore, the word 'any person aggrieved' as used in Section 6 of the Act would not be controlling the interpretation of Section 4(3) so as to read the word 'office bearer' or 'the members thereof', to include ex-office bearers or the ex-members.

40. So far as the judgment in *Prāfulla Samantra (supra)*, cited by the learned counsel for the applicants/intervenors is concerned, it is of no assistance to them. The judgment is distinguishable on facts, in as much as it was considering the right of a private person to challenge an action of the Government in Public Interest Litigation in a writ petition, as compared to the case in hand, where a reference has been made to the statutory tribunal for determination of the sufficiency of material to issue the notification banning SIMI.

41. Accordingly, this contention of Mr. Aggarwal does not have any merit. Therefore, the two individuals represented by Mr. Aggarwal in their individual capacity, in my view, do not have any right to appear, participate and cross-examine the witnesses.

42. The aforesaid discussion, however, should not be interpreted to mean that the Tribunal does not have the power to permit any member of the public to participate in the proceedings in case it deems that it may help the Tribunal in deciding the question referred to it as to whether the validity of the notification should be upheld or not. This reasoning stems from the fact that the proceedings of the Tribunal in terms of sub-section (7) of Section 5 of the Act are judicial proceedings for deciding the list between the parties after recording of evidence, which requires appreciation of evidence. It has the powers of the Civil



Court under Sections 6 & 9 of the Act. It issues public notices inviting objections from the association and its office bearers and members to show cause as to why the ban be not continued. Therefore, in such circumstances it may permit desirous members to participate in the proceedings.

43. It would be appropriate at this stage to refer to Section 41 of the Act regarding continuance of an Association. The said Section reads as under :—

“41. Continuance of association - An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.”

44. A perusal of the aforesaid section shows that an association shall not be deemed to have ceased to exist only by a formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. On the basis of the aforesaid submissions, Mr. Chandhok has contended that although SIMI as an organization has been banned in September, 2001 as having been declared unlawful association but still on ground it has been functioning surreptitiously through various frontal organizations for which evidence has been brought on record by the UOI.

45. The language of the provisions of the Act is drafted in such a manner that the Tribunal is required to see only the ‘sufficiency of the cause’ for the Central Government to declare the association to be unlawful and conversely, the onus is put on the association, either as a body of persons or as office-bearers or even as members, to show cause as to why it should not be declared as unlawful. Being former office-bearers of the association, they were permitted to cross-examine the witnesses and participate in the proceedings but if one examines the tone and the tenor of the objections/reply filed by them and the entire thread of cross-examination conducted for and on behalf of these two applicants/intervenors, it would clearly show that they were not cross-examining the witnesses in their individual capacities but, in effect, they are representing the banned organization itself. As a matter of fact, it is surrogate representation by them on behalf of the banned organization SIMI.

46. I find considerable merit in the submission of the learned ASG that the applicants/intervenors as individuals cannot be permitted to participate in the proceedings and cross examine the witnesses produced by the Central Government, but since this is a surrogate representation by them for the banned organization SIMI, they are allowed to participate in the proceedings as members of a ‘continuing organization’.

#### (H) Confessional Statements before Police Authorities

Another argument advanced by the learned counsel Mr. Aggarwal is that the primary evidence led before the

Tribunal by the UOI is the confessional statements recorded by the police officers while the accused persons were in their custody. In this regard he has referred to the testimony of PW-2, PW-6, PW-17, PW-27, PW-28, PW-29, PW-30, PW-31, PW-33, PW-35, PW-38, PW-40 & PW-41. It is contended by the learned counsel that such evidence is not admissible and is liable to be rejected by the Tribunal in view of Sections 25 & 26 of the Indian Evidence Act, 1872.

47. It is contended by the learned counsel that the term “as far as practicable” in Rule (3) of the Unlawful Activities (Prevention) Rules, 1968 must be read to mean strict adherence to the provisions of the Evidence Act and, thus, no sanctity can be attached to the confessional statements recorded by the police officers and that their statements be not entertained and relied upon by the Tribunal.

48. Elaborating this argument further, it was contended by him that the major component of evidence which has been produced by the Union of India is the statements/confessions of the various accused persons recorded by the police officers or while the accused were in police custody and these confessions or so called disclosure statements have allegedly lead to various recoveries. It is contended that all these recoveries shown from the accused persons or at their behest are planted and fake recoveries. Further, merely because some recoveries have been effected from some accused persons does not establish the complicity of the organization SIMI. Another argument which was advanced was regarding the statements recorded under Section 161 Cr.P.C. It was contended that these statements are also inadmissible in evidence and they, at best, could be used for the purpose of the contradiction under Section 145 of the Evidence Act.

49. Sections 25 & 26 of the Indian Evidence Act, 1872, read as under :—

“25. Confessions to police officer not to be proved - No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him - No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

50. Learned counsel referred to the decision of the Apex Court in *Khatri & Ors. (IV) Vs. State of Bihar & Ors.*, (1981) 2 SCC 493 to contend that statements recorded before the police authorities can be considered in evidence under Section 162 of the Evidence Act only if they are otherwise relevant under the provisions of the Indian Evidence Act and since Sections 25 & 26 of the Indian Evidence Act render such statements inadmissible, the Tribunal should not entertain such statements while assessing the ‘sufficiency of cause’ shown by the Central Government. Learned counsel referred to the following observations of the Apex Court in *Khatri’s case*:-

"It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L. V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

51. Learned counsel for the applicants/intervenors next submitted that the so-called confessional statements being relied upon by the Central Government for issuing the notification under Section 3(1) of the Act are carved by a threat of injury to the maker of the statement since the maker of the statement is at the mercy of the police officers. It is argued that confession carved by any inducement, threat or promise, proceeding from a person in authority is liable to be excluded from evidence and that the Tribunal while weighing the evidence should discard such statements. Learned counsel, in support of his arguments, referred to the following observations made by the Apex Court in *State (NCT of Delhi) Vs. Navjot Sandhu, (2005) 11 SCC 600*:-

".....If it appears to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression "appears" connotes that the court need not go to the extent of holding that the threat, etc. has in fact been provided. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer. Confessions leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of police officer. Consideration of a provided confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-a-vis confessions. The allied provision which needs to be noticed at this juncture is Section 162 Cr.P.C. It prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any enquiry or trial in respect of any offence under investigation....."

52. Learned counsel also argued that the statements made before the police authorities do not inspire confidence and suffer from the vice of threat and coercion and thus inadmissible under Section 24 of the Evidence Act. Such

statements are, in most cases, retracted by the accused persons in court, which shows that they are not 'voluntary' in character. In support of the submissions, learned counsel referred to the observations of the Apex Court in *Tahsildar Singh Vs. State of U.P., AIR 1959 SC 1012*:

"It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention."

53. Learned counsel Mr. Aggarwal contends that in view of the clear mandate of the law and the pronouncements of the Apex Court, the confessional statements made by the accused persons in particular cases, which are sought to be relied upon by the Union of India are not admissible in the present proceedings before the Tribunal for adjudicating the reference.

54. In reply, learned ASG, at the outset, referred to Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968, to submit that the rules of the Indian Evidence Act, 1872 are not applicable stricto sensu to the proceedings before this Tribunal and not more than 'as far as practicable'. It is submitted that the term 'as far as practicable' implies that the provisions of the statute do not apply to the proceedings in their entirety and must be interpreted loosely to examine the 'sufficiency of cause' for issue of the notification under Section 3(1) of the Act. In support of the submissions, learned ASG relied on the judgment of the High Court of Bombay in *Keshrimal Jivji Shah & Anr. Vs. Bank of Maharashtra & Ors., (2004) 122 Camp. Cases 831 (Bombay)*, wherein the Division Bench has observed as under:-

"Wherever legislature uses words such as 'as far as possible', 'as far as practicable' etc. the intent is not to apply the provisions in their entirety."

In this regard, learned ASG has also referred to the decision in *Abdul Majid Haji Mahomed Vs. P. R. Nayak, AIR 1951 Bombay 440*, wherein the Division Bench of the Bombay High Court in Para 27 of the judgment has observed that "as far as practicable" can only mean and must be construed to mean in to the extent that it is practicable".

55. Learned ASG also referred to Section 9 of the Act to contend that the words 'so far as may be' used in the said Section de-fetter the Tribunal from the provisions of the Civil Procedure Code and the Evidence Act and empower it to evolve its own procedure to assess the 'sufficiency of cause'. These provisions, it is argued, allow the Tribunal to modify, change and regulate its own procedure, keeping in view the practical requirements, need and necessity. Learned ASG, referring to Section 18 of the Indian Evidence Act, argued that statements whether confessional or made under Section 161 Cr.P.C. before the police authorities by members of the SIMI organization are admissions made on behalf of SIMI and are, therefore, admissible in view of the express language of Section 18.



56. It is further argued by the learned ASG that the appreciation of evidence by the Tribunal in a reference under the Act is not a 'trial' against the accused persons and the evidence led by the Central Government in these proceedings cannot form the basis in the trial proceedings. Therefore, the appreciation of evidence by the Tribunal being collative in nature and in view of the express provision of Section 18 of the Indian Evidence Act, 1872, this Tribunal can certainly examine and form its opinion to answer the reference on the basis, inter-alia, of confessional statements made by the accused persons before the police authorities while being in police custody.

**FINDING :**

57. The aforesaid arguments raise an issue as to what kind of evidence can possibly be admissible in respect of a banned organization, which is continuing to indulge in a surreptitious manner in anti-national activities and how far the strict rules of evidence can be read in this arena by the Tribunal to arrive at its opinion and to answer the reference. It also entails examination of the question of quantum of proof which the Tribunal is required to see for the purpose of answering the reference as to whether there is 'sufficiency of cause' for continuation of ban. In this regard suffice it would be to here mention that this question is no more res integra. It has been settled by the Supreme Court that the inquiry before the Tribunal is only an 'inquiry' and not a trial, therefore the quantum of proof which will be required is only of preponderance of probability and not beyond reasonable doubt and secondly the evidence which may be taken into consideration by the Tribunal is not only the legal evidence but the other material also, which may be produced before the Tribunal. Reliance in this regard can be placed on *Jamaat-e-Islami Hind's case* (supra).

58. I have carefully considered the submissions made by the learned counsel and have gone through the judgments. I have also gone through the previous Notifications, especially the Notification dated 12-2-2010 issued by the Central Government, upholding the ban for a period of two years on the basis of the reference of the Notification No. S.O. 544(E) dated 5th March, 2010 issued by the Government of India, declaring SIMI as an Unlawful Association. It may be pertinent here to mention that once the Gazette Notification on the basis of the report of HMJ Sanjiv Khanna is issued, the said Notification has become a public document in pursuance to Section 74 of the Indian Evidence Act, 1872, which can be proved by resort to Section 78. Sections 74 and 78 read as under:—

"74. **Public documents**—The following documents are public documents:—

- (1) documents forming the acts, or records of the acts—
  - (i) of the sovereign authority,
  - (ii) of official bodies and tribunals, and
  - (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

- (2) public records kept in any State of private documents.

78. **Proof of other official documents.**—The following public documents may be proved as follows:—

- (1) Acts, orders or notifications of (the Central Government) in any of its departments, (or of the Crown Representative) or of any State Government or any department of any State Government—by the records of the departments, certified by the head of those departments respectively,

Or by any document purporting to be printed by order of any such Government (or, as the case may be, of the Crown Representative)".

59. A perusal of the aforesaid Sections would show that once a notification is issued and it is proved as established, this being a public document, the Tribunal, the Court or any other judicial body is entitled to take judicial notice of the said notification. Further, this notification has been proved by Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs. This Tribunal has taken judicial notice of the Notification dated 12-8-2010 issued by the Central Government, and it is noticed that the submissions, urged by Mr. Ashok Aggarwal before this Tribunal with regard to the relevancy and admissibility of the evidence in the context of confessions recorded by the police officers, hearsay evidence and the recoveries purported to have been effected in pursuance to Section 27 of the Indian Evidence Act, 1872, are almost a re-run of the submissions which were urged before the previous Tribunal. Hon'ble Mr. Justice Sanjiv Khanna had passed a detailed order dealing with each of these submissions as well as the judgments cited by the learned counsel. These are contained in paras 33 to 72 of the Notification dated 12-8-2010. Nothing new has been urged by the learned counsel. Therefore, I do not find myself, in any manner, being persuaded, so as to differ with the reasoning which has been arrived at by the said Tribunal. Suffice it would be here to mention that the fallacy with regard to the submissions made by Mr. Ashok Aggarwal can be illustrated by one simple point. Mr. Ashok Aggarwal has put too much of premium on the submission that a confession which is made by an accused to a police officer or, for that matter, while in police custody, is not admissible.

60. It is correct that Sections 25 & 26 of the Indian Evidence Act, 1872 lay down that the confessions made in certain contingencies are not admissible, but the bar is very clearly against the use of such confessions against the accused persons making such confessions during the course of its trial. A reading of the said two sections in conjunction with Section 18 makes such statements good enough as a material for reliance purposes of this Tribunal to assess the sufficiency of the cause. Even the case law cited by learned counsel for the applicants/intervenors, clearly recognizes this distinction between use of such statements against the accused persons and their use in

collateral proceedings. In the case of *Khatri & Ors.* (supra), the Apex Court has categorically held that statements before police officers during investigation cannot be shut out from being considered in evidence under Section 162, provided they are otherwise relevant under some provisions of the Indian Evidence Act. As observed earlier, this Tribunal is not restricted in its power to adopt its own procedure, so as to assess 'sufficiency of cause' by weighing of the evidence brought before it by a fair procedure.

61. Accordingly, I am of the considered opinion that the judgments which have been relied upon by Mr. Ashok Aggarwal, detailed hereinabove, are not applicable to the facts of the present case. In addition to this, there is another point of distinction on the basis of which the judgments, which have been relied upon by Mr. Ashok Aggarwal, can be ignored as not applicable to the facts of the present case. This reasoning is that although the judgments, which have been relied upon by Mr. Ashok Aggarwal, lay down certain points of law in the context of the facts reported therein but the Supreme Court has umpteen times laid down that while laying down the law in a particular case, the applicability of the said law to the case in hand should not be done in a mathematical manner, like as is done in the case of theorems. In such contingencies, the facts of the reported judgment must be correlated to the facts of the case in hand. The judgments, which have been relied upon by Mr. Ashok Aggarwal, are essentially dealing with the admissibility of confessions, the admissions, the statements made by the accused persons while in police custody, in the context of the criminal trial, while in the instant case, there is no such requirement and what has to be determined by the Tribunal is as to whether there is sufficiency of material to confirm the ban or not. Reliance in this regard can be placed on *Haryana Financial Corporation Vs. Jagdamba Oil Mills*, 2002 (3) SCC 496 and *Sushil Suri Vs. CBI & Anr.*, AIR 2011 SC 1713.

Accordingly, the plea of the applicants/intervenors to disregard evidence brought on record by way of confessional statements or statement made to police officer under Section 161 Cr.P.C. is rejected.

**(H) Claim of Privilege by Union of India (I.A. No. 12/2012)**

Another contention raised by Mr. Ashok Aggarwal, learned counsel representing the applicants/intervenors, is that the Central Government cannot claim any privilege with respect to the evidence adduced before the Tribunal by way of documents placed in a sealed envelope. It is submitted that either the contents of the sealed documents be disclosed to the applicants/intervenors or the Tribunal should disregard all such evidence produced before the Tribunal during its sittings in different States and by the Central Government at Delhi. In this behalf, the applicants/intervenors have also filed IA No.12/2012, objecting to the manner in which the privilege is claimed by the Central Government and seeking directions that the Central Government must file affidavits, clearly stating the nature

of each of the documents on which privilege is claimed as also the grounds for seeking non-disclosure of such information to the applicants/intervenors. The learned counsel claims that such withholding of information placed before the Tribunal from the applicants/intervenors amounts to violation of the principles of natural justice and also their right to challenge all such material to oppose the notification issued under Section 3(1) of the Act. It is argued that the alibi of public interest to withhold disclosure of information to the applicants/intervenors amounts to jeopardizing their right to effectively participate and contest the proceedings on behalf of the applicants/intervenors. Referring to the decision of the Supreme Court in *Jamaat-e-Islami Hind* (supra), it is submitted that the affected association or those who represent it before the Tribunal, are entitled to a copy of the entire material, based on which the Central Government is purported to have formed its opinion to ban the said organization, except to the extent it intends to claim privilege, in order to give the affected party a proper opportunity to show cause against the same. Reliance is also placed on the decision of the Apex Court in *Sushil Kumar Vs. State of Punjab*, AIR 1961 SC 493 to submit that each claim of privilege must be founded upon an affidavit, clearly stating the nature of the documents and the grounds for seeking non-disclosure. It is submitted that the claim of privilege cannot even be considered, much less granted, unless the prescribed procedure is followed.

62. It is argued by the learned counsel that any privilege, which is to be claimed by the Union of India, has to be done in accordance with the provisions of Section 123 of the Indian Evidence Act, 1872. In other words, it was contended that the mode of claiming the privilege is prescribed in Section 123 of the Evidence Act, 1872 itself. This plea was raised by the learned counsel in the context of the fact that at a number of places where the Tribunal had gone for the purpose of recording of evidence, the witnesses or the high officials of the state concerned had handed over sealed envelopes for the purpose of perusal by the Tribunal to satisfy itself regarding the 'sufficiency of cause' for the continuation of the ban.

63. It will be pertinent here to reproduce Section 123 of the Indian Evidence Act, 1872, which reads as under:—

"123. Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

The learned counsel also sought to rely on Section 162 of the Indian Evidence Act, 1872 to support his argument for disclosure of all documents.

64. On the strength of the aforesaid statutory provisions of the Evidence Act, Mr. Aggarwal has referred to paragraph 15 & 17 of judgment of the Apex Court in *R.K. Jain Vs. Union of India & Ors.*, AIR 1993 SC 1769 to contend that

before any privilege is claimed by the UOI, not only there has to be an application, but there has to be an affidavit by the Head of the Department, stating therein that the disclosure of the contents of the document or the document itself to the opposite side would not be in public interest. Learned counsel laid emphasis on the following observations of the Supreme Court:—

“.....It is now settled law that the initial claim for public interest immunity to produce unpublished official records for short ‘State documents’ should be made through an affidavit generally by the Minister concerned, in his absence by the Secretary of the department or head of the department. In the latter case the court require an affidavit of the Minister himself to be filed. The affidavit should indicate that the documents in question have been carefully read and considered and the deponent has been satisfied, supported by reasons or grounds valid and germane, as to why it is apprehended that public interest would be injured by disclosure of the document summoned or called for.....”

65. Since in the instant case, it was contended that neither the application nor the affidavit of the Head of the Department has been filed, therefore, no privilege can be granted or can be claimed by the UOI in respect of the documents which are given at different hearings in a sealed cover. Mr. Aggarwal also referred to S. P. Gupta Vs. Union of India & Ors., AIR 1982 SC 149 to make a similar submission.

66. As against this, Mr. Chandhiok, the learned ASG, has contended that neither an application nor an affidavit is required to be filed for claiming privilege. It was contended that proviso to Section 3(2) makes it amply clear that the Central Government is empowered not to disclose any fact which it considers to be against public interest to disclose, meaning thereby, that if the Central Government is of the opinion that the disclosure of any fact to the banned organization or to any of its members, or for that matter to the public in general will be against public interest, it can withhold its disclosure. The language of the section is couched, it was contended, in such a manner which does not entertain any doubt that any application or any affidavit by any competent authority is required to be filed to claim privilege.

67. It was also observed that this information could not and ought not to be disclosed to the respondents because apart from the source of information being leaked it would also jeopardize the life and property of certain witnesses or individuals. So far as Section 162 of the Evidence Act is concerned, it was contended that the same does not apply to the facts of the case at all.

68. I have carefully considered the submissions made by Mr. Ashok Aggarwal as well as Mr. A.S. Chandhiok.

69. Section 5(6) of the Act gives the powers to the Tribunal for the purpose of making an inquiry under this Act in order to answer the reference made to the Tribunal

under Section 4 of the Act. Sub-section (6) of Section 5 reads as under:—

“5. Tribunal:—

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record from any court or office;
- (e) the issuing of any commission for the examination of witnesses.”

Rule 3(2) of the Unlawful Activities (Prevention) Rules, 1968 lays down as under:—

“3. Tribunal and District Judge to follow rules of evidence,—

[2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—

- (a) make such books of account or other documents a part of the records of the proceedings before it; or
- (b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.]”

70. A perusal of the aforesaid Section and Rule clearly shows that although the principles of the Indian Evidence Act, 1872 are made applicable for admissibility and relevancy of evidence produced before the Tribunal adjudicating the reference under the Act, but the same are not applicable in stricto sensu. What is to be followed are the broad principles of evidence which are conforming to the principles of natural justice and fair play.

71. Thus, there is a certain amount of laxity and departure made under the Act for the reason that the provisions of the Act are extraordinary and preventive in nature. The preamble of the Act clearly states that the Act has been passed by way of a special enactment for effective prevention of certain unlawful activities of individuals and associations as well as dealing with terrorist activities and for the matters connected therewith. The statement of



objects and reasons underlines the purpose of the enactment empowering Parliament to impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India, on the freedom of speech and expression; right to assemble peacefully and without arms; and right to form association. In addition to this, if these two provisions are seen in the proper perspective, it will give an impression that the provisions of the Act, which are passed at a later point of time, are laying down its own procedure for the purpose of taking evidence in order to determine the sufficiency of grounds for upholding the ban. It is in this context that the power has also been given to the Union of India to withhold the information or material from the aggrieved party. Although it has to be given to the Tribunal to show and determine the objectivity of its decision. This procedure does not call for any affidavit by the Head of the Department. This provision is also at variance with Section 123 of the Evidence Act.

72. It is settled law of interpretation that where the special Act is passed and prescribed as special procedure under the said Act itself, then that procedure has to necessarily supersede the general provision of law or the general act if it deals in the same field. Reliance in this regard can be placed on the Latin maxim *generalia specialibus non derogant*.

73. It would be pertinent at this stage to notice the observations made by the Supreme Court in *Jamaat-e-Islami Hind (Supra)* on the issue of non-disclosure of information by the Central Government in public interest. In para 20 of the judgment, the Apex Court has observed as under:—

“..... The requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act.”

Thus, it may be noticed that principles of natural justice must remain subservient to public interest, so far as disclosure of secret and confidential information is concerned.

74. In the light of the aforesaid discussion, I hold that neither any application for seeking privilege nor any affidavit of the Head of the Department is required to be filed by the Union of India for grant of the privilege by the Tribunal. The judgments which have been relied upon by the learned counsel Mr. Aggarwal are distinguishable on

facts and do not lay down that sensitive information cannot be withheld from the parties to a lis. So far as Section 162 of the Indian Evidence Act, 1872 is concerned, that is not applicable to the facts of the case, as it deals with altogether a different situation.

#### SEALED ENVELOPES:

75. During the course of proceedings of the Tribunal, 8 sealed envelopes were submitted at Kerala, Udaipur, Kolkata, Mumbai, Jabalpur, Ahmedabad, Hyderabad and Indore. Apart from these, PW-42, Ms. Rashmi Goel, appeared as a witness on behalf of the Union of India and handed over 9 sealed envelopes. I have perused the contents of all these sealed envelopes, except for the sealed envelope which has been given at Ahmedabad, which contains the documents only in Gujarati, without any English translation, could not be perused by the Tribunal. The Tribunal also did not consider it to be necessary to get the documents translated on account of paucity of time.

76. After perusing the information which has been furnished in the form of CDs, VCDs, audio CD, pamphlets, book, magazine and literature, I am further satisfied that the information, which has been furnished to this Tribunal in the sealed envelopes, is sensitive information which cannot be disclosed to the applicants, as it will derail not only the investigations of the cases, which are going on, but will also disclose to them the various sources of information and may even threaten the life and liberty or even property of such witnesses who have furnished the said information. Apart from this, these pieces of information, if perused by any reasonable law knowing person, he would be left with no manner of doubt in his mind that the organization in question has been banned in September, 2001 but in reality, its ex-office bearers, activists and sympathisers are trying all their efforts to regroup, recruit and indoctrinate the techno savvy young persons with impressionable age to indulge in illegal and unlawful activity within the definition of Section 2(o) and 2(p) of the Act.

Accordingly, the application I.A. 12/2012 of the applicants, Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, seeking directions that the Central Government must file affidavits, clearly stating the nature of each of the documents on which privilege is claimed as also the grounds for seeking non-disclosure of such information to the applicants/interveners, is rejected.

#### Individual Actions cannot be attributed to the Association already Banned

77. Another argument advanced by learned counsel for the applicants/interveners is that the incidents relied upon by the Central Government in support of the Notification banning SIMI are at best individual incidents of crime and have no relation whatsoever with the banned organization. It is further argued that the ban on the organization is in violation of their right to form association as enshrined in Articles 19(1)(c) of the Constitution of India. He has submitted that the individual cases of crime are being tried

in courts of competent jurisdiction and such cases have no relation whatsoever with the organization.

78. The aforesaid argument of the learned counsel will need to be tested on three counts, viz., (i) whether the incidents/crimes are of such nature which are capable of being committed without support from the organization of which they claim to be members; (ii) whether the incidents/crimes are isolated in nature or are a part of a larger web being created, which is aimed at causing terror and destabilization of the State; and (iii) whether the association has at the first available opportunity delineated itself from such incidents by publicly disassociating itself from the incidents/crimes.

79. Learned ASG in this connection has once again referred to the definition of 'unlawful activity' as contained in Section 2(o) of the Unlawful Activities (Prevention) Act, 1967, which provides that an unlawful activity, in relation to an individual or an association, means any action taken by such individual or association which is intended or supports any claim to bring about on any ground whatsoever the cession or the secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession; or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or which causes or is intended to cause disaffection against India. Learned counsel argued that on a mere literal interpretation of the definition of the term 'unlawful activity', the argument advanced by learned counsel for the applicants/intervenors must fail.

80. It is submitted that the aforesaid definition does not draw any distinction between an Association and its members and both are equally responsible for the acts of crime and anti-national activity committed by the members. It is submitted that an Association is nothing but a group of people with common objectives and, as such, the acts of the members, committed in pursuance of their common objectives, represent the acts of the Association and no one else. It is further argued that the Association cannot be permitted to adopt the convenient alibi of disassociating itself from any member who is caught in an act covered within the definition of unlawful activity.

81. A literal reading of the definition of 'unlawful activity' in the Unlawful Activities (Prevention) Act, 1967 coupled with the examination of the evidence which has been brought on record and the documents made available to the Tribunal under sealed cover lead to the conclusion that these incidents are carried out surreptitiously, as a part of a larger well-planned conspiracy, to carry out terror related activities in the name of Jihad by members of the organization even though their outward claim may be that the organization has ceased to exist after September, 2001 and there are no activities carried out by their cadres which can be attributed to the organization. Furthermore, these incidents brought on record during the examination of witnesses cannot be termed as isolated incidents of crime. There are proved interlinks and linkages between the

different incidents, which establish the commonality of purpose of each of the incidents and are aimed at achieving the specified objects of the Association. Further, nothing has been brought on record to show that the Association has at any point of time or at any stage made any effort to disown itself from such acts.

Thus, on all the three counts, the argument advanced by the learned counsel for the applicants/intervenors must fail and is accordingly rejected.

#### PROCEEDING TO THE EVIDENCE BROUGHT ON RECORD

82. A brief analysis of the evidence recorded in each of the States is as under :

##### (I) At Trivandrum in Kerala :

At Trivandrum, the Central Government, in support of the Notification banning SIMI, examined the following witnesses :—

- (i) Mr. Lhari Dorjee Lhatoo, Superintendent of Police, National Investigation Agency, New Delhi (PW-1);
- (ii) Mr. Sajid Farid Shapoo, IPS, Superintendent of Police, National Investigation Agency, New Delhi (PW-2);
- (iii) Mr. G.V. Ramana, Deputy Superintendent of Police, NIA, Field Office, Hyderabad (PW-3);
- (iv) Mr. Sasidharan Chalil, Additional Sub-Inspector in Town Police Station at Kozhikode (PW-4);
- (v) Mr. Aananthakrishnan, IGP (Internal Security), Special Branch, CID Hqrs. Govt. of Kerala (PW-5).

83(a). PW-1, Mr. Lhari Dorjee Lhatoo, Superintendent of Police, National Investigation Agency, New Delhi, has filed two affidavits exhibited as Ex. PW-1/A and PW-1/B. Along with his affidavit (Ex. PW-1/A), he has filed a certified copy of the FIR No. 159/2006 and its English translation (exhibit PW-1/1). He has stated that the said FIR was registered by PS Binanipuram, Distt. Ernakulam, Kerala under Sections 120(B), 124(A) IPC and Sections 10 & 13 of Unlawful Activities (Prevention) Act against five SIMI activists, who are accused of conducting a secret seditious meeting at the Happy Auditorium, Binanipuram PS Limits, Ernakulam Distt., which was attended by 13 other persons, who were also arrested by a Joint Investigation team. The investigation of the FIR was subsequently transferred to National Investigation Agency (NIA), which re-registered the said FIR as FIR No. 3/2010 on 21-1-2010 (Ex. PW-1/1).

- (b) The NIA further investigated the matter and filed the charge sheet on 30-12-2010 (Ex. PW-1/2). This has been wrongly stated by the witness in his affidavit as 30-12-2012. During the course of investigation by the NIA, the witness got the statement of Rasheed @ Rasheed Moulavi recorded under Section 164 Cr.P.C. The statement of Rasheed @ Rasheed Moulavi recorded under Section 164 of Cr.P.C. [Ex. PW-1/3 (colly)] has been placed on record. In his



examination-in-chief, he has stated that Rasheed was originally the complainant but when the investigation of the case was transferred from one IO to another of the state police itself, he was made an accused and after the investigations were transferred to NIA, he turned as an approver. In his statement, he has stated that in 2006 during the period when the FIR in question was registered, he was acquainted with one Nizamuddin of Panaykulam who used to visit mosques for prayer. He used to lend CDs and Islamic religious books from the mosque library. One week before 15-8-2006, Nizamudeen told him that a meeting was going to be organized at Happy Auditorium in Panaykulam on 15-8-2006 and in the said meeting, the role of Indian Muslims in the freedom struggle was being discussed. The aforesaid meeting was attended by Nizamudeen, Abdul Rasik, P.A. Shaduly, Shammi @ Shammas and Ansar who were sitting in the Dias. There were 13 persons, including him, who were sitting in the audience. After reciting Quran by Ansar, Abdul Rasik took a class on history of Kashmir. Abdul Rasik said that Kashmiri Muslims were conducting Jihad and that they were being shot dead by Indian soldiers. The Government of India had also been torturing Muslims with black laws, like TADA and NSA. He also asked the gathering to fight against these atrocities under the leadership of SIMI. He is also alleged to have stated that these activities cannot be eradicated. They were also in possession of certain books and pamphlets, which, on a visit by Police to the area in question, were hidden by each one of them. This statement was recorded on 4-4-2010.

- (c) Statements of Ubaid, S/o Abdul Rashid, Shihab S/o Ibrahim, Mohd. Sherref, S/o Abdul Kader, Shabeer S/o Abdul Khader have also been recorded under Section 161 Cr.P.C. by the police officials, wherein it is reflected that the activities of SIMI are being carried out by the persons belonging to Muslim community living in Kerala, either under the banner of SIMI surreptitiously or under the name of Students Islamic Organization (SIO), a student's wing of Jamaat-e-Islami Hind (JIH). The statements of other accused filed by PW-1 are exhibited as Ex. PW-1/4 to PW-1/15. Certified copies of the publications of the banned organization are exhibited as Ex. PW-1/16 and the certified copy of the list of leaders/members/workers of the organization are exhibited as Ex. PW-1/17.
- (d) In his cross examination by Mr. Mobin Akhtar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-1 admitted that Rashid @ Rashid Maulvi was made an accused on 31-12-2008, on which date he was arrested by the previous investigating officer.

He further stated that he had not filed the entire documents in this Tribunal forming part of the charge sheet but volunteered that the documents which were considered relevant were filed by him. He also admitted that in FIR No. 3/2010, which is registered by NIA, there is no mention that the accused persons were making speeches against the Government of India. He further admitted in his cross-examination that no other statements of the accused have been recorded under Section 164 Cr.P.C. except that of Rashid Maulvi. He further stated that at the time of search and raid, various written material by way of pamphlets and literature etc. were recovered belonging to the organization concerned.

- (e) A perusal of the testimony of this witness PW-1 highlights 2-3 important facts as his testimony is not demolished on that score by the cross-examination. The fact, which has come out from the testimony of this witness, is that though FIR No. 3/10 (Ex. PW-1/1) pertained to an incident of the year 2006, the investigations, were carried out by the NIA after transfer of the investigation in question to them, which revealed the deep-rooted hurt of young disgruntled Muslim youth in harbouring a grudge to carry out a struggle and help spreading hatred among different communities and create communal disharmony among the members of various communities in the name of a particular religion. It is also reflected that they wanted to support the so-called freedom struggle by carrying out similar extremist activities in the State of Jammu & Kashmir which they were terming as 'Jihad', It also showed that most of these persons, who were involved in the said FIR, were either very young or middle aged persons, who seemed to be well educated.
- (f) This clearly shows that even after the investigation of the case was transferred to the NIA, the activities of the banned organization SIMI were still being carried on by spreading seditious material by way of pamphlets, books and distributing CDs etc. It may be pertinent here to mention that the witness has also testified with regard to the seizure of various incriminating CDs, pamphlets and books which showed that the Muslim youths in Kashmir were conducting freedom struggle by way of Jihad against the alleged forcible annexation of that part to the Indian Union. In this regard, in one of the CDs, it is attributed that Pt. Nehru had refused to send the Indian Army on account of raid by nomadic tribes at the instance of Pakistan Army for a period of 44 days, as there was no annexation by them and Kashmir used to be an independent princely State. This kind of thinking on the part of the accused persons is nothing but the byproduct of their perverted mind.

84(a). PW-2, Mr. Sajid Farid Shapoo" Superintendent of Police, National Investigation Agency, New Delhi, has filed his affidavit exhibited as Ex. PW-2/A. Along with his affidavit, he has filed a certified copy of the FIR No. 356/2008 and its English translation (exhibit PW-2/1). He has stated that the S.I. of Police Station Edakkad arrested Abdul Jaleel on the basis of reliable information pertaining to some illegal activities and FIR 356/2008 was registered against him under Sections 3 and 13(2) of Unlawful Activities (Prevention) Act, which were subsequently altered into Section 3 read with Sections 13(2), 16, 18, 19, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 and Sections 120(B), 121, 121(A), 124(A), 465, 471 and 34 of IPC. The said case was investigated by a Joint Investigation team headed by Sh. T.K. Vinod Kumar, then DIG, State of Kerala and during the course of investigation 23 persons were arraigned as accused out of which 4 had been killed in an encounter with security forces while attending a camp for training in Kashmir. On the basis of investigation in FIR 356/2008, two charge sheets were filed by the Kerala police in the competent court of Jurisdiction. Later on, seeing the gravity of the offence, the investigation of the FIR was transferred to National Investigation Agency (NIA) on 24-12-2009, which re-registered the said case as FIR No. 2/2010 on 21-1-2010 (Ex. PW-2/2).

b) The NIA further investigated the matter and filed the supplementary charge sheet before the Special Court for NIA cases (Ex. PW-2/3) against 24 accused persons, including 23 accused already charge sheeted by the Kerala Police. During the course of investigation, it has been revealed that one of the accused namely, Sarfaraz Nawaz, was a SIMI activist and his statement was recorded under Section 161 of Cr.P.C. by PW-2, which is exhibited as Ex. PW- 2/4. The witness in his affidavit has further stated that it was further learnt that Sarfaraz Nawaz was also associated with Lashkar-e-Taiba and arranged funds for training of the other accused at Jammu & Kashmir and also assisted in the escape of two accused namely, Naseer and Sharfaras from India in October/ November, 2008.

c) He has stated that during the course of investigation and interrogation of Sarfaraz, it was revealed to him that Safdar Nagori, after being appointed as the New Secretary General, wanted to change SIMI into a full-fledged Jehadi group. Sarfaraz also met SIMI members in Dubai and started taking part in their activities. Apart from taking part in the activities of SIMI between 2004 and 2006, the witness also stated that the banned organization SIMI was recruiting people from the State of Kerala, indoctrinating them and sending them for waging war against the

Government of India and indulging in other terrorist acts in the State of Jammu & Kashmir. Out of these accused persons, four had got killed in an encounter in Srinagar while carrying out terrorist activities when they were confronted by security forces and cases have been registered in Police Stations, Lal Pura and Sogaon. He has also stated that SIMI and its members continued to indulge in anti-national activities, prejudicial to the interest of our national integrity, communal harmony and sovereignty by waging a war against the Government of India and, therefore, the ban, which is imposed by the Government on SIMI, is legally justified and is required to be upheld in the public interest so as to control its activities.

(d) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-2 admitted that he was not the first investigating officer of FIR 2/2010 and volunteered that there was another investigating officer assigned for this FIR before him. He further admitted that the statement of Sarfaraz Nawaz had already been recorded earlier by the Kerala Police and that both the statements, one which is recorded by Kerala Police and the other recorded by him are almost on the same lines. He further admitted that the statement of Sarfaraz Nawaz was recorded by him when he was in judicial custody after taking permission from the concerned Magistrate and that the statements of most of the accused persons have been recorded but he denied the suggestion of the learned counsel that these statements have not been filed purposely, as it would have exposed that Sarfaraz Nawaz has no connection with SIMI. He admitted that he had not filed the complete record of the charge sheet but volunteered that whatever was relevant for the purpose of the present case was filed by him.

(e) One noticeable fact of the entire statement of this witness is that it has withstood successfully the test of cross-examination. Nothing has been brought on record during cross-examination which could discredit his testimony on the aspect of involvement of banned organization SIMI, which is surreptitiously indulging in anti-national terrorist activities through its members, not only in the State of Kerala, but also lending active support to such illegal activities being carried out by the militants in the State of Jammu & Kashmir. He has also testified that the ban against this organization deserves to be continued in the light of their activities. The testimony of this witness assumes great importance because he is a Muslim and hails from the State of Jammu & Kashmir and yet he has testified against the illegal and unlawful activities of disgruntled persons who are misguided and carry on the activities of the banned organization SIMI in the name of religion in the name of Jihad in the State of Jammu & Kashmir.

85(a). PW-3, Mr. G. V. Ramana, Deputy Superintendent of Police, National Investigation Agency, New Delhi, has filed his affidavit exhibited as Ex. PW-3/A. Along with his affidavit, he has filed a certified copy of the FIR No. 257/2008 and its English translation (exhibit PW-3/1). He has stated that the said FIR was registered at PS Mundakayam, Distt. Kottayam, Kerala under Sections 120(B), 124(A), 122, 153(A) IPC, Sections 25 & 27 of Arms Act and Sections 10 & 13 of Unlawful Activities (Prevention) Act based on the complaint by Mr. R. K. Krishna Kumar, Dy. Superintendent of Police (Internal Security), Special Branch, CID, Ernakulam, who noticed the word 'SIMI' written on a rock both in English and Malayalam near Shaikh Farudeen Dargah on the Kolahalmedu-Thangalpara route and on making a confidential enquiry, found that 30 activists/members of SIMI organization conducted a training camp at Thangalpara (Wagamon) in December, 2007. The investigation of the FIR was subsequently transferred to National Investigation Agency (NIA), which re-registered the said case as FIR No. 4/2010 on 21-1-2010 (Ex. PW-3/1).

(b) During the course of investigation by NIA, it has been revealed that three days' secret training camp of SIMI was conducted in a meticulous manner with each member entrusted with specific task and responsibility. The trainees were imparted vigorous physical training such as rock climbing, swimming, use of fire arms, making of petrol bombs; riding motor cycles at great speed for VIP assassinations, trekking in difficult terrain and methodologies for launching terrorist strikes. The NIA further investigated the matter and filed the charge sheet on 13-1-2011 against 30 accused persons, out of which 29 accused were arrested (Ex. PW-3/2). Along with his affidavit, the witness has filed the statements of various persons including the statements of (i) Mr. P. K. Krishna, complainant; (ii) Smt. Beena, a PCO booth operator from where the accused persons in FIR had allegedly made telephone calls; (iii) Vinesh V.K., who had made the arrangement of a Scorpio vehicle (KL 7 AP 4655) for transportation of the accused persons as well as the explosive material; (iv) Sajjan K. Poulouse, an authorized arms dealer from whom the accused persons purchased 2 Air Guns and 2 packets of pellets for the purpose of target practice; (v) Raju G., who is an employee of a Guest House by the name of Sri Hari Tourist Home, where the accused persons stayed after the camp at Wagamon; (vi) Sh. P.J. Girwasis, Scientific Assistance, FSL, Thiruvananthapuram, who had examined the material objects from the place of occurrence as well as the vehicle for the purpose of expert opinion; and (vii) Sh. V. K. Bhadrans, Addl. Director, Cyber Forensic Division, who had examined the laptop, the CDs and other connected material objects which were seized at the instance of the accused persons, which contained information and data pertaining to running of Wagamon training camp by the accused persons. All these statements are exhibited as Ex. PW-3/3 to PW-3/15. The witness has also annexed three reports of FSL, Thiruvananthapuram, about examination of fired projectile and gunshot residue

from the scene and the same are exhibited as Ex. PW-3/16 to PW-3/18.

(c) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-2 admitted that the camp at Wagamon was held from 10th to 12th December, 2007 and volunteered that on account of an inadvertent mistake in his cross-examination, he stated that the training camp was held from 10th to 13th December, 2007. He further admitted that as a part of further investigation, he had arrested four accused persons. He also admitted that he had visited Wagamon, as an investigating officer. Wagamon is a tourist place, surrounded by hillocks, and is quite popular generally visited by persons for adventure sports like Para Gliding, Mountaineering, Rock Climbing, Trekking etc. He also admitted that the training camp held was approximately 5 kms. from the entrance. The site cannot be seen from the entrance but the thoroughfare of the camp can be looked at from the gate. He further admitted that he does not know whether SIMI can be the name of a person but is aware that there is an actress by the name of 'Simi Grewal'. On being asked by the Tribunal, he stated that mere use of word 'SIMI' indicated 'Students Islamic Movement of India'. He further admitted that FIR No. 257/2008 was registered after about 6 months of the incident. He also stated that no separate action was taken against the owner of the vehicle, which was involved in the incident, since he was already made an accused for transportation of the accused persons as well as the explosive material. The witness further stated that his basis for stating that the accused persons are connected with SIMI is based on the facts namely seizure of computer, hard disk, data, explosive and other connected material during the course of investigation in the aforesaid FIRs. He denied the suggestion of the learned counsel that he did not produce the hard disk before the Tribunal as there is none and volunteered that the statement of V. K. Bhadrans, Scientific Expert, along with his report, have already been submitted by him along with his affidavit.

86(a). PW-4, Mr. Sasidharan Chalil, Additional Sub-Inspector in Town Police Station, Kozhikode, proved his affidavit Ex. PW-4/A. Along with his affidavit, he has annexed a copy of the FIR No. 448/2010 and its English translation (exhibit PW-4/5). He has stated that the said FIR was registered by PS Kozhikode under Sections 120(B), 124(A) IPC and Sections 10 & 13 of Unlawful Activities (Prevention) Act, 1967 in respect of a raid conducted at Nanma Books, which is a book shop of a Trust. During the raid, certain books and other publications as also a Hard Disk containing statements questioning the secular values of India as a Nation besides other matter inciting disaffection towards certain religions and thus capable of creating communal disharmony were found and seized. The relevant extracts of the books in Malayalam along with their English translation have been annexed along with his affidavit and are exhibited as Ex. PW-4/2 to PW-4/5. The witness in his affidavit has stated that C.A. Mahin, an activist of ISA (Islamic Students Association), a cover/front organization of SIMI, is running the book stall namely Nanma Books as



Manager, which is learnt to be owned by a Trust consisting of persons who are activists of MRW (Minority Rights Watch), which is another cover organization of SIMI. The witness has also annexed the statements of Subair, who was present at the time of search at Nanma Books; and Abdul Rahiman, who is a tenant and has further let-out the store by the name of Nanma Books, along with their English translation, which are exhibited as Ex. PW-4/7 & 8. He has also annexed a copy of FIR No. 424/2010 registered by PS Kozhikode and its English translation which are Ex. PW-4/9. The said FIR was registered on account of a raid conducted on a book store namely 'Other Books'. The search list and its English translation in respect of FIR No. 424/2010 is exhibited as PW-4/10 and the forwarding note/letter to FSL enclosing therewith the hard disk seized as a consequence of FIR No. 424/2010 is Ex. PW-4/11.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-4 admitted that he was not a member of the raiding party of either of the two raids conducted in pursuance to both the FIRs. He also admitted that three kinds of books were seized and in total 121 books were seized by the local police and that he had read a copy of each book when he had taken over the investigation of the case. He further admitted that out of the three books, which have been seized, only one contains the word 'SIMI'. He further admitted that Islamic Students Association (ISA) and Minority Rights Watch (MRW) are not banned organizations and he was not aware of the office of the organization. He also admitted that he had never registered any case against Islamic Students Association and Minority Rights Watch.

(c) An examination of the evidence of PW-4 shows that the witness has withstood the test of cross-examination and one thing highlighted from his testimony is that even though the books which have been seized do not contain material pertaining to SIMI but the activities of the organization are being carried on with the help of frontal organizations like Islamic Students Association and Minority Rights Watch.

87(a). PW-5, Mr. Aananthakrishnan, IGP (Internal Security), Special Branch, CID Headquarters, Government of Kerala, proved his affidavit as Ex. PW-5/A. Being the Nodal Officer, he along with his affidavit, has attached the documents which are exhibited as Ex. PW-5/I to PW-5/II in the same serialim as have been exhibited in the testimony of PW-4, Mr. Sasidharan Chalil. He also handed over a sealed envelope, claiming privilege in respect of the contents of the envelope on the ground that it contained secret and confidential information, which could not be disclosed to the applicants/intervenors. (b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-5 admitted that FIR Nos. 448/2010 & 424/2010 are still under investigation. He further admitted that he did not make any reference to the Government of Kerala for banning the books in question in pursuance of Sections 94 & 95 Cr.P.C. but volunteered that the material which was seized was sufficient to cause disharmony amongst the members of

different communities. He stated that the offending books have reference to the banned organization SIMI at number of places. He admitted that the book 'Islam and Nationalism' does not make a reference to the word 'SIMI' but in reply to the Tribunal's question, he stated that it has certain portions, which are fundamentally against the secular features of our Constitution and thus are offending. He also stated that in his affidavit the names of three organizations, namely, Islamic Students Association (ISA), Minority Rights Watch (MRW) and Wahadat-e-Islami (WEI) are given as the front organizations of SIMI on the basis of the intelligence reports. He further stated that the objectives of these three organizations, if seen on the face of it through their Memorandum of Associations etc., seem to be good but the intelligence reports have shown that the former active members of SIMI are trying to propagate and implement the objectives of SIMI through these organizations surreptitiously and in a clandestine manner. He further stated that Mr. A. Shahnawaz, Advocate, is a signatory and a trustee of Nanma Charitable Trust and is known to be a member of Minorities Rights Watch. He further stated that intelligence reports show that this gentleman was a former member of SIMI and is spreading seditious material through this frontal organization.

#### (II) At Udaipur in Rajasthan :

At Udaipur, the Central Government examined the following witnesses in support of the Notification banning SIMI :—

(i) Mr. Satyendra Singh Ranawat, Addl. Superintendent of Police, Bharatpur Distt. Rajasthan (PW-6);

(ii) Mr. Rajesh Nirwan, Inspector General of Police, C.I.D. (Intelligence), Jaipur, Rajasthan (PW-7)

88(a). PW-6, Mr. Satyendra Singh Ranawat, Addl. Superintendent of Police, Bharatpur Distt., Rajasthan, has proved his affidavit Ex. PW-6/A. Along with his affidavit, he has filed certified copies of FIR Nos. 130/2008, 131/2008, 132/2008, 133/2008 registered at PS Manak Chowk, Jaipur on 13-5-2008 and FIR Nos. 117/2008, 118/2008, 119/2008, 120/2008 & 121/2008 registered at PS Kotwali, Jaipur on 13-5-2008 under Sections 121, 121A, 124A, 153, 153A, 302, 307, 427, 120B IPC, Sections 3, 4, 5, 6 of Explosive Substances Act and Sections 16A, 18 of Unlawful Activities' (Prevention) Act, 1967 [Ex. A-I (colly)]. All these FIRs were registered in respect of serial bomb blasts which took place at 8 different places in Jaipur on 13-5-2008 pursuant to which 70 people died and 186 people were severely injured. He has also filed the certified copy of the e-mail, which was received by various news channels from Indian Mujahideen claiming responsibility for the serial bomb blasts (Ex. A-2). He has also filed the certified/true copies of the (i) seizure memo, (ii) test identification parades of the accused, (iii) charge sheet No. 187/08 along with supplementary charge sheets, (iv) statement of witnesses, (v) interrogation reports, (vi) forensic reports, (vii) various bills, and (viii) sketches of suspects prepared and released

by Rajasthan police etc. and the same are exhibited as Ex. A-3 to Ex. A-12. In his examination-in-chief, he has stated that Shahbaj Hussain, who purportedly sent the mail was identified by the owner of Cyber Cafe, wherefrom the e-mail was sent and various other accused were also identified by various witnesses in the Test Identification Parade and their statements were also recorded under Section 161/164 of Cr. P.C.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate representing H.A. Siddiqui and Misbah-ul-Islam, PW-6 stated that during the course of interrogation of Shahbaj Hussain, he admitted that after the ban on SIMI, two factions namely, Al-Hindi and Al-Arabi were created in order to run the movement in three different languages, which was earlier being espoused by SIMI. He also stated that he filed the interrogation report of Shahbaj Hussain and other accused persons as also the e-mail in order to establish the link between SIMI and Shahbaj Hussain and between SIMI and Indian Mujahideen. He admitted that he had not arrested Shahbaj Hussain and that he had not recorded his interrogation report, which is annexed with the affidavit. He also admitted that he did not make any effort to get the statements of any witness recorded under Section 164 Cr. P.C. as he did not feel the necessity thereof. He stated that during the course of interrogation of these persons as also the inquiries and interrogation done of other persons at Khandwa, Ahmedabad, Mumbai, Lucknow, Indore and Delhi etc., where involvement of the persons accused in the Jaipur Bomb blasts was confirmed, it transpired that the accused persons, including Shahbaj Hussain, were members of SIMI.

89(a). PW-7, Mr. Rajesh Nirwan, Inspector General of Police, CID (Intelligence), Jaipur, Rajasthan, and the Nodal Officer, proved his affidavit Ex. PW-7/X-1. Along with his affidavit, he has filed certified copies of FIR No. 111/2001 registered at PS Kotwali, Bikaner under Section 10 of Unlawful Activities (Prevention) Act, FIR No. 102/2001 registered at PS Bapawarkalan, Kota Rural under Sections 10 & 13 of Unlawful Activities (Prevention) Act, and FIR No. 341/2001 under Section 13 of Unlawful Activities (Prevention) Act and Section 153A of IPC along with certified copies of charge sheets in respect of aforesaid FIRs and various other documents relating to the said FIRs, which are exhibited as Ex. B (colly), C (colly), & D (colly) respectively. In his affidavit he has stated that SIMI, due to its ideology and preaching, has developed a parochial, rigid, intolerant and communal outlook amongst the minority community, mainly in the youth. SIMI had circulated pamphlets and posters with highly objectionable and provocative language and text which are against the religious feelings of the majority community and their activists are operating under the name of cover organization Wahadat-e-Islami.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-7 stated that he is not aware of any notification having been issued by the Government of Rajasthan with regard to the literature to which references

have been made in the cases. He admitted that no notification banning Wahadat-e-Islami has been issued. He further stated that according to him no action has been taken against the office bearers and members of Wahadat-e-Islami as their activities are being monitored. He also stated that he is not aware whether any case has been registered against the office bearers of Wahadat-e-Islami.

**(III) At Kolkata in West Bengal:**

At Kolkata, the Central Government examined the following witnesses:—

- (i) Ms. Kim, Superintendent of Police (City), Patna, Bihar (PW-8);
- (ii) Mr. Swapan Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, Kolkata (PW-9).

90(a). PW-8, Ms. Kim, Superintendent of Police (City) Patna, Bihar, and the Nodal Officer for the State of Bihar proved her affidavit Ex. PW-8/A. Along with her affidavit, she has filed true copy of FIR No. 279/2001 (Ex. A-2) registered under Sections 10, 11, 12 & 13 of Unlawful Activities (Prevention) Act read with Section 298 of IPC against 16 members/active supporters of SIMI for conducting secret meetings in and around Amin Manzil, Exhibition Road, Patna and giving provocative speeches with intention to create communal disharmony. She has also filed a certified copy of charge sheet No. 182/2007 (Ex. A-4) in respect of aforesaid FIR, wherein four persons were sent for trial for various offences. Ex. A-6 is the certified copy of the supplementary charge sheet No. 14/2008, against three accused persons, filed in respect of the aforesaid FIR. In her affidavit she has stated that one of the arrested accused Md. Hasib Raza @ Samim Bhai has been found to be involved in serious cases in other parts of the country such as in anti national activities in Jalgaon, Maharashtra and 20 bomb blast cases in Ahmedabad as also in the conspiracy for blowing the Howrah Bridge in February, 2002 and accordingly several cases have been registered against him in different parts of the country.

(b) In her cross examination by Ms. Sridevi Panikkar, Advocate representing H.A. Siddiqui and Misbah-ul-Islam, PW-8 admitted that after the registration of FIR No. 279/2001, no other FIR has been registered against SIMI or any of its alleged members in the State of Bihar. She also admitted that the involvement of Hasib Raza in other cases, as stated by her, was based on the letter received from the Deputy Commissioner (Intelligence), Gandhi Nagar, Gujarat and that she had not personally seen any of the records pertaining to the case of Howrah Bridge conspiracy, Ahmedabad blast case and the Jalgaon (Maharashtra) case.

91(a). PW-9, Mr. Swapan Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, West Bengal, and the Nodal Officer for the State of West Bengal has proved his affidavit Ex. PW-9/A. Along with his affidavit, he has filed copies of (i) FIR No. 403/2001 and two charge sheets filed pursuant to the said FIR (Ex. B)



under Sections 153(A)/153(B) and 120B IPC and Sections 10/11/12/13 of Unlawful Activities (Prevention) Act; (ii) FIR No. 335/2001 and the charge sheet filed on the basis of same (Ex. D) under, Sections 153(A)/153(B)/295(A)/298/505/121(A) and 120(B) IPC; (iii) FIR No. 171/2001 and the charge sheet filed on the basis of the same (Ex. F) under Sections 153/153(A)/153(B) and 120(B) IPC and Sections 10/13(a)(b) of Unlawful Activities (Prevention) Act; (iv) FIR No. 110/2001 and the copy of the charge sheet etc. (Ex. G) under Sections 121(A)/124(A)/153(A)/153(B) IPC; (v) FIR No. 327/2001 and the charge sheet etc. (Ex. H) under Sections 153(I)/153(B)/121(A)/124(A) IPC, and (vi) FIR No. 111/2001 and the charge sheet etc. (Ex. I) under Sections 153(A)/153(B)/124(A)/120(B) IPC and Sections 10/13 of Unlawful Activities (Prevention) Act. In his affidavit he has stated that the SIMI activists have floated newly formed organizations under different nomenclature and their activities are confined to holding secret meetings, maintaining alleged contacts with the different organizational intellectuals like Popular Front of India (PFI), Social Democratic Party of India (SDPI), Indian National League (INI), Youth Islamic Association (YIA), Federation of Muslim Association (FOMA) etc. to get the ban on the organization (SIMI) withdrawn. The witness also handed over a sealed cover containing confidential intelligence reports about the activities of SIMI.

(b) In his cross examination by Ms. Sridevi Panikkar, Advocate, PW-9 stated that the aforesaid organizations are not banned by the Government of India and he is not aware if any case has been registered against them. However, he has stated that after 2001, no case has been registered against SIMI in the State of West Bengal. He also stated that he is not aware as to whether Jamaat-e-Islami Hind is a banned organization in India.

#### (IV) At Bangalore in Karnataka :

At Bangalore, the Central Government examined the following witnesses:—

- (i) Mr. Jagadish Basalingappa Khot, Deputy Superintendent of Police, DCRB, District Chitradurga, Karnataka (PW-10);
- (ii) Mr. Paul S. Varma, Deputy Superintendent of Police, Somawarpet Sub-division, Kodagu District, Karnataka (PW-11);
- (iii) Mr. Jayanth Vasudev Shetty, Superintendent of Police, Karkala Sub-Division, Udupi District, Karnataka (PW-12)

92(a). PW-10, Mr. Jagadish Basalingappa Khot, Deputy Superintendent of Police, DCRB, District Chitradurga, Karnataka, has proved his affidavit Ex. PW-10/A. Along with his affidavit, he has annexed a copy of the FIR No. 260/2008, the seizure memo and the English translation (exhibit PW-10/A1). The said FIR was registered in Golagumbaz Police Station under Sections 153(A), 153(B), 120(B), 149 IPC and Sections 11, 13, 15, 18 of Unlawful Activities (Prevention) Act, 1967 against some unknown

persons suo-moto on the complaint filed by Mr. M.K. Dhamannavar, sub-inspector, who on receiving an information, found that some of the miscreants had pasted provocative pamphlets containing slogans and statements, viz. "Our Struggle For Final & Complete Supremacy of Allah" "Involves Babri Masjid Too" so as to create clashes between Hindus & Muslim. The witness has also filed voluntary statements of various accused persons marked as 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K' & 'L' out of which only mark 'L' is the statement which has been written by the witness. The said statement is Ex. PW-10/L. The witness has also stated that Shaan-e-Karim, one of the accused facing trial in FIR No. 260/2008, had distributed pamphlets in Bijapur, which were divisive, and the same is exhibited as Ex. PW-10/G. He further stated that CDs containing provocative slogans intending to bring disharmony between Hindus and Muslims were also seized from the accused, Shaan-e-Karim. The copy of the charge sheet filed in the aforesaid FIR was exhibited as Ex. PW-10/N.

(b) In his cross examination by Sridevi Panikkar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-10 stated that the pamphlet Ex. PW-10/G does not bear the word 'SIMI', however, it bears the word 'IBT' on the left hand side, which has a reference to Islamic Book Treasure. In answer to the question as to how does he says in his affidavit that the pamphlet is attributed to SIMI, he stated that Shaan-e-Karim was collecting money from the students of Dental College where he was studying and issuing receipts for the money received by him which had the word 'SIM' and these pamphlets were published by him only. The witness has admitted that no statement under Section 164 Cr.P.C. has been recorded in respect of any of the accused persons whose statements have been attached along with his affidavit. He also admitted that along with his affidavit, he has not filed CFSL report of the examination of CPUs but volunteered that the same has to come from Hyderabad.

93(a). PW-11, Mr. Paul S. Varma, Deputy Superintendent of Police, Somawarpet Sub-division, Kodagu District, Karnataka, has proved his affidavit Ex. PW-11/A. Along with his affidavit, he has filed the certified copy of Crime No. 37/2012 and the English translation. The said FIR was registered by PS Shuntikoppa under Sections 153(A), 143, 147, 120(B), 121, 121(A), 201, 149 IPC and Sections 3 & 5 of Explosive Substances Act against 13 accused persons suo-moto on the complaint filed by sub-inspector, who received an information that the accused persons have had several meetings conspiring to create hatred amongst the public, causing bomb blasts in various places in the State of Karnataka and other neighbouring States. The witness has also annexed statements of various witnesses along with his affidavit. The copy of the charge sheet in respect of aforesaid FIR was annexed as Ex. R along with the affidavit.

(b) In his cross examination by Sridevi Panikkar, Advocate, PW-11 stated that Ex. 'R' is the draft charge sheet which has been submitted to the Govt. of Karnataka

for the purpose of obtaining its approval before the same is filed in the court. He admitted that all the statements of the witnesses, which have been annexed along with the affidavit, are recorded under Section 161 Cr.P.C. He also stated that Rafeeq and Shihab, who are the witnesses in the draft charge sheet, are made witnesses on the basis of their statements recorded in the Madivala Crime No. 483/2008 and that he had not recorded the statements of these two witnesses in the Madivala case. The witness has admitted that none of the documents annexed with his affidavit are filed in Court.

94(a). PW-12, Mr. Jayanth Vasudev Shetty, Deputy Superintendent of Police, Karkala sub-division, Udipi District, Karnataka, has filed his affidavit exhibited as Ex. PW-12/1. Along with his affidavit, he has filed a copy of the FIR No. 242/2008 and the English translation (Exhibit A). The said FIR was registered by PS Ullalin under Sections 121(A), 122 153(A), 120(B), IPC, Sections 5 & 6 of Explosive Substances Act, 1908 and Sections 11, 13, 18 of Unlawful Activities (Prevention) Act, 1967 against the accused persons on the complaint filed by Mr. Venkatesh Prasanna, police inspector. The witness has also annexed certified copies of various seizure memos along with his affidavit. The certified copy of the charge sheet in respect of aforesaid FIR along with English translation is also annexed as Exh. R. The examination of this witness was deferred at the instance of the learned standing counsel Mr. Datta. However, after deferring the same, his testimony has not been completed, therefore, it cannot be read in evidence.

**(V) At Aurangabad in Maharashtra :**

At Aurangabad, the Central Government examined the following witnesses :-

- (i) Mr. Rajendra Balajirao Dahale, D.C., SID, State Police Headquarters, Mumbai, Maharashtra. (PW-13);
- (ii) Mr. Pradep Bhargav Jadhav, Police Inspector (Crime), Vijapur Naka Police Station, Solapur, Maharashtra (PW-14);
- (iii) Mr. Sanjay Mohan Kamble, Police Inspector (Crime Branch), Navi Mumbai, Maharashtra (PW-15)

95(a). PW-13, Mr. Rajendra Balajirao Dahale, Deputy Commissioner, SID, State Police Headquarters, Mumbai, and the Nodal Officer has proved his affidavit Ex. PW-13/1. Along with his affidavit, he has annexed 12 certified copies of the charge sheets pertaining to SIMI in respect of different FIRs registered from the year 2001 to 2002. In his affidavit, the witness has stated that during the course of investigation it has been revealed that the members of SIMI continued their illegal and anti-national activities even after the ban. He further stated that though the ban has served as a great deterrent, the clandestine activities of the organization have not stopped.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate representing H.A. Siddiqui and Misbah-ul-Islam, PW-13 stated that he had not investigated any of these cases personally but he denied the suggestion that these

cases have been kept pending deliberately by him or by the prosecution.

96(a). PW-14, Mr. Pradip Bhargav Jadhav, Police Inspector (Crime), Vijapur Naka Police Station, Solapur, Maharashtra, has proved his affidavit Ex. PW-14/1. Along with his affidavit, he has filed the certified copy of FIR No. 3036/2008, and its English translation. The said FIR was registered by Vijapur Naka Police Station, Solapur under Sections 2(a), 10, 13 of Unlawful Activities (Prevention) Act, 1967 against Khalid Ahmed Muchhale on the complaint filed by Mr. S.P. Bondar, police sub-inspector. The witness in his affidavit has stated that the accused, Khalid Muchhale, in his statement has admitted that he was a member of SIMI and that on 26-3-2008 he met a senior office bearer of SIMI namely, Safdar Nagori at Indore. A copy of the said statement is annexed with the affidavit and Marked 'X'. The witness has also annexed certified copy of the charge sheet being RCC No. 1285/2011 filed in respect of the aforesaid FIR. The witness has also annexed certified copies of House search panchnama dated 29-3-2008 and the incriminating material seized therein along with the English translation.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-14 stated that he was made the investigating officer of this case on 15-7-2011 i.e. three months prior to the date of filing of the charge sheet. He admitted that the FIR in respect of which the charge sheet has been filed was on the basis of the search conducted on 29-3-2008. However, he denied that no incriminating material was seized in the said search. The witness also denied that the accused Khalid Muchhale has not been doing any work for SIMI after 27-9-2001 and volunteered that Khalid Muchhale had gone to Balgaum along with Dr. Munsen and he was arrested with the said doctor at Indore.

(c) The testimony of the witness clearly establishes that despite the ban on SIMI, clandestine activities of the banned organization SIMI are still continuing. This has been corroborated by the fact that one of the person by the name of Khalid Muchhale has admitted that he has been doing work on behalf of SIMI. This person has also named Safdar Nagori as one of the senior members of SIMI, who is active in carrying on its activities. It may be pertinent here to mention that the learned ASG has submitted that presently Safdar Nagori is incarcerated in connection with the illegal activities having been done by him for which various offences have been registered against him.

97(a). PW-15, Mr. Sanjay Mohan Kamble, Police Inspector (Crime), Navi Mumbai, Maharashtra, has proved his affidavit Ex. PW-15/1. Along with his affidavit, he has filed the certified copy of FIR in LAC No. 1106/2006, and the English translation. The said FIR was initially registered by Ghatkopar Police Station under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 but subsequently the investigation of the same was transferred to DCB, CID Unit No. VII wherein LAC No. 34/2006 was registered and after completion of the investigation, charge sheet was filed by them. In his examination-in-chief, the witness has

stated that he was a member of the investigation team which had arrested Nafis Ahmed Jamil Ahmed Ansari on 11-8-2006. He further stated that in the said FIR, there were five accused persons, out of which initially two were arrested and against them the charge sheet has already been filed and the remaining three accused persons are absconding. He also stated that he learnt that the third accused namely Md. Ali Alam Shaikh @ Aziz was arrested on 10-11-2011 by P.I. Surve and a supplementary charge sheet in this regard was filed by P.I. Surve subsequently. In his affidavit the witness has stated that during the course of investigation of accused No.1, Shabbir Ahmed Mashiullah and accused No.2, Nafis Ahmed Jamil Ahmed, it was revealed that they are members of banned organization SIMI and that they participated in the meetings of SIMI held for the purpose of committing unlawful activities. He further stated that through banned organization SIMI, with the intention of causing damage to public property and loss of human life, these two accused persons had gone to Pakistan via Dubai in May/June, 2003 and got training for handling arms and ammunitions and for preparation of bombs.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-15 stated that he was a member of the team which had arrested Nafis Ahmed Jamil Ahmed Ansari while, simultaneously another team had arrested the other accused Shabbir Ahmed. He further stated that he was not aware whether the proceedings under Sections 82 and 83 of Cr.P.C. were initiated against Md. Ali Alam Shaikh @ Aziz or that Md. Ali Alam Shaikh was arrested in another case by ATS Mumbai, whereupon his arrest was shown in the present case.

**(VI) At Mumbai in Maharashtra :**

At Mumbai, the Central Government examined the following witnesses:—

- (i) Mr. Suresh Digambarrao Deshpande, Asstt. Commissioner of Police, ATS, Mumbai, Maharashtra, (PW-16);
- (ii) Mr. Navinchandra Datta Reddy, Superintendent of Police, ATS, Aurangabad, Maharashtra (PW-17);
- (iii) Mr. Atul Sabnis, Police Inspector, ATS, Maharashtra (PW-18)-

98(a). PW-16, Mr. Suresh Digambarrao Deshpande, Asstt. Commissioner of Police, ATS Mumbai, Maharashtra, has proved his affidavit Ex. PW-16/1. Along with his affidavit, he has filed the certified copy of CR No. 31/2011 along with the English translation (Ex. A-2). The said CR was registered with ATS Police Station, Kalachowki, Mumbai City under Sections 120(B), 489(B), 489(E), 34 of IPC read with Sections 10, 13, 17, 18(B) of Unlawful Activities (Prevention) Act, 1967 against Haroon Rashid Abdul Hamid Naik. The said accused was found in possession of fake Indian currency notes collectively valued at Rs.97,500 knowing the same to be fake, in order to circulate the same as genuine. PW-16 in his affidavit has further stated that during investigation,

it was revealed that the accused was an active member of SIMI. Further, the accused disclosed that he went to Pakistan and Afghanistan to have terrorist training and also disclosed the various unlawful activities he had indulged in and further disclosed the names of two other persons namely Asrar Ahmed Abdul Hamid Tailor @ Sagari and Azhar Ul Islam Mohd. Ibrahim Siddiqui @ Munna, who were arrested on 12-9-2011 and 26-9-2011 respectively. PW-16, along with his affidavit, has also annexed the certified copies of the statements of the aforesaid three accused persons in vernacular as well as their English translations [Ex. A-3 and A-4 (colly)]. The Panchnama dated 18-9-2011 along with English translation in respect of CR No. 31/2011; the certified copies of the statements of the witnesses along with their English Translation; and the certified copy of the charge sheet in respect of the aforesaid CR are annexed with the affidavit as Ex. A-5, Ex. A-6 (colly) and Ex. A-8 respectively.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-16 stated that the case bearing CR No. 31/2011 is pending trial and the charges have not yet been framed against the accused persons. He admitted that none of the literature seized in the instant case has been published by the organization SIMI. He further admitted that the statements of the accused persons were recorded when they were in police custody.

99(a). PW-17, Mr. Navinchandra Datta Reddy, Superintendent of Police, ATS Aurangabad, Maharashtra, has proved his affidavit Ex. PW-17/1. Along with his affidavit, he has filed copy of CR No. 2/2012, and its English translation. The said CR (FIR) was registered with ATS Kalachowki Police Station, Mumbai City under Sections 10, 13, 15 & 16 of Unlawful Activities (Prevention) Act, 1967 against Akhil Yusuf Khilji and Jafar Hussain. In his examination-in-chief, the witness has stated that during the course of investigation of the aforesaid CR (FIR), the names of other accused persons namely Mohd. Abrar @ Munna @ Ismail @ Abdul Rehman and Anwar Hussain were disclosed and various incriminating materials have been found against them showing their involvement in unlawful activities. The said material has been handed over in a sealed envelope to this Tribunal, with a view to ensure that the investigations of the case are not prejudiced, which is taken on record.

(b) In his affidavit, the witness has stated that on the basis of secret information, Mohd. Abrar @ Munna @ Ismail, was arrested. He was absconding in the 2008 Ahmedabad Bomb Blast case and was an active member of SIMI. He was coming to meet his accomplices on 26-3-2012 when the ATS Aurangabad laid a trap and tried to arrest three persons but they fired on the ATS police persons. During retaliation, one person namely Khalil @ Azhar Qureshi died while the other two were arrested.

(c) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-17 stated that he was a part of the team involved in the encounter at Aurangabad on 26-3-2012 and



that he had not filed any FIR with regard to the said encounter. He admitted that he had mentioned the name of the deceased in the encounter as Khalil @ Azhar Qureshi. He stated that he cannot admit or deny as to whether in the said FIR, the name of the deceased is mentioned as Khalil Khilji as he will have to see the said FIR. The witness has stated that subsequent to the registration of the FIR, the complete name of the deceased as Khalil @ Azhar Qureshi was learnt. He admitted that the investigations till date have revealed that the two persons namely Mohd. Abrar and Khalil Khilji, as well as the deceased, are the members of the banned organization SIMI. The witness has further stated that he cannot admit or deny the suggestion that the literature which has been seized in the aforesaid FIR is not published by SIMI as the matter is under investigation.

(d) It may be pertinent to mention here that there is no cross-examination of the witness with regard to the arrest of Mohd. Abrar @ Munna @ Ismail, who was a member of SIMI and was arrested around 26.3.2012 which means much after the notification was issued for banning the organization on 3.2.2012.

100(a). PW-18, Mr. Atul Sabnis, Police Inspector, ATS, Maharashtra, was examined orally as the affidavit filed by him has been withdrawn by learned counsel for Union of India. In his examination-in-chief the witness has stated that he is the investigating officer in respect of FIR bearing CR No. 17/2008 dated 21.8.2008 registered with ATS Police Station, Kalachowki, Mumbai City under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967. He further stated that originally the FIR was registered against Firoz Mehboob Pathan but during the interrogation, another accused person, namely, Imtiyaz Babumiya Sheikh was also arrested as his involvement was found in the case and incriminating material in the form of book titled 'Jihad-e-Kashmir Farziyat Fajilat Aur Tarik' was recovered from him. In addition to this, various other incriminating articles in the shape of CDs etc. were also recovered from him. He further stated that the charge sheet in respect of the said FIR was filed by him on 24.6.2011 against five accused persons and after filing of the charge sheet he had arrested two more accused persons by the name of Shabbir Mohiddin Gangawali and Himayat Mirza Baig. He also stated that he has yet to file the supplementary charge sheet against the two persons arrested later.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-18 admitted that no recovery of material connected with the banned organization SIMI or otherwise has been effected from the two accused persons, who have been arrested subsequently. But a book pertaining to Kashmir was recovered from them which shows that the accused persons are members of the banned organization and are supporting the so called liberation movement of Kashmiris.

**(VII) At Jabalpur in Madhya Pradesh :**

At Jabalpur, the Central Government examined the following witnesses:—

- (i) Mr. Mukesh Kumar Vaishya, City Superintendent of Police, Khandwa, Distt. Khandwa, Madhya Pradesh (PW-19);
- (ii) Mr. Mahendra Tarnekar, City Superintendent of Police, Dewas, Madhya Pradesh (PW-20);
- (iii) Mr. Dinesh Kaushal, City Superintendent of Police, Rewa, Madhya Pradesh (PW-21);
- (iv) Mr. Arun Kumar Mishra, Sub Divisional Officer Police, Itarsi, Distt. Hoshangabad, Madhya Pradesh (PW-22);
- (v) Mr. J. K. Dixit, Deputy Superintendent of Police, ATS Gwalior, Madhya Pradesh (PW-23);
- (vi) Mr. Sohanpal Singh Chaudhary, Sub-Divisional Officer (Police), Khacrod, Distt. Ujjain; Madhya Pradesh (PW-24);
- (vii) Mr. T. S. Baghel, City Superintendent of Police, Mandsaur, Madhya Pradesh (PW-25);
- (viii) Mr. Kiran Lashkarkar, Sub-Divisional Officer (Police), Mundi, Distt. Khandwa, Madhya Pradesh (PW-26)

101(a). PW-19, Mr. Mukesh Kumar Vaishya, City Superintendent of Police, Khandwa, Madhya Pradesh, has proved his affidavit Ex. PW-19/1. Along with his affidavit, he has annexed true copies of FIR Nos. 728/2009, 729/2009 & 703/2009 along with their English translation (Ex. 'A', 'C' and 'E' respectively). The aforesaid FIRs were registered under Sections 302 of IPC and Sections 15/16 of Unlawful Activities (Prevention) Act on account of the killings of three different persons, including one constable of ATS, Khandwa namely, Mr. Sita Ram; one advocate namely Mr. Sanjay Paul and an officer of the bank namely, Mr. Ravi Shankar. The witness has also annexed the true copies of the charge sheets filed in respect of the aforesaid three FIRs along with their English translation [Ex. 'B', 'D' & 'F' (colly) respectively]. The witness has stated that all the three charge sheets were filed on the same date i.e. 21-12-2011.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-19 denied the suggestion that all the three FIRs were registered in pursuance to a single incident and volunteered that these were three separate incidents of crime. The witness has stated that there were seven accused persons in FIR No. 728/2009. He also stated that efforts were made, including conducting of raids at various places of hiding, to arrest the three accused persons namely Sheikh Mehboob, Zakir Hussain and Mohd. Aslam, who were found to be suspects in FIR Nos. 728/2009 & 703/2009. He further stated that there is only one accused namely Ejajuddin@Riyaz@John@Raja@Rahul involved in FIR No. 729/2009, who is also involved in FIR No. 703/2009. He admitted that four accused persons were discharged in FIR No. 728/2009 & 703/2009. He also admitted that the confessional statements of the accused persons were recorded while they were in police custody and volunteered that on the basis of these confessional statements, various other evidences were collected which fortified their confessional statements.

102(a). PW-20, Mr. Mahendra Tarnekar, City Superintendent of Police, Dewas, Madhya Pradesh, has proved his affidavit Ex. PW-20/1. Along with his affidavit, he has annexed true copy of FIR No. 456/2009 along with its English translation (Ex. A). The aforesaid FIR was registered under Section 392 of IPC for the offence of robbery of Bank of India, Branch Vijayganj Mandi, by 5 persons armed with pistols and other weapons.

(b) During the course of investigation, the complicity of accused Abu Faizal, Shaikh Mehboob, Mohd. Ikrar Shaikh, Amzad Shaikh and Zakir became clear. The Memorandum of accused persons revealed their design to assassinate three Judges of Lucknow Bench of the Allahabad High Court, who had delivered the verdict in the Babri Masjid-Ram Janam Bhoomi case. Further, the complicity of SIMI activists in murder of ATS constable Sitaram Yadav and dacoity of Mannapuram Gold Finance Company was also revealed. The investigation also revealed that a significant part of the amount looted from the Bank was used for pursuing court proceedings for obtaining bail of Safdar Nagori and other SIMI workers. The concerned advocate, Shahid Azmi, to whom significant payment had been made, was subsequently murdered. Amounts were also spent on recruitment of new members, purchasing of laptop, computer and publication of literature/books pertaining to SIMI organization. The witness has also annexed true copy of the charge sheet dated 24.11.2011 and the relevant annexures along with its translation [Ex. B (colly)] and the true copy of the statements of the accused persons [Ex. C (colly)].

(c) In his confessional statement the accused, Abu Faizal, stated that he had prepared a plan to do the bank dacoity/bank robbery because the SIMI organization had become financially very weak. For the sake of strengthening the organization, he called Amjad, Zakir, Mehboob and Ikrar to Dewas and there all the five persons planned for the bank robbery. He also narrated the whole incident how they looted the aforesaid bank. In their confessional statements, the other accused have also admitted to have committed the bank robbery and other illegal activities.

(d) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-20 stated that he cannot specifically state as to what investigations were carried out during the period from 24.8.2009 to 16.6.2011 without seeing his case diary. He admitted that all the five accused persons allegedly involved in FIR No. 456/2009 became suspects after the letter from ATS Bhopal was received. He also admitted that the alleged involvement of the accused persons in the aforesaid FIR is based only on the confessional statements purported to have been made in CR No.4 & 5/2011, PS ATS Bhopal but volunteered that after receipt of information from the ATS Bhopal to the effect that Abu Faizal is purported to have confessed his involvement in FIR No. 456/2009, the formal arrest of the said accused in the aforesaid FIR was shown and the matter was investigated including the interrogation of the accused person, which confirmed the findings intimated to them by ATS Bhopal.

The witness also admitted that no document from the accused persons, which could show their connection with the organization SIMI, was recovered in this case but volunteered that from the possession of Amjad, some documents relating to unlawful activities being carried out by the banned organization SIMI were recovered by ATS Khandwa and similar documents were also seized from other three accused persons by ATS Bhopal. The witness denied the suggestion that FIR No. 456/2009 is false and fabricated and that these accused persons have no connection with the banned organization SIMI.

103(a). PW-21, Mr. Dinesh Kumar Kaushal, City Superintendent of Police, Rewa, Madhya Pradesh, has proved his affidavit Ex. PW-21/1. Along with his affidavit, he has filed a true copy of charge sheet in Crime No. 4/2011 under Sections 120(B), 124(A), 153(A), 153(B), 353, 420, 467, 468, 471 of IPC, Sections 25 & 27 of Arms Act and Sections 3, 10, 13, 16, 17, 18, 19, 20, 21, 38, 39 & 40 of Unlawful Activities (Prevention) Act along with various other documents forming part of the charge sheet [Ex. A (colly)]. The witness in his examination-in-chief has stated that during the course of investigation it has been revealed that members of Muslim community belonging to organization SIMI were targeting the members of RSS. Further, it was revealed from the seized electronic data from the personal computer of Abu Faizal, an accused, that the messages were sent to various members of the community by the members of the banned organization SIMI, spreading hatred amongst various communities and had the potential of disturbing the integrity and sovereignty of India. He further stated that the three accused persons namely, Dr. Abu Faizal, Mohd. Ikrar and Sheikh Mehboob were absconding and there was evidence to the effect that they were earlier also involved in unlawful activities of the banned organization SIMI and that Dr. Abu Faizal and Mohd. Ikrar had conducted a training camp at Raipur on 21st and 22nd May, 2011 for the purpose of galvanizing the activities of the banned organization SIMI and recruiting more members. Similar camp was also conducted at Bhopal.

(b) The witness has also stated that decision was taken by these persons that they would loot the money from the persons/institutions which lend money on interest as that was un-Islamic and the looted money could be utilized for furthering the objectives of the banned organization SIMI and for this purpose the members of the organization had conducted various bank dacoities. Further, the accused persons had resorted to communication through the medium of internet with the help of internet cafe since the mobile phones had the potential of their getting detected and arrested. The modus operandi which was followed by the members was that they will not go online with the other members; they would draft a message and give the passwords to the members on the other side, who will open the file, read the message and thereafter delete the same. With this modus operandi, the activities of the banned organization SIMI were continued and they widened the membership net of the organization SIMI. The witness



further stated that the members of the banned organization SIMI also adopted the modus operandi of changing their names to Hindu names and then targeting the selected persons who were acting as hurdles in the way of propagating the objectives of SIMI. The witness also stated that the accused persons also got published books on Jihad which gave 44 methods of waging Jihad and apart from this, various other books and visual materials like DVDs, VCDs were seized which were used for propagation of the objectives of the banned organization SIMI and also for the purpose of achieving Muslim rule in the country.

(c) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-21 admitted that the statements of the accused persons were recorded while they were in police custody and that he had not recorded the statements of the accused persons under Section 164 Cr.P.C. The witness denied the suggestion that the connection of accused with the activities of SIMI regarding which he had testified in court is solely on the basis of the confessional statements attributed to the accused persons. The witness also denied the suggestion that the seized articles like DVDs, VCDs, pen drives or the laptop/hard disk have no material which is relatable to the banned organization SIMI and further denied the suggestion that the e-mails which have been intercepted and seized do not have any reference to the activities of the organization SIMI.

(d) The testimony of the witness is very important because he has not only talked about recovery of books but also visual material like DVD, VCD, which were containing seditious material, from the accused persons and has also proved the fact that although the word 'SIMI' may not have been used in any article seized but it certainly shows that the activities of the SIMI are continuing even as on date.

104(a). PW-22, Mr. B.P. Mishra, Sub-Divisional Officer (Police), Itarsi, Distt. Hoshangabad, Madhya Pradesh, has proved his affidavit Ex. PW-22/1. Along with his affidavit, he has filed true copies of FIR Nos. 168/2010 and 72/2010 (Ex. 'A' & 'G' respectively). FIR No. 168/2010 was registered under Sections 395 & 397 of IPC by Police Station Itarsi, Distt. Hoshangabad pertaining to a dacoity which had taken place in Canara Bank, Branch Itarsi. The witness in his examination-in-chief has stated that the aforesaid case was originally registered as a case of robbery, however subsequent thereto, it was solved and some persons who were sympathizers of SIMI were suspected to be involved. Charge sheet (Ex. 'F') in respect of the aforesaid FIR was filed by the witness and six accused persons namely Mohd. Ikrar, Mohd. Aslam, Abu Faizal, Mohd. Ejajuddin Ahmed, Zakir Hussain and Sheikh Mujib have been sent for facing the trial. FIR 72/2010 was registered under Sections 379, 467 & 411 of IPC on account of theft of a motorcycle which was allegedly used by the accused persons for the purpose of committing the bank robbery. The charge sheet in respect of FIR No. 72/2010 was annexed as Ex. 'H' along with the said affidavit.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-22 stated that there are six accused persons

in FIR No. 168/2010, who were arrested by Mr. B.S. Basunia, sub-inspector. He admitted that the aforesaid six accused persons were already under arrest in different FIRs and their formal arrest was shown in the FIR Nos. 168/2010 and 72/2010 only in order to complete the formalities. He further admitted that no material pertaining to SIMI has been recovered in the aforesaid two FIRs but volunteered that when Safdar Nagori, leader of SIMI and other office bearers were arrested, they made Dr. Abu Faizal as the leader of the banned organization SIMI and conferred on him the title 'Amir'. Similarly, Mohd. Ikrar was conferred on the title 'Ansar'. All these accused persons used to collect money by legal and illegal means and were using the said money for the purposes of furthering the objectives of the banned organization SIMI. The witness also admitted that no attempt was made to get the confessional statements of the accused persons recorded under Section 164 of Cr.P.C.

(c) The testimony of this witness is important on account of the fact that the witness has stated that the accused, who were basically anti-social elements, were making the plans to loot banks etc. This witness has fortified the fact that these fringe elements were given incentives by conferring titles on them. He has also admitted that the money so looted was used to procure the new ammunition.

105(a). PW-23, Mr. J. K. Dixit, Deputy Superintendent of Police, ATS Gwalior, Madhya Pradesh, has proved his affidavit Ex. PW-23/1. Along with his affidavit, he has filed a true copy of charge sheet in Crime No. 5/2011 along with various other documents forming part of the charge sheet [Ex. A (colly)]. The said Crime No. 5/2011 was registered under Sections 25 & 27 of Arms Act and Sections 3, 10, 13(1) & 13(2) of Unlawful Activities (Prevention) Act against four accused persons namely Shiekh Mujeeb, Mohd. Aslam, Mohd. Habib and Mohd. Sazid and various incriminating material including the pistol, knife, membership forms of SIMI, pamphlets regarding Babri Masjid, books related to Indian Mujahiddin etc. and pen drive, one CD etc. were seized and the said accused were arrested.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-23 admitted that he was not a member of the team which arrested Shiekh Mujeeb, Mohd. Aslam, Mohd. Habib and Mohd. Sazid on 4-6-2011. He also admitted that the statements of the aforesaid four accused have not been recorded by him and that their statements were recorded while they were in police custody. He further admitted that in various articles like CDs, pen drives and DVDs, except in one DVD, there is no mention about organization SIMI because of it being the banned organization. However, in one of the DVD's, there is a reference to the activities of the banned organization SIMI. He also admitted that the e-mails which have been relied upon in the affidavit do not have a reference to the organization SIMI as it is banned but essentially the e-mails have been exchanged for the purpose of spreading the activities of the banned organization SIMI. The witness denied the suggestion that the membership forms of SIMI, which have been recovered, are forged and fabricated by the police.

(c) The witness has withstood the test of cross-examination conducted by the learned counsel for the applicants. Nothing has been brought on record which could persuade this Tribunal to discard his testimony. He has testified regarding the DVD, CD, pen-drives etc. Only one of the DVD was having the reference to the banned organization SIMI. Similarly, the witness has also testified regarding recovery of membership forms of SIMI. He has also denied the suggestion that these forms are forged and fabricated. There is hardly any personal interest of the witness to forge or fabricate the documents. Same logic would equally apply to the State apparatus. So far as the recovery of CD and the VCD are concerned, the absence of the name of the SIMI is immaterial because when the organization is banned and its activities are being carried on clandestinely, it is but natural that precautions would be taken to see that the name SIMI does not get reflected in any manner.

106(a). PW-24, Mr. Sohanpal Singh Chaudhary, Sub-Divisional Officer (Police), Khacroad, Distt. Ujjain, Madhya Pradesh, has proved his affidavit Ex. PW-24/1. Along with his affidavit, he has filed the true copy of FIR No. 112/2010 along with its English translation (Ex. A). The said FIR was registered at PS Birlagram, Distt. Ujjain under Sections 307, 294 & 34 of IPC, Sections 25, 27 of Arms Act and various provisions of the Unlawful Activities (Prevention) Act, 1967 against seven accused persons namely Abu Faizal, Zakir, Mohd. Farhat, Sharafat Ali, Zubair Shah, Imran Shah and Shahzad Shah at the instance of Bheru Lal Tank, the complainant, who was shot at on the date of the incident at about 7.45 a.m. in Birlagram, Distt. Ujjain by three unknown persons. The witness has stated that the three accused persons were arrested on 2-6-2011, who admitted their involvement in the incident. He further stated that on the basis of their interrogation, recovery of various articles used in the commission of the offence was effected. The charge sheet filed in respect of the aforesaid FIR was annexed with the affidavit as Ex. B. True copies of the statements of the accused persons were also annexed with the affidavit as Ex. C.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-24 has admitted that apart from one poster, no other article has been seized during the course of investigation in the instant case, which bears the name or reference to the organization SIMI. He stated that three of the accused persons namely Zakir, Abu Faizal and Farhat, were shown to have been formally arrested on production warrants as they were in judicial custody. The witness denied the suggestion that the information regarding the involvement of aforesaid three accused persons was received from ATS Bhopal and volunteered that these three accused persons were named by the other three accused persons namely Imran Shah, Zubair Shah and Shahzad Shah, during their interrogation. The witness admitted that he did not make any effort to get the statement of any of the accused persons recorded under Section 164 Cr.P.C. but he denied the suggestion that the connection between the

organization SIMI and the accused persons is purely on the basis of the statements attributed to them and volunteered that there are other evidences also which connect the organization SIMI with the accused persons.

107(a). PW-25, Mr. T.S. Baghel, City Superintendent of Police, Mandsaur, Madhya Pradesh, has proved his affidavit Ex. PW-25/1. Along with his affidavit, he has filed the true copy of FIR No. 149/2010 along with its English translation (Ex. A). The said FIR was registered at PS Mandi, Distt. Mandsaur under Section 394 of IPC and Sections 25 & 27 of Arms Act on account of a bank robbery which took place on 1-6-2010 at State Bank of Indore, Branch Pipliyamandi. In his affidavit, the witness has stated that the accused persons were acting in furtherance of the concerted design to indulge in bank robbery in several districts of Madhya Pradesh with a view to fund the SIMI organization and its activities. The true copy of charge sheet and supplementary charge sheet in respect of aforesaid FIR along with relevant annexures is annexed with the affidavit as Ex. B (colly).

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-25 has stated that two cassettes were seized from Mohd. Sadiq, which had the literature pertaining to SIMI organization. He admitted that apart from these two cassettes, no other literature has been seized in this case naming the organization SIMI and that the CDs which were recovered were actually the video CDs. The witness has clarified that by referring to the word 'cassette' what he meant was VCDs and further clarified that as a matter of practice when he used the word 'cassette', he meant CDs, be it VCDs or DVDs. He stated that he was not aware as to how many documents are contained in the CDs as he has not seen the CDs.

(c) The witness has stated that in the police record there was no mention about the serial number of the currency notes which were looted. However, the description of the currency notes was available to the police. He admitted that the bank notes were identified by the officials of the bank in the presence of the Executive Magistrate, Malhar Grah and volunteered that each bank puts its own slip and a distinct mark on the notes and it was on account of this description that the currency notes were identified. He further admitted that the serial numbers of the currency notes looted from the bank were not received from the bank, however, the currency notes were identified on the basis of the paper slip which was put on the bundles by the branch which was looted. In reply to a question 'was there any identification mark of the currency notes given in the complaint on the basis of which the FIR was registered', the witness has stated that the FIR talks about the fact that the total currency notes were Rs. 1,00,339/-, out of which Rs. 84,000/- was in torn/mutilated/bad condition which were kept in different bundles to be sent to Reserve Bank of India and a sum of Rs. 16,339 were the good currency notes.

(d) The testimony of this witness is very important to establish that the banned organization SIMI is still carrying

on its unlawful activities. This is revealed from the admission of the arrested persons who had looted the bank money, a part of which was subsequently recovered and duly identified by the officials of the bank with the help of paper slips which are put on the bundles of notes. Absence of identification through numbers is not possible unless and until it is brought on record that currency notes were fresh. It has also been testified by the witness that the money so looted was in fact used for furthering the illegal activities of the banned organization SIMI.

108(a). PW-26, Mr. Kiran Lashkarkar, Sub-Divisional Officer (Police), Mundi, Distt. Khandwa, Madhya Pradesh, has proved his affidavit as well as supplementary affidavit Ex. PW-26/1 & PW-26/2. Along with his affidavit (Ex. PW-26/1), he has annexed the true copy of FIR No. 319/2011 along with its English translation (Ex. A). The said FIR was registered on 14-6-2011 under Section 153(A) of IPC, Sections 25, 27 of Arms Act and Sections 3, 10, 13 of the Unlawful Activities (prevention) Act on account of gathering of 10-15 members/activists of the banned organization SIMI in the house of Akhil Khilzi, who were planning/conspiring to commit untoward and anti-national acts/attacks. Ten accused persons were arrested from the spot while five accused persons were absconding. The charge sheet in respect of the aforesaid FIR was annexed with the affidavit as Ex. I.

(b) Along with the supplementary affidavit (Ex. PW-26/2), the witness has annexed various documents consisting of literature showing the activities of SIMI, seized during the course of investigation of the aforesaid case. The witness in his examination-in-chief has stated that he had arrested 13 accused persons whose names are given in the charge sheet itself and four accused persons were shown by him in the final report as absconding.

(c) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-26 admitted that he was not the member of the raiding police party but has stated that the accused persons, at the time of their arrest, were talking about the activities of the SIMI and Jihad. Membership forms of SIMI were also recovered from them and their previous records also show their association with SIMI. The witness has stated that he do not know as to whether Al Furkan magazine printed and published in Pakistan has any connection with SIMI but volunteered that it contained objectionable and seditious material. He admitted that the magazine does not use the word SIMI. The witness denied the suggestion that Nawa-e-Jihad, Afghan magazine, does not have any connection with the organization SIMI and volunteered that it does not bear/use the word 'SIMI', however, it is connected with the organization SIMI. The witness also admitted that he did not make any attempt to have the statements of the accused persons recorded under Section 164 of Cr.P.C.

(d) This witness also testified regarding recovery of seditious material. The recovery of this material coupled with the fact that at the time of their arrest the accused persons were talking about SIMI and Jihad clearly shows

that though the organization SIMI may be banned on paper but disgruntled, misguided, indoctrinated youths are still proceeding ahead with the illegal agenda of spreading hatred amongst different communities and thus posing a threat to the national unity and integrity.

#### (VIII) At Ahmedabad in Gujarat :

At Ahmedabad, the Central Government examined the following witnesses :—

- (i) Mr. Mayur Jagmalbhai Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, Gujarat, (PW-27); and
- (ii) Mr. Vajesinh Vakhatsinh Rathod, Assistant Commissioner of Police, F-Division, Surat City, Gujarat, (PW-28)

109(a). PW-27, Mr. Mayur Jagmalbhai Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, Gujarat, has proved his affidavit Ex. PW-27/1. Along with his affidavit, he has filed copies of the details of FIR of seven cases along with English translation in respect of which he was the investigating officer (Ex. A). In his examination-in-chief, he has stated that FIR No. 236/2008 of Shahi Baug Police Station was registered under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967 and the charge sheet filed in respect of the same (Ex.B) has been treated as the lead case by the Trial Court. He further stated that more than 20 charge sheets have been filed in respect of serial bomb blasts which had taken place at various places in Ahmedabad, which have been clubbed together. Around the same time, cases pertaining to the bomb plantation, which were defused, in Surat were also registered. Those cases registered in Surat have also been transferred to the Special Court in Ahmedabad to be tried along with the lead case FIR No. 236/2008. He also stated that in all, there are 70 accused persons who have been arrested till date. Out of these 70, charges against 64 accused persons have already been framed and they are facing the trial. Charges against the six accused persons have not been framed. Apart from these accused, there are 28 other suspects in the case, who are absconding or yet to be arrested. The witness has further stated that during interrogation of the accused persons by him, it was learnt that these accused persons were erstwhile members of the banned organization SIMI and they had also provided shelter to the persons who had absconded and all these 70 accused persons and some of the absconding persons are involved in cases pertaining to offences under the Unlawful Activities (Prevention) Act, 1967 in other States also.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-27 has stated that he does not recall how many witnesses are termed as star witnesses in the charge sheets and that he will not be able to state orally the year in which the statements of these star witnesses were recorded under Section 164 Cr.P.C. The witness has further stated that he has filed the copy of the charge sheet in support of



his statement that Indian Mujahiddin is the new name of the banned organization SIMI, wherein it has been stated that the activities of the banned organization SIMI are being carried on under the name of Indian Mujahiddin. He stated that the connection between the banned organization SIMI and the Indian Mujahiddin is also reflected in the various documents annexed along with the charge sheet. The witness has stated that he had filed the supplementary charge sheet where the allegations regarding stealing of cars and making of bombs were levelled against the accused persons but denied the suggestion that he had no material in order to substantiate the said allegations. The witness also denied the suggestion that large number of Muslim youths were illegally detained and tortured after the blast and that their statements under Section 161 Cr.P.C. were recorded after torturing them.

110(a). PW-28, Mr. Vajesinh Vakhatsinh Rathod, Assistant Commissioner of Police, F-Division, Surat City, Gujarat, was examined orally. In his examination-in-chief, he has stated that he has been appointed as the investigating officer on 25-7-2011 in respect of 15 Surat bomb plantation cases and subsequent thereto he arrested five absconding accused persons. Out of these five accused persons, supplementary charge sheet has already been filed against four accused persons, which is pending trial in the Special Court. So far as the fifth accused, Mohd. Abrar, is concerned, the supplementary charge sheet against him is not yet filed as the case is still under investigation. He further stated that during his investigation, he learnt that some of the accused persons became members of the banned organization SIMI in 2005, 2006 or later years and that although the organization has been banned officially, but surreptitiously, it is carrying on its activities.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-28 has stated that the statements of these accused persons were recorded while they were in police custody. He denied the suggestion that he had no material available with him to make a statement that these accused persons were members of SIMI or joined the said organization at any point of time. He also denied the suggestion that he has no proof to show that the banned organization SIMI is functioning as on date.

(c) It would be travesty of truth in case the submission of Mr. Aggarwal that there is no proof to show that banned organization is not functioning, is accepted. The very fact that the last report of the Tribunal upholding the ban on the organization was received is itself indicative of the fact that unlawful, rather criminal and illegal, activities of the organization are being carried on through or under new names like Indian Mujahideen etc.

**(IX) At Hyderabad in Andhra Pradesh :**

At Hyderabad, the Central Government examined the following witnesses :—

1. Mr. M. Nagesh Nara Rao, Deputy Suptd. of Police, Counter Intelligence Cell P.S. Hyderabad, Andhra Pradesh, (PW-29);

2. Mr. V. N. V. Satyanarayana, Addl. Suptd. of Police, Eluru, W.G. District, Andhra Pradesh, (PW-30);
3. Mr. K. R. Nagaraju, Asstt. Commissioner of Police, Special Investigation Team, Hyderabad City, Police, Hyderabad, (PW-31);
4. Mr. G. Guru Raghavendra, Inspector of Police, Abid Road Police Station, Hyderabad City, Andhra Pradesh, (PW-32);
5. Mr. G. Girish Rao, Inspector of Police, Narayanaguda P.S., Hyderabad City, Andhra Pradesh, (PW-33);
6. Mr. V. C. Sajjanar, Deputy Inspector General of Police, C.L. Cell, Intelligence Department, Andhra Pradesh, (PW-34);
7. Mr. B. Bhaskar, Inspector of Police, C.I.D., E.O.W., Hyderabad, Andhra Pradesh, (PW-35).

111(a). PW-29, Mr. M. Nageshwara Rao, DSP, PS Counter Intelligence Cell, Hyderabad proved his affidavit Ex. PW-29/1. In his affidavit the witness has deposed in respect of two FIRs, viz. (i) CR No. 01/2009 under Sections 307, 324, 332 read with Section 34 IPC and Sections 27(i)(A) of the Arms Act and Sections 120B, 121, 121(A), 122, 124(A) IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967; and (ii) CR No. 02/2009 under Sections 120(B), 302, 307, 121, 121(A), 122, 124(A) IPC and Sections 25 & 27 of the Arms Act, 1959 read with Section 34 IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967.

(b) In CR No. 01/2009, it is alleged that accused Viqar Ahmed, while under surveillance, resisted the surveillance team of intelligence on 3-12-2008 and opened fire on the police party. He was able to escape with the help of his two associates after injuring two police personnel, who had to be treated at the hospital. Pursuant to this incident FIR No. 358/2008 dated 3-12-2008 was registered at PS Kanchanbagh which was subsequently re-registered as FIR No. 01/2009 at PS Octopus on 16-6-2009. Charge sheet in this case has been filed on 18-2-2011 and the matter is pending trial.

(c) It is claimed in the affidavit that accused Viqar Ahmed is a close associate of Moutasin Billa, a SIMI activist and son of Maulana Abdul Alim Ishali, active member of jamaat-e-Islami Hind and advisor to SIMI. It is also alleged that accused Viqar Ahmed had earlier also been actively involved in propagating jehad and further in May, 2007, he gave a hard disk containing jehadi literature, training camps and speeches of Maulana 'Marood Azhar etc. to Jaber, Yaser and Moutasin Billa, which was handed over to Safdar Nagori, erstwhile acting President and Secretary General of SIMI. It is further alleged that accused Viqar Ahmed has friends of jehadi mentality and people who are sympathizers of SIMI and the other front organizations of SIMI, viz. Darsghah-Jehad-O-Shahadat and Tahreek Tahaffuz Shahar-e-Islam.

(d) In CR No. 02/2009 accused Viqar Ahmed along with his associates is alleged to have opened fire on two police

personnel after confirming that they were Hindus. One of the attacked police personnel died on way to the hospital and the other was admitted as an in-patient. Pursuant to the incident FIR No. 157/2009 dated 18-5-2009 was registered which was subsequently re-registered as FIR No. 02/2009 on 16-6-2009 at PS C.I. Cell, Hyderabad. The investigation of the said FIR revealed that accused Viquar Ahmed and his associates have close connections with SIMI, including its militant cadres and the Indian Mujahiddin. However, in view of the ban on SIMI, they had floated another organization under the name of Tahreek-Galbha- e-Islam (TGI). Investigations also revealed that the aim of TGI is to eliminate the enemies of Islam and to take revenge on police personnel who killed the Muslims in the firing after the Mecca Mosque blast.

(e) PW-29, along with his affidavit, has also annexed the confessional statement of Viquar Ahmed, recorded while he was in police custody. This statement was recorded on 14-7-2010 by the Deputy Suptd. of Police, PS Octopus, Hyderabad in the presence of two panchayatdars. In the said confessional statement, the accused admitted that after reading several articles on Gujarat Communal Riots and coming to know about the alleged atrocities on Muslims and burning of Muslims alive by Sangh Parivar activists, he started downloading material from various Jehadi websites like Al-Musra, Al-Furkan.com etc. and collected Jehadi literature, speeches of Maulana Masood Azhar etc. and stored the same in CDs to motivate youth towards Jehadi ideology. This literature on CDs was handed over to Safdar Nagori through Amjad. Arshad and Javed, which was later used to train SIMI cadres during their training camps. He further admitted having indulged in a number of robberies and murders and procured arms and ammunition for commission of the crimes. In his other confessional statement recorded by Mr. S. Srinivasa Rao, Inspector of Police, Octopus, in the presence of two panchayatdars, Viquar Ahmed has admitted that he along with his cousin Amjad @ Suleman, Dr. Haneef and Zakib decided to float Tahreek-Galbha-e-Islam with the sole aim of eliminating the enemies of Islam and take revenge on police personnel who killed the Muslim in firing after Mecca Mosque blast at Hyderabad and to implement the Shariat Law in the country.

(f) In his cross-examination, PW-29 has denied the suggestion that accused Viquar Ahmed is not connected with the two cases or that the name of SIMI has been illegally interpolated to bring about the connection. He has further stated that even though Tahreek Tahaffuz Shahar-e-Islam (TTSI) is not a banned organization but at the time of the death of Osama Bin Laden, they had conducted prayers for peace to his soul. During his cross-examination, he also produced a copy of the print out downloaded from internet, marked 'X', in respect of the Daily Siyasat, which shows the prayer meeting being conducted for Osama Bin Laden. He has further stated that the said organization is involved in conducting Jehadi activities. He also denied the suggestion that the

confessional statement of Viquar Ahmed is concocted or false. He also denied the suggestion that there is no material to show that SIMI continues to exist.

(g) This is one of the most important witness who has testified regarding the activities of the banned organization in the State of Andhra Pradesh. It seems from the testimony of the witness that the tentacles of the banned organization have deep roots in the State and the unlawful activities of the banned organization are being carried by highly motivated persons owing allegiance to the said organization.

112(a). PW-30, Mr. V.N.V. Satyanarayana, Addl. Superintendent of Police, Eluru, West Godavari District, Andhra Pradesh, appeared in the witness box and proved his affidavit Exh. PW-30/1. The witness has stated that he arrested the accused Viquar Ahmed vide arrest memo dated 15-7-2010 (Ex. P-2) and recorded his panchnama/statement in CR No. 02/2009 of PS CI Cell, Hyderabad, in the presence of panchayatdars (Ex. P-1).

(b) In his affidavit the witness has stated that the accused Viquar Ahmed is a close associate of Moutasim Billa, brother of late Mujahed Saleem, SIMI activist and s/o Moulana Abdul Aleem Ishali, active member of Jamat-e-Islami Hind & advisor to SIMI. He further stated that the accused was also a close associate of Baleequiddin @ Jaber, who is President of TTSI (Tahreek Tahaffuz Shahar-e-Islam, which is a front organization of SIMI) and an accused in Haren Pandya murder case. He also stated that Viquar Ahmed and his associates have close connections with SIMI (including its militant cadres) and Indian Mujahiddin, but since there is a ban on SIMI, they have floated a new organization under the name of TGI so that the activities of SIMI and Indian Mujahiddin can be continued un-interruptedly.

(c) The witness has annexed the seizure memo-cum-confessional statement of the accused, Viquar Ahmed, along with his affidavit (Ex. P-1). In the seizure memo it is mentioned that pistols, magazine containing 8 rounds of live cartridges, pen drives containing jehadi literature and other objectionable items were recovered from the accused. In his confessional statement, the accused admitted that he procured air guns and other weapons for committing robberies. He also admitted that in June, 2007, he looted the e-seva centre, Banjara Hills and robbed the cash of Rs.2,60,000 and while escaping he opened fire on security guard who tried to catch him and injured him. He also admitted that after reading several articles on Gujarat Communal Riots and coming to know about the alleged atrocities on Muslims and burning of Muslims alive by Sangh Parivar Activists, he started downloading material from various jehadi websites like Al-Musra, Al-Furkan.com etc. and collected Jehadi literature, speeches of Maulana Masood Azhar etc. and stored the same in CDs to motivate youth towards Jehadi ideology. This literature and the CDs were handed over to Safdar Nagori through Amjad. Arshad and Javed, which was later used to train SIMI cadres during



their training camps. He further admitted having indulged in a number of robberies and murders and procured arms and ammunition for commission of the crimes.

(d) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-30 stated that he apprehended accused Viquar Ahmed along with two more accused persons on 14-7-2010 at 7:00 pm after which he conducted their personal search and recorded their statements and thereafter showed their formal arrest on 15-7-2010 in the morning at police station. He further stated that he started the recording of the confessional statement of the accused Viquar Ahmed at about 19:15 hours and finished it by 21:30 hours. He admitted that the questions were put to the accused in Hindi and his answers were also in the same language but the statement was recorded in English after translation. He also admitted that he simply asked the question to the accused as to what had happened, whereupon the accused narrated the entire sequence of events which is recorded in the confessional statement. He denied the suggestion that one of the panch witnesses had signed the statement on 15-7-2010 (the portion where the witness has put the date as 15-7-2010 is encircled as portion 'X' and stated that by 10.00 pm, everybody, including the accused and panch witnesses, signed the statement. He also denied the suggestion that the accused had not made the statement voluntarily and that the statement was signed by the panch witnesses later and not at the time of recording of the statement. He further denied the suggestion that Viquar Ahmed was coerced to make the statement and because of this reason, he did not take any steps to record the statement under Section 164 Cr.P.C. and that the primary purpose of recording this statement was to make out a connection between SIMI and these cases.

113(a). PW-31, Mr. K.R. Nagaraju, Assistant Commissioner of Police, Special Investigation Team, Hyderabad, Andhra Pradesh, appeared and proved his affidavit exhibit PW-31/I. The witness in his affidavit has deposed in respect of three FIRs, viz. (i) FIR No. 287/2011 registered on 26-10-2011 by Central Crime Station CCS SIT, Hyderabad under Sections 120B, 121A, 125, 126 IPC and Sections 10, 13 & 3 of Unlawful Activities (Prevention) Act, 1967 (Ex. P-1); (ii) FIR No. 380/2011 registered on 22-10-2011 by PS Begumpet, Hyderabad under Sections 420, 468, 120B IPC; and (iii) FIR No. 87/2010 registered on 14-5-2010 by PS/SIT Hussainialam, Hyderabad under Sections 302, 120-B, 122, 123, 124A & 34 of IPC, Sections 25(1)(A) & 27 of Indian Arms Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act, 1967.

(b) In FIR No. 287/2011, it is stated that in terms of memo received from DCP, East Zone vide No. 438/DCP/EZ/Camo/2011 dated 1-9-2011 to register a case under appropriate Sections of law about the unlawful activities of the accused persons in Saidabad, Hyderabad and to thoroughly investigate the involvement of the accused persons Mr. Syed Afak Iqbal @ Danish Iqbal @ Danish Riyazuddin, a SIMI activist, who was arrested on 21-6-2011 by Gujarat Police, this FIR was registered. It is alleged that during the

interrogation of the accused by Mayur J. Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, it was revealed that the said accused is an active member of SIMI.

(c) During the investigation, it was revealed that during the period when Shahid Badar was the president of SIMI, Safdar Nagori had formed a new format of SIMI in the name of SIM. Afaq Iqbal had joined the said group of Safdar Nagori and had attended the Choral (M.P.) and Waghmon (Kerala) Training Camps in July 2007 & December, 2007 respectively wherein various kinds of trainings were imparted including the making of petrol bombs besides Jehadi speeches being delivered on Godhra riots and Babri Masjid demolition. It is further alleged that the accused Afaq Iqbal in October, 2009 had given shelter to the persons accused in the Ahmedabad serial bomb blasts namely Taukir, Mujib and Abdulrajik Mansuri. The attested copy of the statement of Afaq Iqbal recorded in Gujarati along with its English translation is also annexed with the affidavit (Ex. P-2).

(d) In FIR No. 380/2011, it is alleged that the accused Afaq Iqbal obtained SIM cards from Airtel and Tata Indicom Cellular Services by furnishing fake and forged documents under the name Manzor Aslam S/o Jamil Khan, R/o Road No. 10-C, Gayathri Hills Colony, Jubilee Hills and another one in the name of V. Mohan Babu, R/o 4-15, Jagerpally, Pedda Aruveedu, Prakasham District AP. During his stay at Hyderabad, he made efforts to re-group SIMI cadres. A complaint letter dated 22-10-2011 in this regard has been received from the Nodal Officer, Bharti Airtel Ltd. addressed to the Police Inspector, PS Begampet along with various attested copies of the documents furnished by the accused to obtain SIM cards (Ex. P-4).

(e) In FIR No. 87/2010, it is alleged that on 14-5-2010, Hyder Baig, ASI of Kamatipura PS, PC 9884 of Hussainialam PS and HC 627, PCs 811, 649 and 1077 of APSP 11th BN were on picket duty at Volga Hotel "T" Junction, Himmathpura in view of the Friday Prayers. After Friday prayers, the Civil PC 9884, G Santha Rao, and APSP PC 649, U. Ramesh, remained at the picket. At about 4.00 pm, two unknown persons came on a two wheeler and suddenly fired 3 rounds on them with" weapon, due to which PC 649 of 11th BN, APSP, U. Ramesh, received bullet injuries on his chest, back side of left waist and left forearm. Immediately, injured PC 649, U. Ramesh, was shifted to Osmania General Hospital, Hyderabad for treatment, where the duty doctor declared him as brought dead. It is further alleged that Tahreek Galba-e-Islam" (TGI) a terror group claimed the responsibility of killing the constable as a revenge of killing of Muslims in the police firing during Bomb Blast at Mecca Mosque on 18-5-2007.

(f) The accused, Viquar Ahmed, who was arrested on 14-7-2010 by PS Octopus in CR No. 2/2009, was re-arrested in this case by filing P.T. Warrant (Body warrant) under Section 267 Cr.P.C. and regularized his arrest in the case on 23-7-2010. During the course of investigation, it has been revealed that the said Viquar Ahmed had killed the above

mentioned constable namely U. Ramesh. It was further revealed that the accused Viqar Ahmed along with his cousin Amjad, Dr. Haneef, Riyaz and Jabir had formed a militant group in the name of Tahreek-Galba-e-Islam (TGI) in August, 2008. The aim of TGI is to eliminate the police personnel who are responsible for the killing of Muslims after the blast at Mecca Masjid on 18-5-2007, targeting several Hindu leaders of RSS and Bajrang Dal etc. The investigation further revealed that the accused prepared seditious matters and stored them in a Hard Disk and gave it to Mohd. Baleeghuddin which was later handed over to Safdar Nagori.

(g) The witness has also annexed attested copy of report dated 14-5-2010 by G. Santa Rao, constable which led to the FIR 87/2010 (Ex. P-6) and certified copy of the panchanama/ statement of the accused Viqar Ahmed dated 18-8-2010 (Ex. P-7). The witness has stated that the charge sheet dated 11-1-2011 in respect of FIR No. 87/2010 was filed by his predecessor before the Trial Court (Ex. P-8).

(h) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-31 admitted that FIR No. 287/2011 has been registered on the basis of confession made by Afaq Iqbal and that the said statement has been recorded by the Gujarat Police. He also admitted that the said FIR was registered at the instance of DCP, East Zone by the SHO of the concerned police station. He further admitted that he did not make any effort to get the statement of Viqar Ahmed recorded under Section 164 Cr.P.C. But he denied the suggestion that he had no other material to show the connection of these cases with SIMI except the two confessional statements. He further denied that SIMI's name has been maliciously interpolated in these cases and that the statements which he made with regard to SIMI are false to his knowledge.

114(a). PW-32, Mr. G. Guru Raghavendra, Inspector of Police, Abid Road Police Station, Hyderabad City, Andhra Pradesh appeared and proved his affidavit exhibit PW-32/1. The said witness has deposed in respect of Crime No. 274/2011 registered under Sections 420, 468, 120(B) IPC at the Abid Road Police Station, Hyderabad City. He has stated that on 2-9-2011, a written complaint was received from one Mr. M.Srinivasa Reddy of Tata Tele Services Limited stating that a mobile connection bearing No. 8121589868 was obtained on the basis of forged/fake documents submitted by the customer. The complainant further stated that the said connection was obtained by the applicant Mr. Manjoor Alam whereas it had come to their notice that he had a different name, i.e. Saiyed Afaq Iqbal. The statement of the complainant is stated to have been recorded under Section 161 Cr.P.C. wherein the complainant had submitted that Mr. Afaq Iqbal, by submitting fake and forged documents in the name of Mr. Manjoor Alam, had cheated their company. Copy of the complaint and the statement recorded under Section 161 are Exh. P-2 (colly). The documents submitted by accused Afaq Iqbal for obtaining the connection have also

been placed on record along with the affidavit and are Exh. P-3.

(b) The witness PW-32 has further stated that the investigations conducted in the case revealed that accused Afaq Iqbal is an active member of SIMI and that in order to avoid his arrest in the cases registered against him in Ahmedabad and Bhopal, he had changed his name and obtained the SIM card with a fictitious name and also worked in ESN Technologies, Apex Company and ACS Company in Hyderabad. It is further stated that the accused during his stay at Hyderabad met various SIMI cadres and made efforts to re-group the SIMI cadres for continuing its activities. The accused is yet to be arrested in this case as he is stated to be presently lodged in Ahmedabad jail and is facing trial there.

(c) During his cross-examination by the learned counsel for the applicants/intervenors, the witness has stated that the confessional statement placed by him on record (Ex. P-4) was not recorded by him or in his presence but was recorded in Crime No. 203/2008 registered at PS Mani Nagar, Ahmedabad. The witness has denied the suggestion that the averments made by him, with regard to the connection of SIMI with the activities of the accused person as also the statement that the FIR in question is based solely on alleged confessional statements are false.

115(a). PW-33, Mr. G. Girish Rao, Inspector of Police, PS Narayanaguda, Hyderabad City, Andhra Pradesh, appeared and has proved his affidavit exhibit PW-33/1. The witness has deposed in respect of Crime No. 245/2011 registered at PS Narayanaguda dated 15-7-2011 under Section 177/419 IPC. It is stated by the said witness that a Memorandum dated 13-7-2011 was received from the Joint Commissioner of Police, Special Branch, Hyderabad informing that one Muneer Deshmukh son of Munnawar Deshmukh, ex-National Secretary SIMI, was arrested in Crime No. 663/2000 under Section 153(A) and 153(B) IPC by the Anti Terrorist Squad, Bhopal on 24-11-2000 and that the said Muneer Deshmukh later on came to Hyderabad and resided there and obtained driving license, pan card, ration card, gas connection and opened bank account on fictitious name as Muneer Ahmed son of Iftikar Ahmed by producing fake documents. The accused also got employment in an IT consulting company at Himayat Nagar, Hyderabad in a fake name in order to hide his real identity and evade his arrest by the Bhopal police. Accordingly, FIR No. 245/2011 was registered against the accused, as noted above.

(b) The witness has claimed that during the course of investigation the association of accused with SIMI came to light. It was revealed that number of Muslim youths and sympathizers of SIMI met the accused at his residence during his stay in Hyderabad and that he made efforts for re-grouping the activists of SIMI.

(c) In his cross-examination the witness has stated that the averments made by him are on the basis of source information even though the said source information has not been filed along with the affidavit. The witness has

denied that the organization SIMI has ceased to exist after September, 2001 or that they do not conduct any activity anymore.

(d) The confessional statement of the accused Muneer Deshmukh has been examined. It was recorded on 23-12-2011 in the presence of two panch witnesses. The accused Muneer Deshmukh in this confessional statement has given a detailed account of his initiation in the SIMI cadres, his holding the position of Zonal Committee Member, Office Secretary/All India Secretary in the year 2000.

116(a). PW-34, Mr. V. C. Sajjannar, IPS, Deputy Inspector General of Police, C.I. Cell, Intelligence Department, Hyderabad, Andhra Pradesh appeared and proved his affidavit as Exh. PW-34/1. The witness is the Nodal Officer for the State of Andhra Pradesh for SIMI related matters. He has stated that despite the ban imposed by the Central Government in the past on SIMI, as per the reports of the Intelligence Agencies and the investigations conducted in the various cases, it has been revealed that the members of SIMI are still involved in carrying on unlawful activities of SIMI in a clandestine manner thereby disrupting communal harmony and indulging in anti-national activities and actions which are detrimental to the sovereignty and integrity of India.

(b) The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres. The contents in the sealed envelope have been examined and are kept on record.

(c) The witness has given a brief summary of all the cases registered against the SIMI cadres in the State of Andhra Pradesh.

(d) In his cross-examination, the witness has denied the suggestion that SIMI ceased to exist after September, 2001 when it was banned and that no activities have been conducted by the members of SIMI or on its behalf by anyone since that date. The witness re-affirmed that SIMI continues to exist and is carrying on its activities surreptitiously.

117(a). PW-35, Mr. B. Bhaskar, Inspector of Police, CID, Hyderabad, Andhra Pradesh appeared and proved his affidavit exhibit PW- 35/1. The witness in his affidavit has deposed in respect of Crime No. 835/2002 registered on 21-11-2002 at PS Saroor Nagar under Sections 302, 307 IPC and Sections 3, 4 and 5 of Explosive Substances Act and Section 3(3) of POTA in respect of a bomb blast in front of Sai Baba Temple at DSNR. There were 11 accused in the said FIR namely Abdul Bari @ Abu Hamza; Mohd. Azam; Syed Azeez; Mohd. Irfan Ali Khan; Syed Abdul Nayeem; Mohd. Abdul Razak @ Masoor, Syed Akhil @ Hafeez; Altaf Ahmed; Abu Ayub Ansari @ Anees, Syed Salauddin Ahmad @ Mohd. Mubarizuddin @ Saeed Salahuddin Sheikh @ Syed Salahuddin Salar @ Ahmed; and Mohd. Shfique Muzavar @ Sadiq.

(b) In CR No. 835/2002, it is alleged that a meeting was organized in Dubai by Abdul Bari between 23-8-2002 to 27-8-2002 along with Mohd. Irfan Ali Khan, Mohd. Abdul Razak, Syed Akhil, Anees Moinuddin and Syed Salauddin, who are SIMI activists along with others whose identity was not known. It is alleged that in the said meeting it was decided to cause bomb blasts near temples in India so as to create communal clashes and to disturb the communal harmony existing in Indian society. In pursuance of the above conspiracy, on 21-11-2002 at about 8.00 pm, Abdul Bari executed the bomb explosion near Sai Saba Temple at Dilsukh Nagar, through Mohd. Azeez and Syed Azeem, both of whom placed explosives along with timer device in a scooter and kept the scooter near the parking place of the temple and left the scene, which resulted in killing of 2 persons and injuring 20 others. It is further alleged that for this operation, Mohd. Irfan Ali Khan provided funds to Abdul Nayeem who provided logistical support to Mohd. Azam and Syed Azeez in Hyderabad. Mohd. Azam was shot dead on 23-11-2002 under Uppal P. S. limits and Syed Azeez was shot dead on 24-11-2002 at Rekurty Village of Karimnagar District in separate exchange of fires with police in self-defence while the accused Mohd. Shfique Muzavar is still absconding.

(c) Investigation of the above case revealed that accused Syed Salauddin actively participated in and has been involved in the unlawful activities of SIMI in India. He organized various SIMI meetings throughout India, visited Dubai and established contacts with SIMI cadres at Dubai and attended their meetings, established contacts with Lashkar-e-Taiba Cadres and organized meetings with Muslim youth and incited them with Jihadi ideology with the help of Abdul Bari and Abdul Razaq. The investigation further revealed that SIMI's ideology does not believe in democracy and SIMI has various cover organizations such as Tahreek Talaba-e-Arabia/TTA, Students Welfare Trust, Khaire-e-Ummath, Islah-e-Mashere, Fargree-e-Jamat, Kidmath-e-Khalq, Islamic Youth Center and Islamic Students Association.

(d) The first charge sheet in respect of the aforesaid FIR was filed on 5.4.2002 and is pending trial before the Trial court. The witness has handed over a certified copy of the same during the course of recording of his evidence and the same is exhibit D/1. The additional charge sheet was filed against the accused Anees Moinuddin and Mohd. Shafique Muzavar on 1.11.2011 (Ex. P-1).

(e) PW-35, along with his affidavit, has also annexed the attested copy of panchanama/statement of Syed Salauddin dated 25.7.2011 and certified copy of his panchanama/statement dated 31.7.2011 recorded in the presence of panchayatdars [Ex. P-2 (colly)] and the attested copies of permission to prosecute Syed Salauddin dated 14.11.2011 issued by the Collector and District Magistrate, Ranga Reddy District as well as Government of Andhra Pradesh (Ex. P-3).



(f) In his confessional statement dated 25-7-2011, the accused Syed Salauddin stated that he was elected as All India SIMI President during the period from February, 1998 to February, 2000 and that he visited Babri Masjid site at Faizabad to collect the particulars of Karasevaks, who are the main persons responsible for the demolition of Babri Masjid, for taking revenge against them. He further stated that in 1999, a meeting was organized at Aurangabad which was attended by about 400-500 persons. During the meeting Sk. Mahaboob Ali delivered provocative speech on Babri Masjid demolition and stated that if Ram Mandir is constructed at the Babri Masjid site, he would demolish the same by planting bombs. He further stated that during his stay at Dubai, he developed contacts with LeT cadre of Pakistan and that he along with Abdul Razzaq and Abdul Bari @ Abu Hamza with the help of Irfan Ali Khan used to attend meetings and brain wash the Muslim youth with Jihadi ideology, who have come to Dubai in search of employment. In his confessional statement dated 31-7-2011, he stated that after arriving in Dubai, he re-established his contacts with ex-SIMI members, who have gone to Dubai and that one person namely Jilani introduced him to his associates viz. Farha. Shareef @ Shadin, Anwar, Riyaz and Sultan and told him that all the above associates were working for Indian Mujahideen along with Riyaz Bhatkal and Iqbal Bhatkal, who are responsible for serial blasts, which occurred across the country.

(g) In his cross-examination, PW-35 admitted that the name of SIMI is not mentioned in the first charge sheet. The witness denied the suggestion that the statements of Syed Salauddin, Mohd. Irfan and Abdul Nayeem were false and concocted and that is why no steps have been taken to record their statements under Section 164 Cr.P.C. He also denied the suggestion that apart from these statements, there are no other material to connect SIMI to the activities of these persons or organizations so as to brand it as a terrorist organization and that there is no connection between SIMI and the aforesaid organizations and the name of SIMI has been maliciously interpolated.

**(X) At Indore in Madhya Pradesh :**

At Indore, the Central Government examined the following witnesses :—

1. Mr. Navratan Singh, Deputy Superintendent of Police, CSP Hanumanganj, Bhopal, Madhya Pradesh (PW-36);
2. Mr. Ghanshyam Malviya, City Superintendent of Police, Misrod, Madhya Pradesh (PW-37);
3. Mr. Anirudha Shyamsunder Nandedkar, Deputy Superintendent of Police, CID (Crime), Aurangabad Unit, Maharashtra (PW-38);
4. Mr. Gajendra Singh Vardhaman, City Superintendent of Police, Distt. Ratlam, Madhya Pradesh (PW-39);

118(a). PW-36, Mr. Navratan Singh, Deputy Superintendent of Police, CSP Hanumanganj, Bhopal, Madhya Pradesh appeared and proved his affidavit exhibit PW- 36/1. The witness in his affidavit has deposed in

respect of FIR No. 431/2010 registered on 23.8.2010 at PS Hanumangaj, Bhopal under Sections 395, 397 IPC.

(b) In FIR No. 431/2010, it is alleged that on 23.8.2010 at 10:30 hours at Bhopal Plaza Building at Shop No. 101, 102, 103, Hamidia Road, Bhopal, some unknown persons entered the branch of Manapuram Gold Finance Company with katta (pistol) and knife and robbed gold ornaments (weighing 12 kg) and cash, having total worth Rs. 1,46,41,000. The witness in his affidavit has stated that on 1.7.2011, information was received from S.P. Bhopal vide letter No. SP(North)/bpl/reader/383-A/11 that accused persons in CR No. 04/2011 (Abu Faisal, Ikrar Shaikh, Azazuddin, Mehboob) and CR No. 05/2011 (Shaikh Mujib Ahmed, Mohd. Aslam, Mohd. Habib and Mohd. Sajid) of ATS, Madhya Pradesh had revealed their involvement in activities of SIMI and also admitted to have committed dacoity in Manapuram Gold Finance Company at Bhopal Plaza on 23.8.2010. During investigation accused Abu Faisal, Ikrar Shaikh, Azazuddin were arrested and were taken on police remand. During interrogation on 13.9.2011, the accused admitted having committed dacoity in Manapuram Gold Finance Company on 23.8.2010 along with other accused persons. The supplementary charge sheet in respect of the aforesaid FIR was filed on 7.3.2012 (Ex. E).

(c) PW-36, along with his affidavit, has also annexed the true copy of the statements of accused namely Abu Faisal, Mohd. Ikrar and Mohd. Azazuddin; Shaikh Mujib Ahmad and Mohd. Aslam; and Jakir Hussain (Ex. B, C & D respectively).

(d) In his confessional statement the accused Abu Faisal stated that after arrest of Safdar Nagori and other members, he became the Head (Aamir) of the SIMI organization. He further stated that after the arrest of the fund raiser of the organization, Mohd. Ali, Musa and Irfan, SIMI witnessed money crisis due to sudden set back of some financial supporters due to increasing fear of police interference and in reaction to these problems, he called a meeting with Ikrar, Aslam, Zakir, Mujeeb, Aizazuddin, Mehboob and Ahmed for fulfillment of the organizational needs and they all agreed to do robbery in banks to get money. After that while residing in Dewas, he inquired and did recce of many banks. He admitted that he along with other accused looted the gold and cash from Manapuram Gold Finance Company on 23.8.2010 and also admitted killing of the constable Sitaram and two other at Khandwa. The accused also admitted doing other bank robberies. The other accused in their confessional statements have also admitted doing various bank robberies including the robbery at Manapuram Gold Finance Company.

(e) In his cross-examination, PW-36 stated that he has not attached a copy of the main charge sheet as he had requested the SHO concerned for discharge of two accused. A copy of the discharge letter, in Hindi, addressed to SHO is produced by the witness and is exhibited as EX.DA. He denied the suggestion that the above-mentioned persons have been made accused on the basis of the letter dated

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1-7-2011 received from SP, Bhopal, and that the statements of all the accused persons are concocted and false and that is the reason why he did not get them recorded under Section 164 Cr.P.C. He also denied the suggestion that these accused persons have no connection with SIMI and their names have been deliberately associated with the banned organization SIMI.

(f) No question has been put in the cross-examination which could discredit the witness so far as his testimony regarding looting of financial institutions is concerned. This looting has been essentially done for the purpose of raising funds for the illegal activities of the SIMI organization despite the continuous ban on it.

119(a). PW-37, Mr. Ghanshyam Malviya, City Superintendent of Police, Misrod, Madhya Pradesh appeared and proved his affidavit exhibit PW- 37/1. The witness in his affidavit has deposed in respect of FIR No. 431/2010 registered on 23.8.2010 at PS Hanumangaj, Bhopal under Sections 395, 397 IPC.

(b) The witness in his affidavit has stated that he was the investigating officer of the aforesaid FIR and that he personally recorded the statements of accused Abu Faizal wherein details about the plans to commit bank robberies for the purpose of funding the SIMI organization were revealed. The witness has also personally recorded the statements of Mohd. Ikrar, Mohd. Aizazuddin, and Zakir Hussain who provided the details about the manner in which the abovementioned bank robberies were committed by the members of SIMI and how the murder of Jailor Sanjay Pandey and constable Sita Ram was planned. The witness has further stated that the aforesaid case demonstrates that despite the ban, SIMI has been clandestinely continuing with its unlawful activities and that the ban on SIMI is necessitated because of their continued unlawful activities which are highly prejudicial to the security, sovereignty and integrity of India.

(c) In his cross-examination by Mr. Ashok Aggarwal, PW-37 stated that he arrested all the six accused persons namely Abu Faisal, Ikrar Sheikh, Mohd. Aizazuddin, Sheikh Mujib, Mohd. Aslam and Zakir and that he recorded their statements on 1.7.2011. The witness has admitted that all the accused persons were under detention and their arrest was shown after obtaining permission from the court in respect of the aforesaid FIR. He denied the suggestion that he has wrongly recorded the statements of the accused persons, which was never made by them and that these statements are totally false and concocted. He also denied the suggestion that these accused persons have no connection with SIMI and their names have been deliberately associated with the banned organization SIMI.

120(a). PW-38, Mr. Anirudha Shyamsunder Nandedkar, Deputy Superintendent of Police, CID (Crime), Aurangabad Unit, Maharashtra appeared and proved his affidavit exhibit PW-38/1. The witness in his affidavit has deposed in respect of CR No. 25/2012 registered on 26.3.2012 at PS Begampura, Aurangabad City, Maharashtra under Sections 307, 333, 335, 336, 338, 352, 353, 34 IPC read with Sections 3, 25, 27 of Arms Act & Section 135 of Bombay Police Act.

(b) In CR No. 25/2012, it is alleged that on 26.3.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information being received from their informant that one person namely Abrar @ Ismail, who was the absconding accused in 2008 Ahmedabad case and an active hardcore member of banned organizations, Indian Mujahideen and Students Islamic Movement of India, was coming to meet his accomplices at about 12.00 noon at Aurangabad. On receiving the information, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation firing, Abrar @ Ismail, Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police constable who was also injured due to firing by the accused persons.

(c) It is stated by the witness that panchanama of the spot was done. Three pistols and other articles of accused persons were seized from the spot. It is further stated that the investigation of the said crime was handed over to CID (Crime) Aurangabad on 29.3.2012 and from the said date, he is investigating the crime.

(d) During interrogation it is revealed that the accused Abrar @ Ismail was an active member of SIMI since 2006 and that he and other members of SIMI namely Abu Faisal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, MP in the year 2006, wherein the members were urged to carry on jihad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. It is further revealed that the accused in 2011 had committed dacoities in Gujarat and MP to generate funds for jihad and had also planned to loot trucks of copper scrap for the said purpose.

(e) The witness has also placed before the Tribunal a sealed envelope containing copies of the statements of the accused persons/witnesses and the panchnamas. The witness stated that the aforementioned case is under investigation and is at a crucial stage and disclosure of statements made by the accused persons/witnesses and details of the articles seized under various panchnamas are likely to hinder/adversely affect the ongoing investigations. The contents in the sealed envelope have been examined.

(f) In his cross-examination, PW-38 stated that he was appointed as the investigating officer on 29.3.2012 but denied the suggestion that he was appointed as the investigating officer after serious doubts were expressed regarding the encounter in which the accused persons are purported to have been arrested. He stated that the order regarding transferring of investigation from Crime Branch to CID was passed by his superior officers. He further stated that he is not aware whether any press conference was held by the Commissioner of Police, Aurangabad on the date of the alleged encounter or that the Home Ministry of the State of Maharashtra had made a public statement to the effect that it will have the case transferred to CID of Maharashtra police in order to get it verified as to whether it was a case of genuine encounter.



121(a) PW-39, Mr. Gajendra Singh Vardhaman, City Superintendent of Police, Distt. Ratlam, Madhya Pradesh appeared and proved his affidavit exhibit PW- 39/1. The witness in his affidavit has deposed in respect of CR No. 224/2011 registered on 3-6-2011 under Section 307 IPC, Sections 25 & 27 of Arms Act and Sections 10, 13 & 15 of Unlawful Activities (Prevention) Act, 1967.

(b) The witness in his affidavit has stated that on 3-6-2011 at about 5.15 pm, SP of Ratlam received a message from the ATS team that ATS jawans were fired at by SIMI activists. The SP immediately ordered to cordon off the city to catch the miscreants. During search operation, one accused namely Zakir was caught by the police near Hotel Palash while the other accused namely Mohd. Farhat @ Khalid was taken into custody from a vacant house near Shah Manzil, where he was hiding.

(c) During investigations it transpired that when the accused Zakir was residing at Ashok Nagar, Ratlam, the activities of SIMI organization were being conducted in the locality and terrorist activities were being planned. Funds were also collected for undertaking SIMI activities and meetings were also arranged in order to propagate and enlarge SIMI activities. During the course of investigation, a CD and other documents were seized from the custody of the accused which contained various SIMI related literature and matters related to extremism, terrorism and communalism. It is stated that the documents refer to the attack on the World Trade Centre, calling Muslims to unite against the world, transformation of Pakistan into Terroristan, and mention the attacks on Kashmir as well as Mumbai. Most significantly, the said documents include SIMI membership form. The investigation of the accused Mohd. Farhat Khan @ Khalid and Zakir Hussain @ Sadiq further revealed that they were trying to collect funds for activities of SIMI and in pursuance to this they indulged in bank robbery and they were involved in spreading their unlawful activities among the Muslim youth by inviting them for Darsh-E-Kuran and then finally by provoking them for Jihad. The witness has stated that he personally recorded the statement of Zakir, wherein he gave details about his connection with SIMI and participation in unlawful activities.

(d) In his confessional statement the accused Zakir Hussain @ Sadiq has stated that he was friends with Guddu @ Mehboob, who works as an active worker of SIMI and together they distributed SIMI pamphlets. He further stated that he also made friendship with Hussain and tried to brainwash him for Islamic extremism by showing him video clippings related to the atrocities against Muslims in Afghanistan and also provided him literature related to SIMI and Islamic Literature and urged him to recruit as many youths as possible in order to take revenge for all those atrocities and to strengthen the organization. He also contacted Chhotu @ Rafiq and Ashik and was successful in winning them for SIMI activities. He also stated that Guddu was their leader who was in contact with the higher leaders of SIMI and conveyed their messages to them.

(e) In his cross-examination, PW-39 stated that he was the investigating officer of FIR No. 224/2011, in respect of which various articles were seized from accused Mohd. Farhat. He stated that apart from the membership form of SIMI, CD and documents were seized which showed connection of the accused persons with SIMI. He admitted that in the CD, the word 'SIMI' is not used but volunteered that the modus operandi reflected in the CD makes one to draw the inference that it pertains to SIMI only. The witness also admitted that the membership forms seized from Zakir as also in other cases were blank and did not bear any serial number or the address of the organization but denied the suggestion that all these forms have been printed at the police press. The witness also denied the suggestion that the material contained in the CD pertains only to USA, Israel and Pakistan and volunteered that he had examined the material and it pertains to India also. The witness also denied the suggestion that the CD does not contain any material or any information, which can be said to be 'unlawful activity' within the definition given under the Act, and also in breach of any provision of law applicable in India. He also denied the suggestion that CDs have been planted by the police. He further denied the suggestion that SIMI has no connection with these cases and it has been maliciously implicated and that SIMI has not conducted any activities since its first ban in September, 2001.

#### (XI) At Delhi:

At Delhi, the Central Government examined the following witnesses:—

1. Mr. Ashok Kamath, Assistant Commissioner of Police, Anti Terrorism Squad, Mumbai (PW-40);
2. Mr. Sanjeev Kumar Yadav, DCP Special Cell, New Delhi (PW-41);
3. Ms. Rashmi Goel, Joint Secretary, Ministry of Home Affairs, New Delhi (PW-42);

122(a) PW-40, Mr. Ashok Kamath, Assistant Commissioner of Police, Anti Terrorism Squad, Mumbai appeared and proved his affidavit exhibit PW- 40/1. The witness has deposed in respect of CR No. 6/2010 registered with ATS Police Station, Kalachowki, Mumbai.

(b) The witness in his affidavit has stated that on 13-2-2010 at around 6.50 pm, a powerful bomb blast took place at German Bakery, North in Road, Koregaon Park, Pune in which 17 people died and 56 persons were injured and a case CR No. 83/2010 under Sections 302, 307, 326, 325, 324, 120B IPC, Sections 3, 4, 5 of the Explosive Substances Act and Sections 16, 18, 21 of the Unlawful Activities (Prevention) Act, 1967 was registered at Bund Garden Police Station, Pune but looking to the gravity and intensity of the crime perpetrated, the said offence was transferred for further investigation to the Anti Terrorist Squad, Maharashtra and the crime was re-registered as CR No. 06/2010.

(c) The investigation revealed that the explosion was a carefully planned attack calculated to terrorize the public in general by causing intensive damage to life and property. The primary objective was to undermine and reduce the faith of the common citizen in its elected Govt. and thereby destabilize the system of Govt. established by law. The investigation further revealed that one Mirza Himayat Inayat Beg @ Ahmed Beg Inayat Mirza @ Yusuf was the person who had perpetrated the crime. He was arrested on 7-9-2010 and RDX, forged documents, Hard disks etc. were seized from him. Investigations further revealed that he had committed the crime with the help of his six associates namely (i) Mohsin Ismail Choudhary, (ii) Ahmed Siddhibappa Zarar@Yasin Bhatkal, (iii) Riyaz Ismail Shabdari @ Riyaz Bhatkal, (iv) Iqbal Ismail Shabdari, (v) Fayyaz Kagzi @ Julfikar Fiyaj Ahmed and (vi) Sayyad Zabiuddin Sayyad Zakiuddin @ Zabi Ansari @ Abu Jundal. It was further revealed that the blast was carried out by Indian Mujahiddin - a frontal organization of SIMI. The Investigations further revealed that the aforesaid accused persons were also wanted in various other criminal cases and were absconding. The charge sheet in respect of the aforesaid CR No. 06/2010 against the arrested and the absconding accused was filed on 4-12-2010 (Ex. A1) and the case is pending trial before the Sessions Court.

(d) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-40 stated that he was appointed as the investigating officer of the aforesaid case in May, 2012. In reply to the question that whether he had filed any documents along with his affidavit to substantiate the averments made in paragraph 5 of his affidavit to the effect that the Indian Mujahiddin is the frontal organization of SIMI, he stated that he has filed the charge sheet which substantiates the said averments. The witness has stated that he had not recorded the confessional statement of Mirza Himayat Beg and that he had not filed the same along with his affidavit. He further stated that some material is purported to have been recovered from Mirza Himayat Beg connecting him with SIMI, however, he was not sure about the same. He denied the suggestion that no material, was recovered from accused Mirza Himayat Beg so as to connect him with SIMI. He also denied the suggestion that he filed additional evidence and is making the statement before the Tribunal only with a view to support the ban against SIMI and that SIMI has not conducted any activities since its first ban in September, 2001.

123(a). PW-41, Mr. Sanjeev Kumar Yadav, DCP Special Cell, New Delhi appeared and proved his affidavit exhibit PW-41/1. The witness has deposed in respect of three FIRs viz. (i) FIR No. 65/2010 registered on 19-9-2010 at PS Jama Masjid under Sections 307/34 IPC read with Section 27 of the Arms Act, 1959 (Ex. A); (ii) FIR No. 66/2010 registered on 19-9-2010 at PS Jama Masjid under Sections 3/4/5 of Explosive Substances Act, 1908 (Ex. C); and (iii) FIR No. 54/2011 registered on 2-11-2011 under Sections 471, 489A, 489C IPC, Section 25 of the Arms Act and Section 12 of the Passport Act (Ex. F).

(b) In FIR 65/2010 it is alleged that on 19-9-2010 at about 11:24 hours an information was received regarding 'firing on foreigners by some unknown bikers at gate No. 3 of the Jama Masjid' and during the enquiry conducted on the spot, it was revealed that two young boys, riding on a black coloured motorcycle, had opened fire upon some foreigners who were descending from a tourist bus. In the said firing incident, two Taiwanese nationals had sustained injuries. On 22-9-2010, further investigation of the case was transferred to the Special Cell/NDR. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. A-1.

(c) In FIR 66/2010 it is alleged that on 19-9-2010 at about 14:00 hours an information was received regarding 'buming of a Maruti Car No. DL 6CD-1042 and emission of smoke from the same' at opposite Gali Guliyani, Dariba Kalan, Main Road. The car was inspected by the Bomb Disposal Squad (BDS) and during inspection the car caught fire after a mild blast. During investigation, the BDS seized a number of articles from the spot. The inspection report of the car records that 'recovery of the above mentioned article suggests that a low pressure IED was planted in the car. The investigation of the said case revealed that the said car was stolen a couple of days earlier. On 21-9-2010, further investigation of the case was transferred to the Special Cell/NDR. Efforts were made to identify and trace the accused persons involved in the incident but could not yield the desired results. However, soon after the said terrorist strike, an e-mail was received by various Sections of the media claiming that it was the Indian Mujahiddin who had carried out the strike. The said e-mail was captioned 'As We Bleed, So Will You Sleep'. A copy of said e-mail dated 19-9-2010 is annexed with the affidavit as Ex. E. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. C-1.

(d) In FIR 54/2011, it is alleged that on 21/22-11-2011, on the basis of specific information, one Mohd. Quateel Siddiqui @ Sajan @ Siraj @ Vivek Mishra, suspected to be a member of Indian Mujahideen, was apprehended from near Anand Vihar Inter State Bus Terminal, Delhi. On his cursory search, one 9 mm loaded pistol made in Brazil, containing 7 live cartridges in its magazine was recovered from his possession. On the search of his bag, besides other articles, (i) fake Indian Currency notes worth Rs. 2 lacs, (ii) One loaded magazine of 9 mm pistol and (iii) one envelope addressed in the name of Seraj Ahmed, containing two Indian Passports in the name of Ahmad Zeauddin and Seraj Ahmad and one Indian Driving License in the name of Vivek Mishra, all containing the photos of the accused, were recovered. Investigation of the said case revealed that Quateel Siddiqui is a member of the banned terrorist outfit Indian Mujahideen and has been involved in several terrorist activities in India. During the course of investigation, 15 accused persons (including Quateel Siddiqui), all members of Indian Mujahideen, have been arrested and a huge quantity of explosive material, IEDs, arms & ammunition have been recovered from their

possession/at their instance from their hideouts. The witness in his affidavit has stated that despite the concerted and strenuous efforts being made in the case, 19 accused, who have indulged in terrorist activities are still wanted in this case and are absconding.

(e) The investigation of the case has revealed that out of the 15 arrested accused, 6 accused persons namely (i) Mohd. Quateel Siddiqi @ Sajan @ Siraj @ Vivek Mishra, (ii) Gauhar Aziz Khomani, (iii) Mohd. Adil @ Ajmal @ Shueb @ Guddu (Pakistani national), (iv) Mohd. Aftab Alam @ Farooq @ Sheikh Chilly, (v) Mohd. Irshad Khan and (6) Gayur Ahmad Jamali were involved in the terrorist attack on foreign nationals and in the blast in the Maruti car, both dated 19-9-2010 near Jama Masjid Delhi. The investigation further revealed the involvement of SIMI and its activists in the said cases. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. F-1.

(f) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-41 admitted that the averments made by him in paragraphs 8 and 10 of his affidavit to the effect that SIMI members floated a new outfit by the name of Indian Mujahideen are based on the confessions purported to have been made by Tarique Anjum Ahsan and Mohd. Bashir Hassan Talha. He also admitted that the charge sheet does not contain any mention about the organization SIMI but he denied the suggestion that the accused persons were not undertaking any activity for and on behalf of SIMI. He also denied the suggestion that SIMI has not undertaken any activity ever since the first ban imposed on it in September, 2001.

124(a). PW-42, Ms. Rashmi Goel, Joint Secretary (HR), Government of India, Ministry of Home Affairs, New Delhi appeared and proved her affidavit exhibit PW-42/1. Along with her affidavit she has annexed the copy of notification dated 3-2-2012 banning SIMI (Ex. A-1), a copy of the background note (Ex. A-2), copies of reports of previous tribunals (Ex. A-3 to A-6), copy of orders dated 6-8-2008, 11-9-2008 and 13.10.2008 in SLP (C) No. 19845/2008 (Ex. A-7) and copy of objections filed by H.A. Siddiqui and Misbah- Ul-Islam before the Tribunal headed by Hon'ble Mr. Justice Sanjiv Khanna (Ex. A-8). The witness has also handed over nine sealed envelopes containing the Cabinet Note and other Intelligence Reports received from various Intelligence Agencies etc. in respect of the activities of SIMI.

(b) In her cross-examination by Mr. Ashok Aggarwal, Advocate, PW-42 stated that her affidavit is drafted on the basis of knowledge derived from the official records and that when she assumed the present posting i.e. Joint Secretary (Human Rights) on 6-2-2012, the notification banning the organization SIMI had already been issued. She admitted that after the constitution of the Tribunal, notices were issued to the banned organization on all the addresses furnished to the Tribunal, which were compiled from the inputs received from various sources. She further stated that she was not aware as to whether the addresses

of the banned organization SIMI were furnished to the previous Tribunals also. On being asked whether she had verified the membership of the persons to whom notices were sought to be issued by the Tribunal as members of the SIMI before the same was furnished to the Tribunal, she replied that no such verification is done in the Ministry of Home Affairs as these inputs are received from various State Governments and their intelligence and police authorities giving therein the names and addresses of the persons who are purported to be the members of the banned organization. She also stated that she was not aware if any representation has been written to the Tribunal where the applicant has claimed that he had never been associated with the banned organization in the past or even now and yet notices were being issued to him by the Tribunal. However, she denied the suggestion that the absence to compile any list of members was deliberate and was actuated only with a view to brand any person as a member of the banned organization. The witness also stated that no formal communication is sent to the States inviting their opinion as to whether the ban on a particular organization should continue or not but the inputs which are received during the course of monitoring the activities of various organizations including the banned organization furnish the requisite information to the Central Govt. to decide as to whether the ban is to be continued or not.

(c) She admitted that only narrative notes are received from the States by way of inputs but volunteered that she has produced before the Tribunal all the other documents in support of the said narrative notes. She further stated that she cannot tell as to whether the draft notification sent to the Cabinet Committee on Security along with the note was modified by the said Committee or not and volunteered that it was concurred by the Ministry of Law.

(d) On being asked whether the draft Cabinet note which was sent, contained information that the Mecca-Masjid case and Malegaon blast case which were earlier attributed to SIMI activities were subsequently found to be the handiwork of Hindu extremist organization. The witness replied that she did not remember about the same. She denied the suggestion that certain averments made in her affidavit show a bias against the banned organization. She also denied the suggestion that the present ban has been imposed on SIMI on incorrect and false information supplied to the Cabinet Committee on Security. She also denied the suggestion that the present ban on SIMI is arbitrary and unjustified and that the constitution of SIMI does not contain anything unlawful nor were its activities unlawful in any manner whatsoever. She also denied the suggestion that while seeking inputs from the State Governments, the Home Ministry impliedly asked them to recommend re-imposition of ban on SIMI and send their inputs accordingly and that SIMI ceased to exist after the first ban imposed upon it in September 2001 or that its activities were legal in any manner.



**(XII) At Madurai:**

At Madurai, the Central Government examined the following witnesses:—

1. Sh. G. Sampathkumar, Superintendent of Police, Special Division, Special Branch CID, Chennai (PW-43):

125(a). PW-43, Sh. G. Sampathkumar, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu, appeared and proved his affidavit exhibit PW-43/I. He filed the said affidavit in the capacity of Nodal Officer of Government of Tamil Nadu. Along with his affidavit he has annexed R/1 which is a certified copy of Government Letter No. SS1/200-7/2012, dated 3-4-2012 issued by the Secretary to the Government of Public (SC) Department, Government of Tamil Nadu, appointing him as the Nodal Officer.

(b) PW-43 has also annexed R/2 (colly) which is the certified copy of Magazine 'Seithi Madal' purported to be published by SIMI in the months of May and June 1999 in Tamil language with English translation of the relevant portions. The said articles were containing seditious material, as a consequence of which, a case under the relevant provisions of law was registered by the Government of Tamil Nadu and six accused persons were put to trial because of the seditious material which resulted in their conviction. He has also handed over the certified copy of the judgment passed by the Additional District and Sessions Judge, Fast Track Court No. II, Coimbatore dated 29-2-2012 convicting five accused persons in the aforesaid case (exhibits R/3A and R/3B), which is in Tamil language and the certified copy of the Judgment passed by JM-IV Court, Madurai in CC No. 214/2010 convicting one of the accused persons namely O. S. Mohideen on 28-10-2010 in connection with an offence under Section 12(b) of Passport Act, 1967 (Ex. R4/A), which is also in Tamil language. Along with the affidavit the witness has also annexed R/5 (colly) which is an invitation purported to have been issued by an organization known as Wahadat-e-Islami Hind (Wel) at Chennai on 26-2-2012 along with its English translation with regard to holding of a conclave at Chennai.

(c) The cross-examination of the witness is not done since no one appeared on behalf of Humam Ahmed Siddiqui and Misbah-UI-Islam even after giving the opportunity.

126. The Union of India, in all examined 43 witnesses in support of the Notification dated 3rd February, 2012 banning SIMI. All the witnesses (except the witness at Bangalore PW-12 who was dropped) were cross-examined extensively by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam. But their testimony has substantially remained unshaken. No fact, gross contradiction or falsity has been brought about in their cross-examination generally which would make the testimony of any witness as a suspect or unworthy of reliance. On the contrary, the Tribunal is persuaded to accept their testimony in generality accepting the complicity of the banned organization, SIMI, its sympathizers, activists, ex-office bearers and members who have been functioning

under different cover names of newly created groups of persons or associations.

127. The applicants/intervenors were called upon to lead their evidence to which the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam, stated that they did not wish to lead any evidence. Their conduct of refraining to enter the witness box and not subjecting themselves to cross-examination by UOI, especially when they have cross-examined all the witnesses produced by the Central Government, leads the Tribunal to draw a presumption against them. Reference in this regard may be made to illustration (g) to Section 114 of the Evidence Act, which reads as under:—

**"114. Court may presume existence of certain facts.—**

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

128. In addition, Section 106 of the Indian Evidence Act, 1872 lays down that the onus of proof of fact, which is especially within the knowledge of a person, is on him. The exact language of Section reads as under:—

**"106. Burden of proving fact especially within knowledge.—**When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

129. The basic rule of evidence is that 'one who asserts must prove' and then there are exceptions to this doctrine. One such exception is contained in Section 106 of the Indian Evidence Act, 1872. The basis of this exception is that if a person has the knowledge about a fact which only he could have, then onus is on him to prove that fact. The simple illustration of this would be if a person caught travelling without ticket and claiming that he has the ticket must establish that he had purchased the ticket. In such a contingency, since he is contending that he had purchased the ticket and yet does not enter into the witness box to testify himself in this regard and subject himself to cross-examination nor does he produce any other evidence, the only option with the Tribunal or the Court is to draw an adverse inference against him that in case he would have testified himself to show that he was in possession of the ticket, it would have gone against him.

130. It may be pertinent here to mention that in their reply, the applicants/intervenors have taken the plea that they are ex-office bearers of the banned organization and in that capacity, they were associated with the said organization. It is also stated by them that SIMI, having been banned in the month of September, 2001, has ceased to exist and accordingly, they have also, because of their age, ceased to be the members of the said organization. It may be pertinent here to mention that the contention of Mr. Aggarwal is that since the name of the organization was starting with the word "students", only students could be the members upto the age of, say 30-35 years, as given in the constitution of the Association. Once a person had

crossed that age by efflux of time, he ceased to be its member. It is also the plea of the applicants/intervenors that after SIMI was banned in September, 2001, it has ceased to exist although, it was stated that it never indulged in any criminal activities.

131. Further, if one examines the line of cross-examination which has been conducted on behalf of the applicants/intervenors, its entire thrust, apart from trying to discredit the witnesses, has been on the issue that SIMI is not an organization indulging in illegal activities: ever since the organization has been banned, it is no more in existence and merely because some members, office-bearers or ex-members of the said organization are indulging in illegal and unlawful activities, does not mean that the organization is in existence. On the contrary, they say that the continuation of the ban on the said organization for the last more than ten years continuously is in fact impairing their rights to freedom of speech, freedom of association etc. guaranteed to the applicants/intervenors under the Constitution of India.

132. It is really very strange that despite taking all these pleas and the stand in the line of cross-examination, both the applicants/intervenors have neither chosen to enter into the witness box themselves in support of their stand nor have they chosen to examine any witness. This clearly invites an adverse inference that the submissions made by the applicants/intervenors are incorrect. Further, as a matter of fact, the applicants/intervenors wanted to avoid unpleasant and unsavory questions which could have brought on record the correct position that despite the ban, the organization is indulging in unlawful activities like Jihad and threatening the national integrity and sovereignty.

I, accordingly, draw an adverse inference in this regard against both these applicants/intervenors. It may also be pertinent here to refer to the observation of the Apex Court in *Jamaat-e-Islami Hind (supra)*, where it has been held that the Tribunal has to go by the probabilities of evidence produced by the respective sides and decide the Reference on the basis of the same by appreciating the evidence produced by the two sides. Here is a case where the UOI produces as many as 43 witnesses (one witness at Bangalore is given up), to testify regarding the unlawful activities of the banned association SIMI in almost 16-17 States of the Union of India under the cover of its different frontal organizations and its other members, sympathizers, activists, yet no evidence is produced by the applicants to dislodge the same. Therefore, prima facie the UOI has satisfied the Reference being answered in affirmative.

**Application No.14/12—regarding deletion of name of Khair-E-Ummat Trust & Court witness CW-1's name.**

133. While the Tribunal was holding sitting in Mumbai a person claiming himself to be the Secretary of the Trust raised an objection regarding inclusion of the name of Khair-e-Ummat Trust. This application is filed on behalf of the above-named Trust objecting to the inclusion of the

name of the Trust in the background note submitted by the Central Government before this Tribunal as one of the front organizations of SIMI. The application is filed on behalf of the Trust by Mr. Haroon Ali Mozawala, General Secretary of the Trust. It may be pertinent here to mention that even the applicants/intervenors namely Humam Ahmed Siddiqui and Misbah Ul Islam also took a plea that the name of this trust has been wrongly mentioned.

134. It is averred in the application that Khair-E-Ummat Trust is a public charitable trust, duly registered with the Office of the Charity Commissioner, Greater Bombay, Navi Mumbai under the Bombay Public Trusts Act, 1955. A photocopy of the certificate of registration is annexed to the application. It is claimed in the application that the objective of the Trust is to spread social and educational awareness within the community and to impart education to under privileged and needy students. The Trust has been carrying out remarkable social, charitable and educational activities amongst the public for the last 14 years in a very peaceful, cordial and effective manner and it has never deviated from its objectives. The Trust comprises several prominent and respectable members of Muslim community as its Trustees. It is claimed that the Trust has always maintained high standards of transparency and legal accountability and it has never come to an adverse notice by any authorities whatsoever in the past. It is submitted that the background note submitted before this Tribunal regarding the Khair-e-Ummat Trust being a front organization of SIMI is totally false, frivolous, baseless and devoid of merit. The Trust, it is claimed, is, in no way, associated with any banned organizations, much less being its front/cover organization. It is submitted that the Trustees are law abiding citizens and have always functioned within the legal framework and have never indulged in any anti-national or unlawful activities.

135. The applicant Trust has appeared before this Tribunal in response to a Public Notice issued in the local newspapers at Mumbai, inviting the general public regarding the sittings of the Tribunal. The applicant Trust claims that the allegations made against them in paragraph 19 of the background note, wherein it has been averred that there are three dozen front/pseudonym organizations of SIMI which are State specific and being used for carrying out its activities, including collection of funds, circulation of literature, regrouping of cadres etc. are false. The paragraph names **Khair-e-Ummat Trust** from the State of Maharashtra as one such organization, which is being objected to by the Trust by way of this application through its General Secretary, Mr. Mojawala.

136. Mr. Mojawala has examined himself as CW1 in support of the affidavit filed by him for deletion of the name of the trust. He was cross-examined at length by the learned ASG on behalf of the UOI.

137. It would be sufficient for the purpose of this Tribunal to prima facie establish whether there is any connection between SIMI and Khair-e-Ummat Trust. For undertaking



this exercise, it is necessary to refer to some of the admissions/statements made by Mr. Mojawala during his cross-examination. In his cross-examination, he has stated that the seven Trustees of the Trust had settled this Trust and that Mr. Abdul Gani Atlaswala is the Chairman of the Trust, he himself is the Secretary-General and Mr. Ali M. Shamshi, Dr. Zikraullah, Mr. Meraj Iqbal Siddiqui, Dr. Imtiaz Ali and Mr. Ibrahim Khalil-Abidi are the other Trustees. All the seven Trustees contributed Rs.1,000 each initially towards the corpus of the Trust and that, as on 31-3-12, the balance in the account of the Trust is approximately Rs. 1,50,000.

138. During the course of his further cross-examination, Mr. Mojawala admitted that one of the Trustees, viz. Dr. Ibrahim, had association with SIMI. The witness has also stated that another Trustee, viz., Mr. Ali Shamshi, is an accused in a criminal case registered by the State of Maharashtra on account of some incidents pertaining to a public rally, where Mr. Abu Azmi, the President of Samajwadi Party, Maharashtra Unit purportedly gave some inflammatory speech, trying to create hatred amongst the groups of members of the public and as a result of which cases against all those persons who were sitting on the dias, were registered. He further admitted that Mr. Ali Shamshi was convicted by the competent court in respect of the said offence and has been sentenced to 2 years of imprisonment. He has also admitted that the services of Mr. Ali Shamshi had not been dispensed with on account of his conviction. He also admitted that the conviction of Mr. Shamshi was in respect of an offence under Sections 153A/153B of the Indian Penal Code, 1860 which prohibits a person from making inflammatory speeches which will breed tension and hatred on communal lines.

139. Mr. Mojawala, during the course of cross-examination, also admitted that a student in need of financial assistance, was given the financial assistance, subject to his memorizing the Namaj and being able to recite the Daru-e-Sharif. He further admitted that it was only after a test of the student was taken that he had memorized Namaj and recited Daru-e-Sharif that the financial assistance was released to him. He admitted that if we remember about this condition [all the applicants having memorized Namaj and recited Daru-e-Sharif], we may impose it and if we do not remember it, at times, the financial assistance may be released without this condition being imposed. Furthermore, during the cross-examination, a doubt also got created with regard to the records of receipt and expenses being maintained by the Trust. Furthermore, the witness has also made a statement during his cross-examination that the Trust has also been receiving donations from abroad and proper financial accounts have not been submitted to the authorities. The witness also admitted that the Foreign Contribution Returns (FCR) statements for the Financial Year 2006-2009 have been filed, whereas for the Financial Year 2009-2011, time has been sought to file the same. The witness also could not deny that the Muslims, to whom the financial assistance has

been given by the Trust, have been found guilty of indulging in anti-national activities. On the contrary it has been brought about in the cross-examination that there have been occasions when the students who have been given financial assistance have been found to be involved in the anti-social activities.

140. I may also notice, at this stage, the conduct of the witness while under cross-examination by the learned ASG. The witness, Mr. Haroon Ali Mohd. Mozawala gives his educational qualification only upto 9th standard but at the same time says that he can read and write English. He is aged about 72 years and he claims to be suffering from forgetfulness and old age where he finds answer to be inconvenient. Therefore, he utilizes these factors to his benefit and wherever he wants to give an answer which may favour him, he gives it readily. He also volunteers very frequently to furnish information in order to show that the Trust is not a frontal organization of SIMI for attaining its objectives. The witness has tried to hide all facts from the Tribunal but these have been sufficiently extracted in his cross-examination. He is such an intelligent witness that when a question is put to him as to what does he understand by the term 'jehad', though he admits that jehad means struggle but the illustration which he gives will clearly show how intelligent and crafty he is as he says that the very fact that he had come to Delhi from Mumbai in itself is a jehad and carrying out of any day-to-day activities in itself is also a jehad but at the same time, he says that he is not a scholar in Islam and, therefore, he cannot tell the exact meaning of the same.

141. The above noted admissions/statements by Mr. Mojawala, prima facie do not rule out the association of the Trust with SIMI. It is clearly evident that some of the trustees are not only former members of SIMI, but their activities are also akin to the objectives of SIMI. There is also no clarity brought about the persons who receive donations from the Trust. Thus, the contention of the learned Add. Solicitor General that the funds received by the Trust are channelized to the SIMI Cadres cannot be out rightly rejected. As a matter of fact he is not a trustworthy person who can be relied upon. Accordingly in view of the discussions above, IA No.14/12 filed on behalf of Khair-E-Ummat Trust through its Secretary-General, Mr. Mojawala, seeking deletion of the name of Khair-E-Ummat trust as one of the front organizations of SIMI, is rejected.

#### PUBLIC INTERVENTION AT INDORE

142. During the course of the proceedings at Indore, Madhya Pradesh, one public person Mr. Satpal Singh filed his affidavit supporting the Notification issued by the Central Government banning SIMI. He appeared in the witness box and was examined as CW-2. He proved his affidavit Ex. CW-2/1 and stated that although the SIMI organization is banned, but its activities are being carried on by 10-15 people of a particular community in the Tehsil Mehidpur with the help of outsiders. The modus-operandi

of this group is that they would usurp Government land and take its possession as Wakf land. They also try to indoctrinate people for the purpose of carrying out illegal activities of the banned organization. So far as the local administration is concerned, it is ineffective as it is not able to take any action on the illegal activities carried out by these persons.

143. He further stated that Tehsil Nagda comes in Dist. Ujjain only and the banned organization is carrying on its illegal activities in the said Tehsil also. In Ratlam Distt. also, the activities of the banned organization are existing. He further stated that in totality of the circumstances, he, as a resident of district Ujjain, in response to the public hearing, filed his affidavit to say that the ban on SIMI should continue under the Unlawful Activities (Prevention) Act, 1967 on account of their illegal and anti-national activities. He also stated that the members of banned organization SIMI are also frequently indulging in activities of enticing innocent Hindu girls into contract marriages with Muslim boys. This activity is also prevalent in the district and this is being termed as 'Love Jihad'. There is no cross examination of this witness and thus his testimony goes completely unchallenged and cannot be discarded.

#### SUBMISSIONS:

144. I have heard Mr. A.S. Chandhiok, the learned ASG on behalf of the UOI as well as Mr. Ashok Aggarwal, the learned counsel appearing on behalf of the applicants/intervenors and have also gone through the records. Both, the learned Senior Counsel have been unanimous on one aspect, that is, with regard to the law laid down by the Hon'ble Supreme Court in *Jamaat-E-Islami Hind* (supra), so far as the question of adjudicating the reference made to this Tribunal is concerned. Although there have been differences in the perception of interpretation by both of them, each one of them has tried to interpret the judgment in his own way and then has canvassed his case for upholding or rejection of the validity of the Notification banning the organization.

145. Before appreciating the evidence brought on record, it will be pertinent to refer to some aspects of the said reported judgment so far as the facts of the case and the law laid therein are concerned, with regard to the Unlawful Activities (Prevention) Act, 1967 and the Rules framed thereunder:

"The Government of India issued a notification dated 10-12-1992 under Section 3 of the Unlawful Activities (Prevention) Act declaring that the *Jamaat-e-Islami Hind*, the appellant, was an unlawful Association in view of the facts stated therein as well as other facts and materials in its possession which it considered to be against the public interest to disclose. A reference was made by the Central Government to the Tribunal for adjudication under Section 4. In the inquiry before the Tribunal, the only material produced by the Central Government was a resume prepared on the basis of some intelligence reports

and the affidavits of the Joint Secretary in the Ministry of Home Affairs' and the Joint Director, IB, both of whom spoke only on the basis of the records and not from personal knowledge. In rebuttal, affidavits were filed on behalf of the Association of persons whose acts, it was alleged, constituted the grounds for issue of the notification under Section 3(1) of the Act. The deponents of the affidavits were also cross-examined. This constituted the entire material on which the Tribunal rendered its decision that there was sufficient cause for declaring the Association to be unlawful and confirmed the notification.

On behalf of the appellant-Association it was urged that none of the grounds on which the notification was based, even assuming them to be proved, constituted "unlawful activity as defined in Section 2(f) to render the appellant an unlawful Association within the meaning of Section 2(g) of the Act; that the only material produced at the inquiry did not constitute legal evidence for the purpose inasmuch as it was, at best, hearsay, and that too without disclosing the source from which it emanated to give an opportunity to the appellant to effectively rebut the same. In rebuttal by the banned organization, there was legal evidence in the form of sworn testimony of the persons to whom the alleged activities were attributed; and that the inquiry contemplated by the Tribunal under the Act was judicial in nature, which must be in the form of adjudication of a lis giving a reasonable opportunity to the Association to rebut the correctness of allegations against it, and negative the same. On behalf of the respondent Union of India it was on the other hand, contended that the Act was, in substance, in the nature of a preventive detention law and the Tribunal, constituted under the Act, was, like an Advisory Board under the preventive detention law required to examine only the existence of material sufficient to sustain formation of the opinion of the kind required for preventive detention; that such opinion could be formed not only on the basis of legal evidence but also other materials including intelligence reports received from undisclosed sources; and that the requirement of natural justice in such a situation was satisfied by mere disclosure of the information without disclosing the source of the information."

146. The reference, which was made to the Tribunal was regarding the 'sufficiency of cause' to decide as to whether the Notification banning the organization was valid or not. The Tribunal returned a finding in favour of the UOI, holding that there was 'sufficient cause' for the Central Government to issue the Notification banning the organization. This finding of the Tribunal was set aside by the Apex Court after examination of the entire object of the law and the provisions made thereunder. The Apex Court

laid down that when the Notification is referred to the Tribunal for the purpose of adjudication of the lis between the parties as to whether there is 'sufficiency of cause' to ban the organization or not, the Tribunal has to form an opinion, of its own, on the basis of material available and on objective assessment after observing a fair procedure, to prevent any arbitrariness or violation of the principles of natural justice, and then arrive at a conclusion as to whether there is 'sufficient cause' for issuance of notification or not. While doing so, the Tribunal has to keep in view not only the material requirements of natural justice, but also the material produced in such matters as may not be confined only to 'legal evidence' in the strict sense, as has to be subjected to scrutiny in a criminal trial. Since in the said case, the Central Government had not produced any person who deposed from personal knowledge whose testimony could be tested by cross-examination nor did it disclose the identity of those persons, the Tribunal could not arrive at an objective assessment. On the contrary, it was observed that the persons to whom the alleged unlawful acts of the association were attributed, filed their affidavits denying the allegations and also deposed as witnesses to rebut the allegations. It was observed that the Tribunal had no means by which it could decide objectively, as to which of the two versions was credible. It was, thus, held that there was no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, as contemplated by the statute. Accordingly, the validity of the Notification upheld by the Tribunal was set aside by the Apex Court. While doing so, the Apex Court observed as under :—

"The definitions of 'unlawful activity' and 'unlawful association' under clauses (f) and (g) of Section 2 of the Act make it clear that the determination of the question whether any association is, or has become, an unlawful association to justify a declaration under Section 3(1) should be that "any action taken" by such association constitutes an "unlawful activity" which is the object of the association or the object is any activity punishable under Section 153-A or Section 153-B IPC. Section 3 requires an objective determination of the matter by the Central Government and Section 4 requires confirmation of the act of the Central Government by the Tribunal. The nature of inquiry contemplated by the Tribunal under Section 4(3) requires it to weigh the material on which the notification under sub-Section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of 'sufficient cause' for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material

produced by them. Credibility of the material should, ordinarily, be capable of objective assessment.' The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context. (paras 9, 10 and 11)

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The scheme of the present Act clearly brings out the distinction between this statute and the requirement under the preventive detention laws to justify the anticipatory action therein of preventive detention based on suspicion reached by a process of subjective satisfaction. The nature of the inquiry preceding the order made by the Tribunal under Section 4 of the Act, and its binding effect, give to it the characteristic of a judicial determination distinguishing it from the opinion of the Advisory Board under the preventive detention laws. (para 13)

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The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. (para 21)

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In Section 4, the words 'adjudicating' and 'decide' have a legal connotation in the context of the inquiry made by the Tribunal constituted by a sitting Judge of a High Court. The Tribunal is required to 'decide' after "notice to show cause" by the process of 'adjudicating' the points in controversy. The requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show-cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a Tribunal constituted by a sitting High Court Judge. The test of factual existence of grounds amendable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right



conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, is equally applicable in accordance with the decision in V.G. Row. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the Association to be unlawful under the Act. (paras 14, 20 and 19)

The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must be satisfied, to make the adjudication meaningful. The requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act." (paras 20)

147. It is, in the light of the aforesaid observations of the Apex Court that the evidence adduced before the Tribunal requires to be examined to conclude whether or not there is 'sufficiency of cause' in sustaining the notification issued by the Central Government under Section 3(1) of the Act. It may also be pertinent to note, at this stage, that it is not necessary that to determine the 'sufficiency of cause' the Central Government must prove, in entirety, all the grounds stated by it in the background note. Even if, one ground stated in the background note establishes the 'unlawful nature of activity of the organization', it would be 'sufficient cause' to confirm the notification under Section 3(1) of the Act.

148. I have, in Para 126, observed that the UOI has produced 43 witnesses in all who have, by preponderance of probability, established that SIMI, an association banned since September, 2001, has still been functioning in a surreptitious manner under the cover of more than 50 organizations whose names are given in the background note. The applicants have not denied involvement of any organization except one which is called as Khair-e-Ummat Trust. The non-denial of association with these organizations shows that they are being used as cover organizations. So far as Khair-e-Ummat Trust is concerned, the Secretary of the Trust has come in the witness box but in cross-examination, he has also fallen flat and has not been able to discredit the averments made in the background note of their association with SIMI or SIMI using the said Trust as a cover organization.

**Incidents which have taken place after the last notification having been issued by the UOI declaring SIMI as a banned organization.**

149. It may be pertinent here to state that the last notification was issued by the UOI on 4-2-2010. Sufficient evidence has already been brought on record by way of statements of witnesses, PW1 to PW43 to show that there is a certain amount of continuity in the activities of the banned organization in carrying out its agenda of illegal and unlawful activities in accordance with its constitution with the purpose of carrying out Jihad for the establishment of an Islamic State. This is against the very basic fabric of the Constitution of India which has a secular and democratic structure. The following are the incidents which have taken place after the issuance of the last notification which can show that sufficient material has been brought on record by the UOI thereby establishing 'sufficiency of its cause' to continue the ban on the organization.

(A) Kiran Lashkarkar, S/o Shankar Rao Lashkarkar, posted at SDOP Mundi, Distt. Khandwa, Madhya Pradesh, PW26, has proved his affidavit, Ex.PW26/1 wherein he has stated that on 13-6-2011, a secret information was received that 10-15 members/activists of the banned organization SIMI have gathered in Gulmohar Colony, Khandwa in the house of Akhil Khilji, where they were planning/conspiring to commit untoward and anti national activities/attacks. As a consequence of this, a police party was constituted and raid was conducted. From there, 10 accused persons were arrested on the spot. Their names are given in the affidavit. Seizure of various contrabands, like one pistol, three cartridges and literature which was seditious in nature was effected, Different literatures were seized, apart from fire arms.

(B) PW-41, Sanjeev Kumar Yadav, S/o Shri Nand Ji Yadav, DCP, Special Cell, Delhi has proved his affidavit, Ex.PW41/1, wherein he has stated that on 19-9-2010 at about 11:24 hours, an information was received that some unknown bikers at Gate No,3 of Jama Masjid had fired at some foreigners. The necessary Police entries were made. FIR 65/2010 was registered at PS: Jama Masjid and the investigations were taken up. The following articles were recovered from the spot:—

- (1) one loaded magazine containing 9 live cartridges.
- (2) 11 empty shells/fired cartridges.
- (3) Two distorted leads of fired cartridges.

The investigations were transferred to the Special Cell of New Delhi. On the same date, at about 1420 hours, another incident had taken place with regard to the burning of a Maruti car, bearing Registration No. DL 6-CD- 1042, Opp, Gali Guliyan, Dariba Kalan. This was also recorded vide FIR No.66/2010 at Jama Masjid. The investigations of these two FIRs led to the arrest, in December 2010, of one Tarique Anjum Ahsan who is purported to have admitted that Ahmad Siddibappa @ Imran had attacked the foreigners and exploded a bomb in a car. It has also been admitted by

Tarique Anjum Ahsan that he was introduced to Ahmad Siddibappa by one Mohd. Jasim who had admitted that Mohd. Tarique Anjum Ahsan as well as Ahmad Siddibappa were the senior members of SIMI. The attempt purported to have been made by this person is a prima facie material which shows that there are members and sympathizers who are acting as activists and continuing the illegal and unlawful activities of the banned organization which warrant to be curbed.

(C) PW-32, G. Guru Raghavendra, S/o G. Yellamanda, Inspector of Police has proved his affidavit, Ex. PW-32/1 at Hyderabad who has stated that on 22-6-2011, Syed Afaq Iqbal @ Labal @ Iqbal @ Danish @ Safi, S/o Saiyed Nurulahoda Saiyed, aged 29 years admitted that he had taken a fake SIM Card in the fake name of Manzoor Alam for himself. He has also admitted that he was in touch with one Abu Faisal, another activist of SIMI whom he had received at Hyderabad and made arrangement for his residence at Gayatri Hills, apart from staying at his residence on one of the days. He has further stated that he was in touch with Safdar Nagori, former Secretary as well as President of SIMI who was intending to carry out Jihad in India. It was also established that some seditious material in the form of books was also handed over to him. The testimony of this witness has remained undemolished during the cross-examination.

(D) PW-9, Sh. Swapan Banerjee Purnapatra, S/o Late Kanai Lal Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, West Bengal, 13 Lord Sinha Road, Kolkata has proved in his affidavit Ex. PW-9/A that on 17-11-2010 SIMI Activists collected Zakat (donation) from Khidirpur, Metiabruz, Park Circus, Kolkata, Hooghly, Howrah, Malda and Murshidabad District of West Bengal which was ostensibly meant for raising funds to meet expenditure of court cases relating to the ban on the outfit.

(E) PW-43, G. Samphat Kumar, S/o Sh. Thiru K. Guruswamy, Suptd. of Police, Special Division, Special Branch, CID, Chennai, Tamilnadu has proved his affidavit, wherein he has stated that SIMI activists are acting under the banner of Wahdat-E-Islami Hind (Wei) and are conducting meetings/classes, symposiums/seminars and interactions with their Kerala counterparts, etc. They conducted one such seminar at Chennai on 26-02-2012 titled "Lesson to be learnt from the life of Prophet Mohammed" in which Ziauddin Siddique, Secretary of Wahdat-E-Islami Hind also participated. The real object of the meeting was to promote the activities of Wahdat-E-Islami Hind, which is a front organization of SIMI. To substantiate the same, he has enclosed the certified copy of the invitation in Tamil and English as Annexure R/5 (Colly) to his affidavit.

(F) PW-24, Mr. Sohanpal Singh Chaudhary, has proved in his affidavit that on 27-5-2011, one Bherulal Tank, a local journalist of the newspaper Swadesh, was fired upon and suffered bullet injuries in his stomach, chest and back, consequent to which, FIR no. 112/11 was registered against seven accused persons. One of the accused, Abu Faizal, in

his statement under Section 161 CrPC stated that he was associated with members of SIMI. He, along with other persons had conducted dacoity in Mannapuram Gold Finance Company, Bhopal in October, 2011. He also stated that in May, 2011, they had conspired to assassinate Bherulal Tank and in pursuance to their motive of killing him, had fired gunshots on him. The other accused persons have also reiterated the incidents of dacoity and conspiracy to murder Bherulal Tank in their respective statements.

(G) PW-25, Mr. T.S. Baghel, has proved in his affidavit that the accused persons had conducted bank robbery which took place on 01-06-2010 at State Bank of Indore, Branch Pipalmandi, consequent to which FIR was registered. In the chargesheet filed on 14-12-11, in respect to the said FIR, two Cassettes of SIMI closed in a pink plastic cover were recovered from the accused Mohd Sajid on 29-9-11. In the Panchanama of the accused persons in the said FIR, the possession of the cassettes of SIMI as well as their involvement in bank robberies and other SIMI operations was stated.

(H) PW-16, Mr. Suresh Digambarrao Deshpande, has proved in his affidavit that on 22-8-2011, one Haroon Rashid was arrested for possession of fake Indian currency notes. In his statement under 161 Cr PC, he stated his association with SIMI and the activities carried out by the banned organization. He also revealed about other two active members of SIMI namely Asrar Ahmad and Azhar ul Islam, consequent to which, they were also arrested. In their statements also, they revealed about their association with SIMI and the unlawful activities carried by the organization even after the ban imposed upon it.

(I) PW-20, Mr. Mahendra Tarnekar, has proved in his affidavit that certain persons, the names of whom are given in the affidavit, were active members of SIMI and they had conspired to kill the Judges of Lucknow Bench of the Allahabad High Court, who had given the Ram Janam Bhumi- Babri Masjid verdict. They had also organized a training camp in Raipur, Chattisgarh in May, 2011 in pursuance of the same. They also revealed about their other activities which included dacoity, conspiracy to assassinate the Jailor of the Jail where prominent SIMI activist, Safdar Nagori was lodged with other such activists.

150. While the Tribunal has tried to confine its enquiry to the cases registered after the report of the last Tribunal, however, the past conduct of the organization will also need to be looked into, to a limited extent, for assessing the sufficiency of the cause.

151. The Central Government has placed on record the reports of the previous Tribunals, which have been examined. These reports, based on evidence led in respect of cases registered since the ban on SIMI in September, 2001, establish consistent and continuous activities by SIMI cadres, which are intended or support any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incite any



individual or group of individuals to bring about such cession or secession or which disclaim, question, disrupt or are intended to disrupt the sovereignty and territorial integrity of India or which cause or are intended to cause disaffection against India. The said activities have continued despite the ban on the organization from September, 2001 onwards, through the named front organizations. The wide-spread nature of activities spread across almost the entire country, causing incident of bomb blasts, extortion, robberies, murders, etc. through a network of activity, in pursuit of a fundamentalist agenda, contrary to the Constitution and established law of the land, cannot be allowed to exist and grow.

152. The evidence led before the Tribunal has succinctly brought on record the commission, nature and aim of the activities indulged in by SIMI cadres, which are not only anti-national, but are capable of causing social unrest.

153. The incidents brought on record are very serious in nature and the persons and organizations responsible for the same, viz., SIMI and its cadres, need to be prevented by all possible means, including the invocation of Unlawful Activities (Prevention) Act, 1967, from pooling together their resources for indulging in activities, which are 'unlawful' within the meaning of 'unlawful activity' as defined in Section 2(o) of Unlawful Activities (Prevention) Act, 1967. It may also be appropriate for the Central Government to have a closer scrutiny of the affairs of the front organizations of SIMI so far as it prevents their involvement and support for the activities of SIMI.

#### CONCLUSION:

154. In view of the aforesaid discussion, the following points/conclusions emerge:—

- (i) SIMI has been banned as an unlawful Association within the definition of Section 2(p) of the Act as the Association and its former office bearers, members, sympathizers and activists are carrying on unlawful activities within the definition of Section 2(o) of the Act in a clandestine manner by using the cover of different names of the associations in different States purporting to give a false impression to the public that these cover organizations are working for social upliftment of members of the Muslim community whereas actually it is regrouping; recruiting new members and radicalizing them by indoctrination to wage the 'Jehad', to establish Islamic rule in the country and thereby destroy the secular fabric of the country.
- (ii) The Supreme Court in *Jamaat-E-Islami Hind* case (supra) has authoritatively laid down the scope of inquiry, methodology and quantum of proof required to uphold the validity of the declaration issued by Central Government. It has been held in the said judgment as under:
  - (a) The inquiry or adjudication is not in the nature of a 'criminal trial' but it is an 'inquiry' in which

rules of evidence in stricto sensu are not applicable. The provisions of Evidence Act, 1872 are to be followed as far as practicable. Further, what is admissible in the inquiry by the Tribunal is not only legal evidence but even the material which is brought on record by the Union of India. It is observed that the principles of natural justice and fair play have to be followed.

- (b) The inquiry is in the nature of adjudication of a lis between two parties, that is, Union of India and the banned organization SIMI. The ex-office bearers of SIMI, H.A. Siddiqui and Misbha-UI-Islam are deemed to be representing the banned organisation. The Tribunal has to weigh the material produced by both the sides and decide its credibility and arrive at its objective assessment whether or not there is 'sufficient cause' for declaring the organization as an 'unlawful association'. The material produced to support the declaration must outweigh the material against it on the principles of greater probability.
- (c) The Tribunal is not to act as a mere rubber stamp for certification of the action of the Union of India.
- (iii) The Union of India has given a number of grounds for declaring SIMI as an 'unlawful association' which has been indulging in 'unlawful activities' through its former officer bearers, former members, sympathizers and activists.
- (iv) The Union of India has produced 43 witnesses, in support of its action of banning the organization SIMI vide notification No. S.O.224(E), dated 3rd February, 2012. Only one witness Mr. Jayant Vasudev Shetty (PW-12) was examined partially at Bangalore and thereafter dropped. The testimony of these witnesses has shown continuity in the unlawful activities of the banned organization through its activists. Prominent among them is regrouping, recruiting fresh members, widening their network, indulging in terrorists activities, manufacturing and planting of bombs, taking innocent lives and challenging the lawful authority of the State.
- (v) Some salient features of the evidence brought on record, clearly establish, by preponderance of probability or what is called by the Apex Court as objective assessment, that SIMI was banned for the first time in September, 2001, which ban was subsequent thereto upheld by Tribunal headed by Hon'ble Mr. Justice S.K. Aggarwal. Since the ban under the Act is only for two years, the subsequent bans imposed by the Union of India were upheld by the Tribunals headed by Hon'ble Mr. Justice R.C. Chopra, Hon'ble Mr. Justice B.N. Chaturvedi and Hon'ble Mr. Justice Sanjiv Khanna. In between

Hon'ble Ms. Justice Gita Mittal held that the organization SIMI still exists but the Tribunal held that the grounds, on which the notification was issued by the Union of India were deficient. This order of Hon'ble Ms. Justice Gita Mittal was stayed in a Special Leave Petition preferred by the Union of India before the Supreme Court and the matter stands admitted. The net result of this stay was that the ban on the organization continued for a period of two years from the date of issue of the notification till the time the new notification came into existence in 2010. The said notification banning SIMI was upheld by the Tribunal headed by Hon'ble Mr. Justice Sanjiv Khanna.

- (vi) All these notifications are public documents within the definition of Section 74 and have been proved in accordance with Section 78(i)(a) of the Evidence Act, 1872 and the Tribunal has taken judicial notice of these notifications as a formal proof of the document. Further, as the proceedings before the Tribunal are judicial proceedings, therefore, the record of the notification issued by the Union of India pursuant to the upholding of the earlier ban are presumed to be correct and duly proved.
- (vii) The evidence which has been brought before this Tribunal has proved by preponderance of probability that though SIMI has been banned in September, 2001 but despite the ban, the organization has been functioning on the ground, carrying out its activities overtly or covertly through its ex-office bearers, members, sympathizers. The prominent among them are the names of different persons who are very active in their own states. Most of the witnesses have brought out in their statements, their agenda of converting India into an Islamic State. To illustrate this, Safdar Nagori's name has surfaced from Madhya Pradesh who is a very prominent SIMI activist and Saquib Nachan's name has surfaced from Maharashtra, etc. as prominent operatives of SIMI in that area. He is also facing trial in some of the cases pertaining to terrorist activities.

Similarly, in West Bengal, an activist by the name of Tayedul Islam, is active; in Hyderabad, Maulana Naseeruddin and Abdul Rehman are active sympathizers working for SIMI and in Rajasthan, Sajid Saharai. All these operatives are in touch and in league with each other and indulging in unlawful activities within the definition of Section 2(o) of the Act by recruiting, training, motivating and indoctrinating young minds to indulge in terrorist activities, making and planting bombs, taking innocent lives, gather firearms and for this purpose, even commit robberies and dacoities.

- (viii) The very aims and objects of SIMI, according to the Constitution of the organization, is to establish an Islamic State. In fact, the oath (Ahadnama, Bara-e-

Ikhwan/akhwat) administered at the time of enrolment as an Ansar is in the nature of a promise that he would work for establishment of Islamic System in his country. The relevant part of the oath administered to an Ansar reads as under :

"I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be" CW-1, Haroon Mozawala also admitted in Court that before a student is given scholarship he is required to memorize certain religious prayers and teachings which only showed that the trust was breeding fanatics.

- (ix) The very purpose of establishing an Islamic State is against the preamble of the Constitution of India, which declares India as a secular State. On the contrary, the action of the SIMI and its various front organizations is to show intolerance towards other religions, breed communal hatred and create social tension and consider themselves and the Muslim community in general as the wronged community on account of Babri Masjid demolition and to change the same.
- (x) It has come on record that there are nearly 52 front organizations, under whose cover the anti-national activities are being carried out by SIMI. Even though 52 front organizations are named, only one organization/trust came forward to challenge their inclusion as a front organization of SIMI in the background note. The two ex-office bearers, H.A. Siddiqui and Misbah-ul-Islam, appearing as surrogate persons for the banned organization also in their reply, have not challenged this except in the case of one organisation, i.e., Khair-E-Umma. This trust was represented by an elderly gentleman named Haroon Ali Mohd. Mozawala, General Secretary of the Trust, who was examined as CW-1. In his cross-examination, he was established to be a person, whose own son-in-law, settled in Saudi Arabia, who is funding the trust which was apparently giving scholarship to the students of the community for higher studies and for medical treatment of patients, but these students were found to be highly indoctrinated and motivated using the facilities of Hostel and the cover of being students to actively indulge in unlawful activities and furthering the objectives of the banned organization so as to create Islamic rule by use of force, indoctrination and misinterpreting the objectives of the pious religion. Some of the students, who were given scholarships, were arrested for being involved in terrorist activities. Even the trustees of this Trust were found to be ex-activists of SIMI and, therefore, all these trustees and the Trust itself was rightly named as front cover organization for SIMI to indulge in illegal activities.

(xi) The appearance of H.A. Siddiqui and Misbah-Ul-Islam is for the banned organization and not in their individual capacity as aggrieved persons. This is a surrogate representation by SIMI.

155. In view of the evidence brought on record and the aforesaid discussion, the only conclusion possible is that SIMI and its cadres have continued to indulge in activities which are detrimental and prejudicial to the national interest and have the potential of posing a threat to the national integrity and sovereignty of the nation. SIMI cadres have continued to indulge in such anti-national activities by forming other front organization, like Indian Mujahiddin, Wahadat-e-Islami, etc. It has continued to recruit and enroll fresh members in their cadres. The evidence brought on record and the cases registered after the report of the last Tribunal overwhelmingly prove that the organization is continuing to work surreptitiously, posing a threat and challenge to the sovereignty of the Indian nation. This is also established through the testimony of witnesses examined in Kerala where it has been brought on record that the sympathizers/activists of this banned organization have supported the so called Jihad of Muslims of Kashmir against the alleged forced occupation of Kashmir where two operatives from Kerala got killed, even when they fully know that majority of Muslims in Kashmir are peace loving and have democratically elected their own representatives to rule them. Further, these persons have scant respect for innocent women lives and know the fact that the State of Jammu & Kashmir is an integral part of India.

156. The reply filed by H.A. Siddiqui and Misbah-ul-Islam, though as individuals, is taken to be a surrogate reply filed by and on behalf of the banned organization, SIMI. The averments made in the said reply that SIMI, after the first ban, has ceased to exist or that it is not a criminal organization or that its ex office bearers or ex members are not indulging in any unlawful activities or terrorist activities or committing offences of waging a war, spreading hatred and creating communal tension, is not established by even an iota of evidence. However, the fact that SIMI is not in existence and not indulging in clandestine and unlawful activities is not established by any credible evidence as these two applicants/intervenors have neither chosen to appear in the witness box to support the averments made in their reply nor adduced any evidence in this regard. Therefore, in terms of the judgment of the Hon'ble Supreme Court in jamaat-e-islami Hind case (supra), the evidence, having not been produced by the applicants/intervenors or the banned organization, leads to the only irresistible conclusion, on the basis of preponderance of probabilities after assessing the material produced by the UOI, that there is 'sufficient cause' to declare SIMI as an unlawful association, as it is indulging in unlawful activities. For arriving at this conclusion, even the Union of India and as many as 8 States have furnished confidential information which has been also perused by the Tribunal except in the case of Gujarat as it was not accompanied with English translation.

157. For the foregoing reasons, I, in pursuance to the statutory reference made to the Tribunal under Section 4 of the Act, hold that the Central Government has been able to establish that there is 'sufficient cause' for declaring SIMI as an unlawful association and accordingly, confirm the declaration made in the Notification No. : S.O.224(E) dated 3.2.2012 issued by the Central Government under Section 3(1) of the Act.

#### SUGGESTIONS :—

158. Although this may not be strictly within the domain of the reference made to the Tribunal by the Central Government, however, while dealing with the reference, the Tribunal feels that it must unhesitatingly bring to the notice of the Union of India certain facts for its consideration, which are detailed as under:—

(i) So far as the Unlawful Activities (Prevention) Act, 1967 is concerned, it prescribes that the ban which may be imposed by the Central Government in terms of Section 3 of the Act, can be valid for a period of two years, within which it has also to be approved by the Tribunal, duly constituted under Section 4 of the Act by making a reference within thirty days of the promulgation of the said notification. The said period of two years, fixed by the statute, is grossly inadequate and needs to be increased to a minimum period of five years. This is on account of the fact that the notification having been issued by the UOI banning the particular organization and the reference having been received by the duly constituted Tribunal, it entails lot of time and expenditure of the constitutional as well as public functionaries at different levels, in different States, for the purpose of recording of evidence and deciding the validity of the notification. Since the Tribunal is headed by a Judge of the High Court, the normal adjudicatory work assigned to the Judge is also impacted, resulting in the delay of disposal of normal cases also. Therefore, the Tribunal is of the view that the validity of the period of notification so issued under Section 3 of the Unlawful Activities (Prevention) Act, 1967, subject to its being upheld by the duly constituted Tribunal, should be for a minimum period of five years. So far as revocation or cancellation of the ban is concerned, it can be done even at a shorter period if the situation so warrants. The Union of India on representation by the aggrieved party or suo motu can always do the same in pursuance to Section 6(2) of the Act.

(ii) During the course of recording of the evidence, the Tribunal has interacted with a number of Muslims across the board as ex members/office bearers of the banned organization as well as the persons belonging to other religious minorities and linguistic groups. As no religion preaches violence and taking the lives of innocent people, the pious religion of Islam is also not preaching to the contrary. Further, by and large all Muslims living in India are nationalists who have abiding faith in the rule of law and the Constitution.

except the fringe elements, especially indoctrinated by the Muslim fundamentalists and extremists who propagate establishment of a theocratic and Islamic State. It is the abject poverty and the lack of employment in the community which is driving some of the members to carry out these illegal and unlawful activities in the name of religion by associating themselves with the banned organization. To give an illustration in this regard, it has come in evidence that certain accused persons, who were doing the zari work and earning their livelihood and maintaining their families, on account of poor financial conditions, were allured by the fundamentalists in the name of Jihad and then led to the path of crime under the cover of these banned organizations. This indoctrination is not only confined to illiterate and the uneducated, but has even fascinated highly qualified doctors, engineers as well as technocrats who are computer savvy. Efforts must be made, by involving the sane elements, leaders, religious and otherwise, of the community and all others who can be of assistance, to isolate these misguided youth who can be thereafter be brought into the mainstream. At the same time, the State Authorities need to deal squarely and firmly with the incorrigible elements so that there is a definite deterrent on the young and impressionable minds who adopt the path of crime in the name of religion and take innocent lives.

- (iii) Another aspect which has been noticed is that the banned organization is functioning all over the country in the guise of its other frontal organizations. Most of the names of such organizations are also giving an impression that neither they have anything to do with the interests of the Muslim community nor with the Islam. To illustrate this, there are frontal groups by the name of Secular Democratic Front of India. These types of names are a misnomer and misleading, in as much as they do not give any prima facie indication that the organization is an unlawful association and is indulging in illegal and unlawful activities. Similarly, the accused persons with criminal tendencies and such bent of mind are having Muslim names with a number of alias/nicknames which ultimately culminates into a Hindu name, like Raju, as has happened in one case, thereby giving an impression as if an operative is not only a member of the minority community, but also is a member of some other community. This trend needs to be arrested at an early date and such organization and individuals need to be identified and their affairs looked into.

Justice V. K. SHALI, Chairman  
Unlawful Activities (Prevention) Tribunal

August 1, 2012

[F. No. 14017/13/2012-NI-III]  
RASHMI GOEL, Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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अधिसूचना

नई दिल्ली, 1 फरवरी, 2014

**का.आ. 299(अ).**—जबकि स्टूडेन्ट्स इस्लामिक मूवमेंट आफ इंडिया (यहां इसके बाद 'सिमी' के रूप में निर्दिष्ट) ऐसे क्रियाकलापों में संलिप्त रहे हैं जो देश की सुरक्षा के लिए खतरनाक हैं और जिनमें देश की शांति एवं सांप्रदायिक सौहार्द को भंग करने और धर्मनिरपेक्ष ढाँचे को छिन्न-भिन्न करने की शक्ति है;

और जबकि, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जो यहां इसके बाद 'अधिनियम' के रूप में निर्दिष्ट) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने अधिसूचना संख्या क्रमशः (i) का.आ. 960 (अ), दिनांक 27 सितम्बर, 2001; (ii) का. आ. 1113 (अ), दिनांक 26 सितम्बर, 2003; (iii) का. आ. 191 (अ), दिनांक 8 फरवरी, 2006; (iv) का. आ. 276 (अ), दिनांक 7 फरवरी, 2008 और (v) का. आ. 260 (अ) दिनांक 5 फरवरी, 2010 और (vi) का.आ. 224(अ) दिनांक 3 फरवरी, 2012 द्वारा सिमी को एक विधिविरुद्ध संगठन घोषित किया;

और जबकि, यह निर्णय करने के प्रयोजनार्थ कि सिमी को विधिविरुद्ध संगठन घोषित करने का पर्याप्त कारण है या नहीं, धारा 5 के अनुसार विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जो यहां इसके बाद 'अधिकरण' के रूप में निर्दिष्ट) गठित किया गया और अधिकरण ने अपने आदेशों की अधिसूचना संख्या क्रमशः (i) का.आ. 397 (अ) दिनांक 8 अप्रैल, 2002; (ii) का. आ. 499 (अ), दिनांक 16 अप्रैल, 2004; (iii) का. आ. 1302 (अ), दिनांक 11 अगस्त, 2006; और (iv) का.आ. 1990 (अ) दिनांक 12 अगस्त, 2010 और (v) का.आ. 1745(अ) दिनांक 6 अगस्त, 2012 द्वारा इस घोषणा की पुष्टि की है;

और जबकि, अधिकरण ने इसके दिनांक 1 अगस्त, 2012 के आदेश द्वारा सिमी को विधिविरुद्ध संगठन घोषित करने वाली दिनांक 3 फरवरी, 2012 की अधिसूचना स. का. आ. 224 (अ) की पुष्टि की है;

और जबकि विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा (6) की उप-धारा (1) के अधीन प्रतिबंध की अवधि, 2 फरवरी 2014 को समाप्त हो जाएगी;

और जबकि केन्द्रीय सरकार की अन्य बातों के साथ-साथ निम्नलिखित आधारों पर यह राय है कि सिमी ऐसे क्रियाकलापों में संलिप्त है जो देश की अखंडता एवं सुरक्षा के लिए खतरनाक हैं; नामतः :—

- (क) भारतीय दण्ड संहिता की धारा 147, 148, 324, 153(क) जो धारा 149 के साथ पठित है और आपराधिक कानून (संशोधन) अधिनियम, 1932 (1932 का 23) की धारा 7(1) के अंतर्गत मामला अपराध सं. 126/2012, आरोपी जावेद खान और 17 अन्य जिसमें 3-पूर्व-सिमी संवर्ग शामिल हैं, के विरुद्ध उनके द्वारा मदनापेट क्षेत्र में कुरमागुडा पर हनुमान मंदिर को अपवित्र करने के आरोप के परिणामस्वरूप **भड़की** साम्प्रदायिक घटना के संबंध में पीडित एम. शिवा शंकर रेड्डी पर धावा बोलने और उसे पीटने के सम्बंध में सैयदाबाद पुलिस स्टेशन, हैदराबाद, आन्ध्र प्रदेश में पंजीकृत है।



- (ख) भारतीय दण्ड संहिता की धारा 147, 148, 324, 153(क) जो धारा 149 के साथ पठित है और आपराधिक कानून (संशोधन) अधिनियम, 1932 (1932 का 23) की धारा 7(1) के अंतर्गत मामला अपराध सं. 128/2012, आरोपी जावेद खान और 17 अन्य जिसमें 3-पूर्व-सिमी संवर्ग शामिल हैं, के विरुद्ध उनके द्वारा हिंदू नेताओं बंगारी प्रकाश और अन्यों पर हमला करने और उनके वाहन को क्षति पहुंचाने पर जब वे मदनापेट क्षेत्र में करुमागुडा में हनुमान मंदिर को अपवित्र करने के परिणामस्वरूप भड़की साम्प्रदायिक हिंसा के संबंध में सैयदाबाद क्षेत्र का दौरा कर रहे थे, के संबंध में सैयदाबाद पुलिस स्टेशन, हैदराबाद, आन्ध्र प्रदेश में पंजीकृत है।
- (ग) भारतीय दण्ड संहिता की धारा 147, 148, 427, 153(क) जो धारा 149 के साथ पठित है और आपराधिक कानून (संशोधन) अधिनियम, 1932 (1932 का 23) की धारा 7(1) के अंतर्गत मामला अपराध सं. 130/2012, आरोपी जावेद खान और 17 अन्य जिसमें 3-पूर्व-सिमी संवर्ग शामिल हैं, के विरुद्ध उनके द्वारा मदनापेट क्षेत्र में करुमागुडा में हनुमान मंदिर को अपवित्र करने के परिणामस्वरूप भड़की साम्प्रदायिक हिंसा के संबंध में सैयदाबाद के श्रीनिवास रेड्डी पर हमला करने और उसकी कार की खिड़कियों के शीशे क्षतिग्रस्त करने के संबंध में सैयदाबाद पुलिस स्टेशन, हैदराबाद, आन्ध्र प्रदेश में पंजीकृत है।
- (घ) भारतीय दण्ड संहिता की धारा 147, 148, 435, 153(क) जो धारा 149 के साथ पठित है और आपराधिक कानून (संशोधन) अधिनियम, 1932 (1932 का 23) की धारा 7(1) के अंतर्गत मामला अपराध सं. 133/2012, आरोपी जावेद खान और 17 अन्य जिसमें 3-पूर्व-सिमी संवर्ग शामिल हैं, के विरुद्ध उनके द्वारा मदनापेट क्षेत्र में करुमागुडा में हनुमान मंदिर को अपवित्र करने के परिणामस्वरूप भड़की साम्प्रदायिक हिंसा के संबंध में एक व्यक्ति डी. राहुल सिंह पर ए.सी.पी. कार्यालय, मालाकपेट के नजदीक पत्थर से हमला करने के संबंध में सैयदाबाद पुलिस स्टेशन, हैदराबाद, आन्ध्र प्रदेश में पंजीकृत है।
- (ङ) मामला अपराध सं 24/2013, रनीप पुलिस स्टेशन, अहमदाबाद, गुजरात में भारतीय दंड संहिता की धारा 224, 120ख, 511 के अंतर्गत और कारागार अधिनियम, 1894 (1894 का 9) की धारा 45 के अंतर्गत बम विस्फोट मामले में 14 विचारणाधीन आरोपियों के विरुद्ध इकट्ठा होकर षडयंत्र करने और वाटर टैंक के नीचे जमीन खोदने और न्यायिक हिरासत के प्रतिबंधित क्षेत्र में 10 से 12 फीट लम्बी सुरंग खोदने के कारण दर्ज किया गया। आरोपियों ने साबरमती केन्द्रीय कारागार के भीतर एक सुरंग खोदी और जेल से भागने का प्रयास किया।
- (च) मामला अपराध सं. 17/2013, डी0सी0बी0 पुलिस स्टेशन, अहमदाबाद, गुजरात में भारतीय दण्ड संहिता की धारा 217, 218, 201, 120(ख) के अंतर्गत 9 आरोपियों जिसमें जेल अधिकारी शामिल हैं, के विरुद्ध जेल से भागने के लिए साबरमती केन्द्रीय कारागार के सुरंग खोदने वाले कैदियों की सहायता करने और उन्हें बचाने के कारण दर्ज किया गया।
- (छ) मामला अपराध सं. 209/2013, कोतवाली पुलिस स्टेशन, खण्डवा, मध्य प्रदेश में आरोपी के विरुद्ध भारतीय दण्ड संहिता की धारा 124(क) और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13 के अंतर्गत पुराने मामला अपराध सं. 237/2006 जो कोतवाली पुलिस स्टेशन, खण्डवा, मध्य प्रदेश में भारतीय दण्ड संहिता की धारा 153(क), 147, 452, 336 के अंतर्गत दर्ज में भारतीय दण्ड संहिता की धारा 124(क), 295(क) और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13 को शामिल करने के लिए दर्ज किया गया।
- (ज) मामला अपराध सं. 541/2013, कोतवाली पुलिस स्टेशन, खण्डवा मध्य प्रदेश में 6 आरोपियों के विरुद्ध भारतीय दण्ड संहिता की धारा 395, 307, 353, 332 और इसके अतिरिक्त विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16 के अंतर्गत दर्ज किया गया। सभी आरोपी पूर्व-सिमी सदस्य हैं और 1 अक्टूबर, 2013 को खण्डवा जेल, मध्य प्रदेश से भागे हुए हैं।
- (झ) मामला अपराध सं. 542/2013, कोतवाली पुलिस स्टेशन, खण्डवा मध्य प्रदेश में 6 आरोपियों के विरुद्ध भारतीय दण्ड संहिता की धारा 224 और इसके अतिरिक्त विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16 के अंतर्गत दर्ज किया गया। सभी आरोपी पूर्व-सिमी सदस्य हैं और 1 अक्टूबर, 2013 को खण्डवा जेल, मध्य प्रदेश से भाग गए।
- (ञ) मामला अपराध सं. 2/2012, ए.टी.एस., कालाचौकी पुलिस स्टेशन, मुम्बई, महाराष्ट्र में 5 आरोपियों के विरुद्ध भारतीय दण्ड संहिता की धारा 153(क) 120(ख), 468, 477 जो विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 16, 18 और शस्त्र अधिनियम, 1959 की धारा 3, 25 के साथ पठित हैं, के अन्तर्गत दर्ज किया गया। आतंकवाद विरोधी स्कवैड, महाराष्ट्र के औरंगाबाद यूनिट को सूचना मिली कि एक अबरार बनाम मुन्ना बनाम अब्दुला बनाम इस्माइल जो प्रतिबंधित आतंकवादी संगठन अर्थात् स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी), इण्डियन मुजाहिदीन (आई.एम.) के सक्रिय सदस्य हैं और वर्ष 2008 में अहमदाबाद क्रमिक विस्फोट मामले में भगौड़ा था, आतंकवाद के कृत्य हेतु औरंगाबाद शहर में अपने साथियों से मिलने वाला था। औरंगाबाद के आतंकवाद विरोधी स्कवैड के अधिकारियों ने सिमी के भागे हुए सदस्य को गिरफ्तार करने के लिए जाल बिछाया। प्रचालन के दौरान संदिग्ध व्यक्ति ने पुलिस दल पर फायर किया, जिन्होंने स्व-रक्षा में उन पर जवाबी हमला किया और अंत में एक संदिग्ध व्यक्ति अर्थात् खलील बनाम अज़हर कुरेशी की मृत्यु हो गई और दो संदिग्ध व्यक्ति अर्थात् (1) मोहम्मद अबरार खान बनाम मुन्ना बाबू खान और (2) शेखर बनाम खलील अकिल खिलजी पकड़े गए। गोलीबारी की घटना और संदिग्धों की गिरफ्तारी के अनुसरण में भारतीय दण्ड संहिता की धारा 307, 333, 335, 336, 338, 352, 353 और 34 जो शस्त्र अधिनियम की धारा 3, 25, 27 और मुम्बई पुलिस अधिनियम की धारा 135 के साथ पठित है, के अंतर्गत एक संज्ञेय अपराध वेगमपुरा पुलिस स्टेशन में सी.आर. सं. 25/2012 दर्ज किया गया।

उपर उल्लिखित आरोपित व्यक्तियों की गहन जांच के अनुसरण में, दिनांक 27.3.2012 को आतंकवादी विरोधी स्कवैड, अकोला यूनिट ने बुलदाना जिले में चिखाली और सेलानी गांव में रेड की और (1) अखिल यूसुफ खिलजी और (2) जाफर हुसैन, इकबाल हुसैन कुरेशी को नज़रबंद किया। रेड के दौरान और इन आरोपितों के घर की तलाशी के दौरान 1 फॉयर आर्म, 5 जीवन्त कारतूस, उत्तेजक साहित्य जो प्रतिबंधित आतंकवादी संगठन अर्थात् सिमी से संबंधित था, पकड़ा गया।

- (ट) मामला अपराध सं. 47/2012, वाशी रेलवे पुलिस स्टेशन, मुम्बई, महाराष्ट्र में भारतीय दण्ड संहिता की धारा 143, 147, 149, 327, 353, 332 के अंतर्गत 10 आरोपियों के विरुद्ध दर्ज किया गया जो गिरफ्तार किए गए थे जिनमें से एक आरोपी नामतः इकबाल उर्फ पप्पा शेख पुत्र गुलाम रसूल शेख एक सिमी कार्यकर्ता है। मामला गोवांडी रेलवे स्टेशन पर दंगे की घटना में दर्ज किया गया जिसमें एक बौद्ध संत को बेइज्जत किया गया और भीड़ द्वारा हमला किया गया जो दिनांक 11.8.2012 को अजाद मैदान में एक आंदोलन में भाग लेने जा रही थी। पुलिस कार्मिक की हैंडी-कैम भीड़ द्वारा क्षति ग्रस्त की गई। पुलिस ने उपरोक्त उल्लिखित सिमी कार्यकर्ता इकबाल उर्फ पप्पा शेख पुत्र गुलाम रसूल शेख को उसके सहयोगियों सहित दिनांक 23.8.2012 को पकड़ लिया।
- (ठ) मामला अपराध सं. 131/2012, निजामपुरा पुलिस स्टेशन, ठाणे शहर, महाराष्ट्र में भारतीय दण्ड संहिता की धारा 307, 120(ख) जो शस्त्र अधिनियम, 1959 की धारा 3, 25, 27 के और एम.सी.ओ.सी. अधिनियम 1999 की धारा 3(1)(ii), 3(2), 3(4) के साथ और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16(1) (ख) के साथ पठित है, के अंतर्गत 5 आरोपियों (पूर्व-सिमी कर्ताओं) के विरुद्ध हत्या के प्रयास हेतु दर्ज किया गया।
- (ड) मामला अपराध सं. 120/2012, रामदास पेठ पुलिस स्टेशन, अकोला, महाराष्ट्र में भारतीय दण्ड संहिता की धारा 143, 147, 148, 149, 324, 307, जो शस्त्र अधिनियम की धारा 4, 25 के साथ पठित है, के अंतर्गत 10 आरोपियों जिसमें 2 सिमी कार्यकर्ता शामिल है के विरुद्ध विधि विरुद्ध सभा करने और शिकायतकर्ता और गवाहों पर मृत्युकारित हथियारों द्वारा प्रहार करके हत्या के प्रयास हेतु मामला दर्ज किया गया।
- (ढ) मामला अपराध सं. 15/2013, जलगांव जमोद पुलिस स्टेशन बुलदाना, महाराष्ट्र में एक सिमी कार्यकर्ता सहित 4 आरोपियों के विरुद्ध भारतीय दंड संहिता की धारा 324, 336, 504 के अंतर्गत शिकायतकर्ता पर पत्थर से प्रहार करके सिर में चोट लगाने के लिए मामला दर्ज किया गया।
- (ण) विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 और 13 के अंतर्गत पुलिस स्टेशन शाजापुर, मध्य प्रदेश में दर्ज मामला अपराध सं. 684/2001 में जे.एम.एफ.सी. शाजापुर न्यायालय द्वारा दो सिमी कार्यकर्ताओं को एक वर्ष के कारावास और प्रत्येक आरोपी को 500 रु. के जुर्माने से दंडित किया गया।
- (प) विरुद्ध क्रियाकलाप (निवारण) अधिनियम 1967 की धारा 10 के अंतर्गत पुलिस स्टेशन शिवानी, मध्य प्रदेश में दर्ज मामला मामला सं. 423/2001 एक में जे.एम.एफ.सी. शिवानी न्यायालय द्वारा एक कार्यकर्ता को एक वर्ष के कारावास और 500 रु. के जुर्माने का दण्ड दिया गया है।
- (फ) दस सिमी कार्यकर्ताओं को पुलिस स्टेशन-कोतवाली, खण्डवा, मध्य प्रदेश में भारतीय दंड संहिता की धारा 153(क), 295, 124(क) और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16 के अंतर्गत अपराध मामला सं. 256/2006 में तृतीय अतिरिक्त सत्र न्यायाधीश, खण्डवा के न्यायालय द्वारा तीन वर्ष के कारावास और 500 रु. के जुर्माने से दण्डित किया गया था और दो सिमी कार्यकर्ताओं को दो वर्षों के कारावास और 500 रु. के जुर्माने का दण्ड दिया गया था।
- (ब) दो सिमी कार्यकर्ताओं को पुलिस स्टेशन कोतवाली खण्डवा, मध्य प्रदेश में भारतीय दंड संहिता की धारा 153(क) 420, 467, 468, 469 और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 20 वर्ष 2004 में संशोधित के अंतर्गत दर्ज मामला अपराध सं. 202/2008 में ए.एस.जे. चतुर्थ, खण्डवा न्यायालय द्वारा विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3/13(2) के अंतर्गत प्रत्येक आरोपी को दो वर्षों के कठोर कारावास और 5000 रु. के जुर्माने का दण्ड दिया गया और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3/13(2) के अंतर्गत प्रत्येक को पांच वर्षों के कठोर कारावास और 5000 रु. के जुर्माने से दण्डित किया गया था।
- (भ) एक सिमी कार्यकर्ता को पुलिस स्टेशन गौतम नगर, भोपाल, मध्य प्रदेश में विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत दर्ज अपराध मामला सं. 295/2001 में जे.एम.एफ.सी., भोपाल न्यायालय द्वारा एक वर्ष के कठोर कारावास और 1000 रु. के जुर्माने से दण्डित किया गया था।
- (म) फास्ट ट्रेक न्यायालय-II, कोयम्बटूर में दिनांक 29.2.2012 को पांच सिमी कार्यकर्ताओं को दोषी ठहराते हुए अपना निर्णय दिया और पुलिस स्टेशन-खतूर, कोयम्बटूर, तमिल नाडू में दर्ज अपराध मामला सं. 722/1999 में भारतीय दण्ड संहिता की धारा 124(क) और 153(ख) के अंतर्गत उन्हें तीन वर्षों के कठोर कारावास और 5000 रु. के जुर्माने से दण्डित किया।
- (य) राष्ट्रीय अन्वेषण एजेन्सी (एन.आई.ए.) विशेष न्यायालय, कोच्ची केरल ने भारतीय दण्ड संहिता की धारा 34 के साथ पठित धारा 120(ख), 121, 121(क), 122, 123, 124(क), 212, 465, 471 और विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3 जो धारा 13(2), 16, 17, 18, 19, 38, 39, 40 के साथ पठित हैं, के अंतर्गत चौबीस आरोपियों के विरुद्ध दर्ज अपराध मामला सं. आर.सी.-02/2010/एन.आई.ए./डी.एल.आई. में तेरह आरोपियों (दो सिमी कार्यकर्ताओं सहित) को दोषसिद्ध किया और प्रत्येक को आजीवन कारावास और 50,000 रु. के जुर्माने से दण्डित किया था।

और जबकि केन्द्रीय सरकार इसके आगे यह मत रखती है कि यदि सिमी की विधिविरुद्ध गतिविधियों को तत्काल नहीं रोका गया अथवा उस पर नियंत्रण नहीं किया गया तो वह

- (i) अपनी विध्वंसात्मक गतिविधियां निरंतर रखने तथा भगौड़े कार्यकर्ताओं को पुनः संगठित करने में;
- (ii) साम्प्रदायिक सदभाव बिगाड़कर लोगों के मस्तिष्क को प्रदूषित करके देश के धर्म निरपेक्ष ढांचे को चरमराने;
- (iii) राष्ट्रद्रोही भावनाएं प्रसारित करने; तथा
- (iv) उग्रवाद का सहयोग करके अलगाववाद को बढ़ावा देने में;
- (v) देश की एकता तथा सुरक्षा के लिए हानिकारक गतिविधियों द्वारा

इस अवसर का फायदा उठा सकते हैं।

और जबकि केन्द्रीय सरकार का यह भी मत है कि सिमी की गतिविधियों का ध्यान रखते हुए सिमी को तत्काल प्रभाव से एक विधिविरुद्ध संगठन घोषित करना आवश्यक है।

अतः, अब केन्द्रीय सरकार विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) और (3) द्वारा प्रदत्त शक्तियों के प्रयोग में एतद्वारा "स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी)" को "विधिविरुद्ध संगठन" घोषित करती है और निर्देश देती है कि यह अधिसूचना, उक्त अधिनियम की धारा 4 के अंतर्गत किसी भी आदेश के अध्यक्षीन, सरकारी राजपत्र में इसके प्रकाशन की तिथि से पांच वर्ष की अवधि के लिए लागू रहेगी।

[फा. सं. 14017/2/2013-एन.आई.-III]

रश्मि गोयल, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 1st February, 2014

**S.O. 299(E).**—Whereas the Students Islamic Movement of India (hereinafter referred to as the 'SIMI') has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, in exercise of the powers conferred by sub-section (1) of section 3 of The Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the 'Act'), the Central Government declared the SIMI as an unlawful association *vide* notification numbers, (i) S.O. 960(E), dated the 27th September, 2001; (ii) S.O. 1113 (E), dated the 26th September, 2003; (iii) S.O. 191 (E), dated the 8th February, 2006; (iv) S.O. 276(E), dated the 7th February, 2008; (v) S.O. 260(E), dated 5th February, 2010; and (vi) S.O. 224(E), dated 3rd February, 2012, respectively;

And whereas, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the 'Tribunal') was constituted in terms of section 5 for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as unlawful association and the Tribunal by its orders published *vide* notification numbers, (i) S.O. 397 (E), dated 8th April, 2002; (ii) S.O. 499 (E), dated 16th April, 2004; (iii) S.O. 1302(E), dated 11th August, 2006; (iv) S.O. 1990 (E) dated 12th August, 2010; and (v) S.O. 1745(E), dated 6th August, 2012, respectively, has confirmed the declaration so made;

And whereas, the Tribunal *vide* its Order dated 1st August, 2012 has confirmed the notification number S.O. 224(E), dated 3rd February, 2012 declaring SIMI as an unlawful association;

And whereas, the duration of ban under sub-section (1) of section (6) of The Unlawful Activities (Prevention) Act, 1967 will cease on the 2nd February, 2014;

And whereas, the Central Government is of the opinion that SIMI is indulging in activities which are prejudicial to the integrity and security of the country on the basis, inter alia, of the following grounds, namely:-

- (a) Case Crime No. 126/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking and beating the victim, M. Siva Shankar Reddy, in connection with an incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (b) Case Crime No. 128/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking the Hindu leaders Bangari Prakash and others and damaging their vehicle when they were visiting the locality of Saidabad in connection with communal flare up consequent to the alleged defiling of Hanuman temple at Karumaguda in Madannapet locality;
- (c) Case Crime No. 130/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 427 and 153(A) read with section 149 of Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one Srinivas Reddy of Saidabad and damaging window panes of his car in connection with the incident of communal flare up consequent to the alleged defiling of Hanuman temple at Kurmaguda in Madannapet locality;
- (d) Case Crime No. 133/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 435 and 153(A) of Indian Penal Code read with section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one D. Rahul Singh with stones near ACP Office, Malakpet in connection with the incident of communal flare up consequent to the alleged defiling of Hanuman temple at Kurmaguda in Madannapet locality;

- (e) Case Crime No. 24/2013 has been registered at Ranip Police Station, Ahmedabad, Gujarat under Sections 224, 120B and 511 of Indian Penal Code read with section 45 of the Prisons Act, 1894 (9 of 1894) against 14 accused persons, undertrials in the case of bomb blasts, for assembling and conspiring and trying to escape Sabarmati Central Jail by digging the earth beneath the water tank and digging 10 to 12 feet long tunnel in prohibited area of judicial custody;
- (f) Case Crime No. 17/2013 has been registered at D.C.B. Police Station, Ahmedabad, Gujarat under sections 217, 218, 201 and 120(B) of the Indian Penal Code against 9 accused persons including jail officials for helping and shielding the prisoners who dug a tunnel in the Sabarmati Central Jail for escaping from the Jail;
- (g) Case Crime No. 209/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 124(A) of Indian Penal Code and sections 3, 10 and 13 of The Unlawful Activities (Prevention) Act, 1967 (37 of 1967) against 1 accused person for inclusion of sections 124(A) and 295(A) of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 in old Case Crime No. 237/2006 registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 153(A), 147, 452 and 336 of Indian Penal Code.
- (h) Case Crime No. 541/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 395, 307, 353 and 332 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of The Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1st October, 2013;
- (i) Case Crime No. 542/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 224 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of The Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1st October, 2013;
- (j) Case Crime No. 2/2012 has been registered at ATS Kalachowki Police Station, Mumbai, Maharashtra under sections 153(A), 120(B), 468 and 471 of the Indian Penal Code and sections 10, 13, 16 and 18 of The Unlawful Activities (Prevention) Act, 1967 read with sections 3 and 25 of the Arms Act, 1959 against 5 accused persons. The Aurangabad Unit of the Anti Terrorist Squad, Maharashtra received information that one Abrar @ Munna @ Abdulla @ Ismail, an active member of the banned Students Islamic Movement of India (SIMI) and Indian Mujahiddin (IM) and an absconder in the Ahmedabad Serial Blast case of 2008, was likely to meet his associates in Aurangabad city for committing a terrorist act. The officers of Anti Terrorist Squad, Aurangabad Unit, laid a trap to arrest the absconding member of SIMI. During the operation, the suspect opened fire at the police party, who retaliated in self-defence and this ultimately resulted in the death of one of the suspect, namely, Khalil @Azhar Qureshi and detention of two suspects, namely, Mohd. Abrar Khan @ Munna Babu Khan and Shaker @Khalil Akil Khilji. Pursuant to the incident of exchange of fire and arrest of suspects, a cognizable offence vide Begumpura P.S. CR No. 25/2012 under sections 307, 333, 335, 336, 338, 352, 353 and 34 of Indian Penal Code read with sections 3, 25 and 27 of the Arms Act, 1959 read with section 135 of the Bombay Police Act was registered;

Pursuant to the thorough questioning of the aforementioned accused persons, the Anti Terrorist Squad, Akola Unit further conducted raids on the 27th March, 2012 in Chikhali and Sailani village in Buldana District and detained Akhil Yusuf Khilji and Jaffer Hussain Iqbal Hussain Qureshi and during the raid and house search of these accused persons, 1 fire arm, 5 live cartridges, inflammatory literature belonging to the banned SIMI was seized;

- (k) Case Crime No. 47/2012 has been registered at Vashi Railway Police Station, Mumbai, Maharashtra under sections 143, 147, 149, 327, 353 and 332 of the Indian Penal Code against 10 accused persons who were arrested out of which one accused namely, Iqbal @Pappa Gulam Rasul Shaikh is a SIMI activist. The case is registered in an incident of rioting at Gowandi Railway Station wherein a Buddhist Monk was humiliated and assaulted by a mob going to participate in Azad Maidan agitation on 11th August, 2012. The Handy-Cam belonging to Police personnel was damaged by the mob. The Police made arrest of above mentioned SIMI activist Iqbal @Pappa Shaikh s/o Gulam Rasul Shaikh with his associates on 23rd August, 2012;
- (l) Case Crime No. 131/2012 has been registered at Nijampura Police Station, Thane City, Maharashtra under sections 307 and 120(B) of the Indian Penal Code and sections 3, 25 and 27 of the Arms Act, 1959 and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) read with section 16(1)(b) of The Unlawful Activities (Prevention) Act, 1967 against 5 accused persons (ex-SIMI activists) for attempt to murder;
- (m) Case Crime No. 120/2012 has been registered at Ramdas Peth Police Station, Akola, Maharashtra under sections 143, 147, 148, 149, 324 and 307 of the Indian Penal Code read with sections 4 and 25 of the Arms Act, 1959 against 10 accused persons including 2 SIMI activists for forming an unlawful assembly and attempting to murder by assaulting complainant and witnesses with deadly weapons;

- (n) Case Crime No. 15/2013 has been registered at Jalgaon Jamod Police Station, Buldana, Maharashtra under sections 324, 336 and 504 of the Indian Penal Code against 4 accused persons including 1 SIMI activist for assaulting the complainant with stone causing him head injury;
- (o) two SIMI activists were sentenced to one year imprisonment and a fine of ₹ 500/- was imposed on each accused by the Court of J.M.F.C. Shazapur in Case Crime No. 684/2001, registered at Police Station-Shazapur, Madhya Pradesh under sections 10 and 13 of The Unlawful Activities (Prevention) Act, 1967;
- (p) one SIMI activist was sentenced to one year imprisonment and a fine of ₹ 500/- was imposed by the Court of J.M.F.C., Siwani in Case Crime No. 423/2001, registered at Police Station-Siwani, Madhya Pradesh under section 10 of The Unlawful Activities (Prevention) Act, 1967;
- (q) ten SIMI activists were sentenced to three years imprisonment and a fine of ₹ 500/- was imposed on each accused and two SIMI activists were sentenced to two years imprisonment and a fine of ₹ 500/- was imposed on each accused by the Court of Third Addl. Sessions Judge, Khandwa in Case Crime No.256/2006, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 295 and 124(A) of the Indian Penal Code and sections 3, 10, 13 and 16 of The Unlawful Activities (Prevention) Act, 1967;
- (r) two SIMI activists were sentenced to two years rigorous imprisonment and a fine of ₹ 5000/- was imposed on each accused under sections 3 and 10 of The Unlawful Activities (Prevention) Act, 1967 and sentenced to five years' rigorous imprisonment and a fine of ₹ 5000/- was imposed on each accused under section 3/13(2) of The Unlawful Activities (Prevention) Act, 1967 by the Court of A.S.J. Fourth, Khandwa in Case Crime No. 202/2008, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 420, 467, 468 and 469 of the Indian Penal Code and sections 3, 10, 13 and 20 of The Unlawful Activities (Prevention) Act, 1967 as amended in 2004;
- (s) one SIMI activist was sentenced to one year rigorous imprisonment and a fine of ₹ 1000/- was imposed by the Court of J.M.F.C., Bhopal in Case Crime No. 295/2001, registered at Police Station-Gautam Nagar, Bhopal, Madhya Pradesh under section 10 of The Unlawful Activities (Prevention) Act, 1967;
- (t) the Fast Track Court-II, Coimbatore has pronounced judgment on 29th February, 2012 convicting five SIMI activists and sentenced them to three years' rigorous imprisonment with a fine of ₹ 5000/- under sections 124(A) and 153(B) of the Indian Penal Code in Case Crime No. 722/1999, registered at Police Station-Kattur, Coimbatore, Tamil Nadu;
- (u) the National Investigation Agency (NIA) Special Court, Kochi, Kerala has convicted thirteen (including two SIMI activists) accused persons and sentenced them to imprisonment for life and a fine of ₹ 50,000/- was imposed on each accused in Case Crime No. RC-02/2010/NIA/DLI, registered under sections 120(B), 121, 121(A), 122, 123, 124(A), 212, 465 and 471 read with section 34 of the Indian Penal Code and section 3, read with sections 13(2), 16, 17, 18, 19, 38, 39 and 40 of The Unlawful Activities (Prevention) Act, 1967 against twenty four accused persons;

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to –

- (i) continue its subversive activities and re-organise its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (3) of section 3 of The Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an "unlawful association" and directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette.

[F. No. 14017/2/2013-NI-III]

RASHMI GOEL, Jt. Secy.





# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 12 अगस्त, 2014

**का.आ. 2050(अ).**— जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा जाएगा) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 1 फरवरी, 2014 की अधिसूचना संख्या का.आ. 299 (अ) (जिसे इसके बाद उक्त अधिसूचना कहा जाएगा) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 27 फरवरी, 2014 की अधिसूचना संख्या का.आ. 578 (अ) के तहत विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश माननीय न्यायविद् श्री सुरेश कैत थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 28 फरवरी, 2014 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 1 फरवरी, 2014 की अधिसूचना संख्या का.आ. 299 (अ) में की गई घोषणा की पुष्टि करते हुए दिनांक 30 जुलाई, 2014 को एक आदेश पारित किया था।

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात्:—

( अधिकरण का आदेश अंग्रेजी भाग में छपा है )

[फा.सं. 14017/12/2014-एन.आई.-III]

डा. आर. के. मित्रा, संयुक्त सचिव

**MINISTRY OF HOME AFFAIRS  
NOTIFICATION**

New Delhi, the 12th August, 2014

**S.O. 2050 (E).**— Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (herein after referred to as said Act), declared the Students Islamic Movement of India (SIMI) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 299 (E), dated the 1st February, 2014 herein (herein after referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 578 (E), dated 27th February, 2014, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice Suresh Kait, Judge of the High Court of Delhi;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 28th February, 2014 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 30th July, 2014, confirming the declaration made in the notification number S.O. 299 (E), dated the 1st February, 2014.

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

**UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL**

**NEW DELHI**

Date of decision: 30<sup>th</sup> July, 2014

**In Re:                    Banning of Students Islamic Movement of India under the Unlawful Activities (Prevention) Act, 1967.**

**Gazette Notification No. S.O.299(E) dated 1<sup>st</sup> February, 2014 issued by the Central Government under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.**

**IN THE MATTER OF:**

**UNION OF INDIA**

Through:

Ms. Pinki Anand, Sr. Advocate and Addl. Solicitor General of India, Mr. Rajeev Mehra, Senior Advocate, Mr. Sachin Datta and Mr. Ravinder Agarwal, Mr. Rajesh Ranjan and Mr. Balendu Shekhar, Advocates and Mr. Aditya Malhotra, Central Govt. Pleader along with Mr. U.C. Srivastava, Under Secretary, Mr. Manoj Kumar Singh, Investigator, Mr. H. Biswas, Research Officer and Mr. U.K. Das, Assistant from the Ministry of Home Affairs.

Versus

**STUDENTS ISLAMIC MOVEMENT OF INDIA**

Through:

Mr. Ashok Agrawal, Mr. Mobin Akhtar and Ms. Sridevi Panniker, Advocates for Mr. Humam Ahmed Siddiqui & Mr. Misbah-Ul-Islam, former members of SIMI.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**ORDER**

1. This order will answer the reference made to this Tribunal under Section 4 of the Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) (hereinafter referred to as the 'Act').

2. The Central Government, in exercise of powers conferred by Section 3(1) of the Unlawful Activities (Prevention) Act, 1967, vide Notification No. S.O. 299(E) dated 1<sup>st</sup> February, 2014, declared the Students Islamic Movement of India [for short 'SIMI'] as an 'Unlawful Association' and directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette.

3. Therefore, the Central Government, in exercise of the powers conferred by Section 5(1) read with Section 4(1) of the Act, vide Notification No. S.O. 578(E) dated 27<sup>th</sup> February, 2014 constituted this Tribunal for the purpose of adjudicating whether or not there is 'sufficient cause' for declaring SIMI as an Unlawful Association, which has already been declared as such by the Central Government vide its notification No. S.O.299(E) dated 1<sup>st</sup> February, 2014. A reference was made to this Tribunal under the provisions of Section 4 of the Act, which was received by this Tribunal on 28<sup>th</sup> February, 2014.

4. Along with the aforesaid Notification, the Central Government furnished a background note on SIMI stating the objectives and the activities of SIMI before imposition of the first ban in the year 2001, till the imposition of this ban in the year 2014. As per the background note, the objectives of SIMI are as under:

- (i) Governing of human life on the basis of Quran;
- (ii) Propagation of Islam;
- (iii) "Jihad" (religious war) for the cause of Islam; and
- (iv) Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

5. The background note states the following activities of SIMI after February, 2012 and before imposition of seventh ban in February, 2014 as the grounds for continuation of the ban:-

- (a) Ex-SIMI leaders/activists have continued their activities in pursuance of SIMI's ideology of establishment of Dar-ul-Islam (land of Islam) through Jihad;
- (b) Holding meetings including secret meetings, making strategies to induct new members, discussing and raising funds and liaising with like-minded organizations like Popular Front of India and Hizb-ut-Tahrir;
- (c) Aimed at radicalizing Muslim youth and motivating them for Jihad, arousing in them a sense of being discriminated against, cultivating alienation from democratic institutions including the legislature, Judiciary, elections and security agencies of the country and cultivating ideas derogatory of other religions etc.;
- (d) Furthering the objectives of SIMI through cover organizations including Muslim Students Association/MSA, Wahadat-e-Islami/WEL, Minority Right Watch, Islamic Students Association, etc. to escape scrutiny;

6. The Central Government in their Gazette Notification dated 1<sup>st</sup> February, 2014 has summarized the cases involving SIMI, alleging that its activists were indulging in activities which are prejudicial to the integrity and security of the country. The cases have been summarized as under:-

- (a) Case Crime No. 126/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking and beating the victim, M. Siva Shankar Reddy, in connection with an incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (b) Case Crime No. 128/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking the Hindu leaders Bangari Prakash and others and damaging their vehicle when they were visiting the locality of Saidabad in connection with communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (c) Case Crime No. 130/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one Srinivas Reddy of Saidabad and damaging window panes of

his car in connection with the incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;

- (d) Case Crime No. 133/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one D. Rahul Singh with stones near ACP Office, Malakpet in connection with an incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (e) Case Crime No. 24/2013 has been registered at Ranip Police Station, Ahmedabad, Gujarat under Sections 224, 120B and 511 of Indian Penal Code read with section 45 of the Prisons act, 1894 (9 of 1894) against 14 accused persons, undertrials in the case of bomb blasts, for assembling and conspiring and trying to escape Sabarmati central Jail by digging the earth beneath the water tank and digging 10 to 12 feet long tunnel in prohibited area of judicial custody;
- (f) Case Crime No. 17/2013 has been registered at D.C.B. Police Station, Ahmedabad, Gujarat under sections 217, 218, 201 and 120(B) of the Indian Penal Code against 9 accused persons including jail officials for helping and shielding the prisoner who dug a tunnel in the Sabarmati Central Jail for escaping from the Jail;
- (g) Case Crime No. 209/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 124(A) of Indian Penal Code and section 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) against 1 accused person for inclusion of sections 124(A) and 295(A) of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 in old Case Crime No. 237/2006 registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 153(A), 147, 452 and 336 of Indian Penal Code;
- (h) Case Crime No. 541/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 395, 307, 353 and 332 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1<sup>st</sup> October, 2013;
- (i) Case Crime No. 542/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 224 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1<sup>st</sup> October, 2013;
- (j) Case Crime No. 2/2012 has been registered at ATS Kalachowki Police Station, Mumbai, Maharashtra under sections 153(A), 120(B), 468 and 471 of the Indian Penal Code and sections 10, 13, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 read with sections 3 and 25 of the Arms Act, 1959 against 5 accused persons. The Aurangabad Unit of the anti Terrorist Squad, Maharashtra received information that one Abrar @ Munna @ Abdulla @ Ismail, an active member of the banned Students Islamic Movement of India (SIMI) and Indian Mujahiddin (IM) and an absconder in the Ahmedabad Serial Blast case of 2008, was likely to meet his associates in Aurangabad city for committing a terrorist act. The officers of Anti Terrorist Squad, Aurangabad Unit, laid a trap to arrest the absconding member of SIMI. During the operation, the suspect opened fire at the police party, who retaliated in self-defence and this ultimately resulted in the death of one of the suspect, namely, Khalil @ Azhar Qureshi and detention of two suspects, namely Mohd. Abrar Khan @ Munna Babu Khan and Shaker @ Khalil Akil Khilji. Pursuant to the incident of exchange of fire and arrest of suspects, a cognizable offence vide Begumpura P.S. CR No. 25/2012 under sections 307, 333, 335, 336, 338, 352, 353 and 34 of Indian Penal Code read with sections 3, 25 and 27 of the Arms Act, 1959 read with section 135 of the Bombay Police Act was registered;

Pursuant to the thorough questioning of the aforementioned accused persons, the Anti Terrorist Squad, Akola Unit further conducted raids on the 27<sup>th</sup> March, 2012 in Chikhali and Sailani village in Buldana District and detained Akhil Yusuf Khilji and Jaffer Hussain Iqbal Hussain Qureshi and during the raid and house search of these accused persons, 1 fire arm, 5 live cartridges, inflammatory literature belonging to the banned SIMI was seized;

- (k) Case Crime No. 47/2012 has been registered at Vashi railway Police Station, Mumbai, Maharashtra under sections 143, 147, 149, 327, 353 and 332 of the Indian Penal Code against 10 accused persons who were arrested out of which one accused namely, Iqbal @ Pappa Gulam Rasul Shaikh is a SIMI activist. The case is registered in an incident of rioting at Gowandi Railway Station wherein a Buddhist Monk was humiliated and assaulted by a mob going to participate in Azad Maidan agitation on 11<sup>th</sup> August, 2012. The Handy-Cam belonging to Police personnel was damaged by the mob. The police made arrest of above mentioned SIMI activist Iqbal @ Pappa Shaikh s/o Gulam Rasul Shaikh with his associates on 23<sup>rd</sup> August, 2012;

- (l) Case Crime No. 131/2012 has been registered at Nijampura Police Station, Thane City, Maharashtra under sections 307 and 120(B) of the Indian Penal Code and sections 3, 25 and 27 of the Arms Act, 1959 and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) read with section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967 against 5 accused persons (ex-SIMI activists) for attempt to murder;
- (m) Case Crime No. 120/2012 has been registered at Ramdas Peth Police Station, Akola, Maharashtra under sections 143, 147, 148, 149, 324 and 307 of the Indian Penal Code read with sections 4 and 25 of the Arms Act, 1959 against 10 accused persons including 2 SIMI activists for forming an unlawful assembly and attempting to murder by assaulting complainant and witnesses with deadly weapons;
- (n) Case Crime No. 15/2013 has been registered at Jalgaon Jamod Police Station, Buldana, Maharashtra under sections 324, 336 and 504 of the Indian Penal Code against 4 accused persons including 1 SIMI activist for assaulting the complainant with stone causing him head injury;
- (o) Two SIMI activists were sentenced to one year imprisonment and a fine of Rs.500/- was imposed on each accused by the Court of J.M.F.C., Shazapur in Case Crime No. 684/2001, registered at Police Station-Shazapur, Madhya Pradesh under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;
- (p) One SIMI activist was sentenced to one year imprisonment and a fine of Rs.500/- was imposed by the Court of J.M.F.C., Siwani in Case Crime No. 423/2001, registered at Police Station-Siwani, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (q) Ten SIMI activists were sentenced to three years imprisonment and a fine of Rs.500/- was imposed on each accused and two SIMI activists were sentenced to two years imprisonment and a fine of Rs.500/- was imposed on each accused by the Court of Third Addl. Sessions Judge, Khandwa in Case Crime No.256/2006, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 295 and 124(A) of the Indian Penal Code and sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967;
- (r) Two SIMI activists were sentenced to two years rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under sections 3 and 10 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to five years' rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under section 3/13(2) of the Unlawful Activities (Prevention) Act, 1967 by the Court of A.S.J. Fourth, Khandwa in Case Crime No. 202/2008, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 420, 467, 468 and 469 of the Indian Penal code and sections 3, 10, 13 and 20 of the Unlawful Activities (Prevention) Act, 1967 as amended in 2004;
- (s) One SIMI activist was sentenced to one year rigorous imprisonment and a fine of Rs.1000/- was imposed by the Court of J.M.F.C., Bhopal in Case Crime No. 295/2001, registered at Police Station-Gautam Nagar, Bhopal, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (t) The Fast Track Court-II, Coimbatore has pronounced judgment on 29<sup>th</sup> February, 2012 convicting five SIMI activists and sentenced them to three years' rigorous imprisonment with a fine of Rs.5000/- under sections 124(A) and 153(B) of the Indian Penal Code in Case Crime No. 722/1999, registered at Police Station-Kattur, Coimbatore, Tamil Nadu;
- (u) The National Investigation Agency (NIA) Special Court, Kochi, Kerala has convicted thirteen (including two SIMI activists) accused persons and sentenced them to imprisonment for life and a fine of Rs.50,000/- was imposed on each accused in Case Crime No. RC-02/2010/NIA/DLI, registered under sections 120(B), 121, 121(A), 122, 123, 124(A), 212, 465 and 471 read with section 34 of the Indian Penal Code and section 3, read with sections 13(2), 16, 17, 18, 19, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 against twenty four accused persons;

7. On the afore-noted grounds, the Central Government formed the opinion that SIMI has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country. The Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect. The Central Government is also of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to:

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;



- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country.

Thus, in exercise of powers conferred by sub-Sections (1) and (3) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, the Central Government declared the SIMI as an “unlawful association” with immediate effect, which was followed by the Notification under Section 4 of the Act, constituting the Unlawful Activities (Prevention) Tribunal, which was received on 28<sup>th</sup> February, 2014. This Tribunal listed the reference for preliminary hearing on 4<sup>th</sup> March, 2014.

8. On 4<sup>th</sup> March, 2014, on consideration of the material placed on record by the Central Government, this Tribunal was, *prima facie*, satisfied that a notice under Section 4(2) of the Act should be issued to SIMI to show cause as to why it be not declared as “Unlawful Association”. The notice was directed to be served upon SIMI in the following manner:

- I. By affixing a copy of the notification to some conspicuous part of the office(s), if any, of the Association;
- II. By serving a copy of the notification, wherever possible, on the principal office-bearers, if any, of the Association;
- III. The notice be also served by registered post/speed post/courier;
- IV. By proclaiming by beat of drums or by means of loudspeakers, the contents of the notification, in the area in which the activities of the Association are ordinarily carried on;
- V. By making an announcement over the radio from the local or nearest broadcasting station of the All India Radio;
- VI. By pasting the notification on the Notice Board of the office of the Deputy Commissioners at the Headquarters of each of the Districts in the States, where the activities of the Association are undertaken; and
- VII. By publication in two National Newspapers in English and in two vernacular newspapers of the respective States in which the activities of SIMI are ordinarily carried on.

9. Pursuant to the directions given by the Tribunal, the States of Kerala, Rajasthan, Karnataka, Gujarat, Andhra Pradesh, Bihar, Maharashtra, West Bengal, Uttarakhand, Uttar Pradesh, Tamil Nadu, Jharkhand, Chattisgarh, Madhya Pradesh, NCT of Delhi, UT of Puducherry and UT of Andaman & Nicobar Islands filed their respective affidavits of services, putting on record the factum of service of notice.

10. On 15<sup>th</sup> April, 2014, Mr. Ashok Agrwaal along with Ms. Sridevi Panikker, Advocates, entered appearance on behalf of two erstwhile members of SIMI, namely Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam. It was stated by learned counsel that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam got the knowledge of these proceedings through the public notice. It was further submitted that since the organization has been banned since 2001, it has not been in existence thereafter and there are no office bearers or members of the organization.

11. The appearance on behalf of the two erstwhile members of SIMI was objected to by Mr. Rajeeve Mehra, Senior Advocate on behalf of the Central Government. By referring the opinion formed by the predecessor Tribunal, learned Senior Counsel submitted that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam in their individual capacity are not entitled to be represented in these proceedings since it is only the association, its office bearers or members who can object to the ban on the association. He further submitted that there is no appearance on behalf of the association or its office bearers or its members despite service of notice. After hearing the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam and the learned Additional Solicitor General, this Tribunal, without expressing any *prima facie* view, and having regard to the facts of the case and the observations made in the previous report, permitted Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to join and participate in the proceedings without prejudice to the submissions, which the respective sides may wish to make at the time of final arguments.

12. During the proceedings of the Tribunal at Bhopal on 7<sup>th</sup> July, 2014, Mr. Ashok Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam sought the permission of the Tribunal to file their reply/statement of objections to the notice issued under the Unlawful Activities (Prevention) Act, 1967. The said request was objected to by Mr. Rajeeve Mehra, learned Senior Advocate on the ground that it is being filed very belatedly. Keeping in view the specific time period of 30 days mentioned in Section 4(2) of the Unlawful Activities (Prevention) Act, 1967 and the absence of any whisper of a request for grant of an extension of time, and in view of the examination-in-chief and cross-examination, this Tribunal was not inclined to take on record the reply/statement of objection being sought to be placed on record at this belated stage. Accordingly, the submission of Mr. Ashok Agrwaal to file the reply/statement of objection was rejected.

13. Mr. Ashok Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam had filed six interlocutory applications seeking, *inter-alia*, a direction to confine the proceedings of the Tribunal at Delhi; to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 along with notification dated 1<sup>st</sup> February, 2014 and to declare that the Tribunal shall not permit the production of any evidence, material, facts or grounds, in the form of oral testimony or documents or in any other form beyond the material forwarded to the Tribunal; seeking a direction to the Central Government to place on record and supply the applicant, with a complete list of witnesses the Central Government seeks to produce before this Tribunal and all the facts and documents such witnesses seek to prove; to discard from consideration cases filed under Sections 10-13 of the Unlawful Activities (Prevention) Act, 1967 where the case is based solely on allegation of membership of SIMI and/or innocuous activity; seeking a direction to the Central Government to file affidavits clearly stating the nature of each of the documents on which privilege is claimed and the grounds for seeking non-disclosure and that no claim of privilege made by the Central Government be allowed without adjudication upon such claim; and seeking a direction to the Central Government to place on record and supply the applicant with the legible, typed and English translated copies of the documents. The said interlocutory applications were heard and disposed of by this Tribunal vide order dated 21<sup>st</sup> April, 2014. Mr. Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam had also filed an application before this Tribunal during the proceedings of the Tribunal at Mumbai, which was dismissed *in limine*. Mr. Ashok Agrwaal, Advocate has further moved three more applications, being IA 08/2010 seeking a direction that the Tribunal will disregard from consideration all cases filed under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 where the case based solely on allegation of membership of SIMI and/or innocuous activity; IA 09/2014 seeking a direction that no claim of privilege made by the Central Government shall be allowed without adjudication upon such a claim in accordance with law; and IA 10/2014 seeking a direction to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rule, 1968 along with notification dated 01.02.2014, which are dealt with in the later part of this opinion.

14. The Central Government, in their background note claimed that the activities of the banned organization are still continuing and the inputs were stated to have been received from the following State Governments/Union Territory Administration regarding the activities of SIMI/regarding ex-SIMI activists/ details of cases pending trial against ex-SIMI activists:

- (i) Andhra Pradesh,
- (ii) Bihar,
- (iii) Gujarat,
- (iv) Karnataka,
- (v) Kerala,
- (vi) Madhya Pradesh,
- (vii) Maharashtra,
- (viii) Rajasthan,
- (ix) Tamil Nadu,
- (x) Uttarakhand,
- (xi) Uttar Pradesh,
- (xii) West Bengal,
- (xiii) NCT of Delhi,
- (xiv) UT of Puducherry,
- (xv) UT of Andaman & Nicobar Islands, and
- (xvi) Chattisgarh

15. It was also claimed that after the imposition of the last ban on SIMI on 3<sup>rd</sup> February, 2012, 17 (seventeen) fresh cases have been registered against the SIMI in six States and 01 (one) case was registered by NIA, which are summarized as under:

**A. Andhra Pradesh (04 cases)**

- (i) FIR/Case Crime No. 126/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 324, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

- (ii) FIR/Case Crime No. 128/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 324, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.
- (iii) FIR/Case Crime No. 130/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 427, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.
- (iv) FIR/Case Crime No. 133/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 435, 153(A) of IPC read with Section 7(1) of CrI. Law Amendment Act.

**B. Chattisgarh (01 case)**

- (i) FIR/Case Crime No.740/2013 of PS-Civil Lines, Raipur under Sections 3, 7, 10, 11, 13, 15, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967.

**C. Gujarat (02 cases)**

- (i) FIR/Case Crime No. 24/2013 dated 11.02.2013, PS-Ranip, Ahmedabad under Sections 224, 120(B) and 511 of IPC read with Section 45 of the Prisons Act, 1894.
- (ii) FIR/Case Crime No.17/2013 dated 10.05.2013, PS-DCB, Ahmedabad under Sections 217, 218, 201 and 120(B) of IPC.

**D. Kerala (02 cases)**

- (i) FIR/Case Crime No.533/2013 dated 04.09.2013, PS-Nadakkavu, Kozhikkode under Section 153(A) of IPC.
- (ii) FIR/Case Crime No.697/2013 dated 31.10.2013, PS-Nadakkavu, Kozhikkode under Section 153(A), 153(B) of IPC.

**E. Madhya Pradesh (03 cases)**

- (i) FIR/Case Crime No. 209/2013 dated 29.03.2013, PS-Kotwali, Khandwa under Sections 124(A), 295(A) of IPC and Sections 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967.
- (ii) FIR/Case Crime No. 541/2013 dated 01.10.2013, PS-Kotwali, Khandwa under Sections 395, 307, 353, 332 of IPC and Sections 3, 10, 13, 16 of Unlawful Activities (Prevention) Act, 1967.
- (iii) FIR/Case Crime No. 542/2013 dated 01.10.2013, PS-Kotwali, Khandwa under Section 224 of IPC and Sections 3, 10, 13, 16 of Unlawful Activities (Prevention) Act, 1967.

**F. Maharashtra (05 cases)**

- (i) FIR/Case Crime No.2/2012 of PS-ATS, Kalachowki, Mumbai under Sections 153(A), 120(B), 468, 471 of IPC and Sections 10, 13, 16 & 18 of the Unlawful Activities (Prevention) Act, 1967 read with Sections 3 & 25 of the Arms Act, 1959.
- (ii) FIR/Case Crime No.47/2012 dated 11.08.2012, PS-Vashi Railway Police Station, Mumbai under Sections 143, 147, 149, 327, 353 and 332 of IPC.
- (iii) FIR/Case Crime No.131/2012 of PS-Nijampura, Thane City under Sections 307 & 120(B) of IPC and Sections 3, 25 & 27 of Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 read with Section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967.
- (iv) FIR/Case Crime No. 120/2012 of PS-Ramdas Peth, Akola under Sections 143, 147, 148, 149, 324 and 307 of IPC read with Sections 4 & 25 of the Arms Act, 1959.
- (v) FIR/Case Crime No. 15/2013 of PS-Jalgaon Jamod, Buldana under Sections 324, 336 and 504 of IPC

**G. National Investigation Agency (NIA) (01 case)**

- (i) FIR/Case Crime No. RC-6/2012/NIA/DLI dated 10.09.2012 under Sections 17, 18, 18(B), 20 of Unlawful Activities (Prevention) Act, 1967 and Sections 121(A) & 123 of IPC.

16. Apart from 18 new cases noted above, the Union of India has placed reliance on: (i) certain old cases which, even though cited & considered by the previous Tribunal, have witnessed certain developments and progress after the report of the previous Tribunal, and (ii) cases which have earlier been cited and considered by the previous Tribunals to be referred to as and when considered necessary. It is stated that the relevance of the old cases in these proceedings is to show the continuity of activities by the banned organization and its members

17. With a view to invite public representation in support of or against the ban on SIMI, this Tribunal held its sittings at Trivandrum in Kerala; Udaipur in Rajasthan; Mysore in Karnataka; Hyderabad in Andhra Pradesh; Patna in Bihar; Ahmedabad in Gujarat; Mumbai and Aurangabad in Maharashtra; Jabalpur and Bhopal in Madhya Pradesh; Coonoor in Tamil Nadu; Lucknow in Uttar Pradesh and Port Blair in the UT of Andaman & Nicobar Islands for the purposes of recording of evidence on behalf of the respective States and/or from members of the public. The witnesses deposed before the Tribunal were cross-examined by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam.

18. **Proceeding to the evidence brought on record**

A brief summary of the evidence recorded in each of the States is as under:

**D) At Trivandrum in Kerala:**

At Trivandrum, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. P. Vikraman, Dy. Superintendent of Police, National Investigation Agency, Kochi, Kerala (PW-1);
- (ii) Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode City, Kerala (PW-2);
- (iii) Mr. G. Sreedharan, Superintendent of Police, SBCID Hqrs., Pattom, Thiruvananthapuram, Kerala (PW-3);
- (iv) Mr. C. Radhakrishna Pillai, Deputy Superintendent of Police, National Investigation Agency, Kochi Branch, Kerala (PW-4);

19. PW-1, Mr. P. Vikraman, Dy. Superintendent of Police, National Investigation Agency, Kochi, Kerala appeared and produced his affidavit exhibit PW-1/A. The said witness has deposed in respect of FIR No. 2/2010 [Ex. PW-1/1 (colly)] registered by NIA under Sections 3, 13(2), 16, 18, 19, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 and Sections 120(B), 121, 121(A), 122, 123, 124(A), 212, 465, 471 read with 34 of IPC.

20. The witness in his affidavit has stated that on 18.10.2008, SI of PS-Edakkad arrested Abdul Jaleel, who was aiding and assisting an organization banned by the Government of India and was a strong sympathizer of SIMI and consequently, a case was registered as Crime No. 356/2008 [Ex. PW-1/1 (colly)]. During the course of investigation, 23 persons were arraigned as accused out of which, 4 had been killed in an encounter with security forces while attending a camp for training in Kashmir. It is further stated in the affidavit that the investigation conducted disclosed that the accused persons entered into a criminal conspiracy under the leadership of Naseer, Shafaz, Ibrahim Moulavi and Shabir @ Ayoob with an intention to incite, facilitate and advocate terrorism and thereby wage war against Government of India. As a part of and in furtherance of common intention and knowledge they arranged and conducted classes to facilitate terrorism under the guise of Noorisha Thareekath, at different places at Kannur, Malappuram and Ernakulam Districts. A final meeting was held on 14.08.2008 at Neerchal in Kannur, where 5 persons were selected and it was decided to send them to J&K for training with LeT (Lashkar-e-Tayyeba) in handling of arms and Ammunition in order to commit terrorist activities. These persons reached J&K and joined LeT camp, collected arms and ammunitions and started indulging in terrorist acts thereby waging war against Government of India. The charge sheet in this case was filed before Addl. Chief Judicial Magistrate Court, Thalassery against 23 persons.

21. The case Crime No. 356/2008 was subsequently transferred to NIA, which re-registered the case as FIR No. 2/2010. During the investigation by NIA, 3 absconding accused were arrested and more evidence on role of each accused in the case was collected. On completion of investigation, an additional charge sheet was filed before the Special Court of NIA cases, Ernakulam against 24 accused which included 23 accused already charge sheeted. The witness has further stated that the investigation revealed that accused Sarfaraz Nawaz arrested during the course of investigation was a SIMI activist. In his confessional statement under Section 161 Cr.P.C., Sarfaraz Nawaz stated that he had held an official position in SIMI as Office Secretary at Delhi Office, attended meetings of SIMI both in India and abroad. It was further stated that thereafter he got associated with LeT and arranged funds for the training of accused at Jammu & Kashmir. He played an important role in the entire conspiracy and also assisted accused Naser and Shafas in escaping from India in Oct./Nov, 2008. Sarfaraz Nawaz also stated that Safdar Nagori after being appointed as the new Secretary General of SIMI wanted to transform SIMI into a full-fledged Jihadi group. A copy of the said statement under 161 Cr.P.C. is annexed with the affidavit [Ex.PW-1/A] as Annexure-III.

22. The witness has further stated that the NIA Special Court, Ernakulam, Kerala has delivered the judgment in respect of this case on 01.10.2013 in which it has categorically found that the evidence has sufficiently brought home the act of waging war against the Government of India defined and punishable under Section 121 IPC and commission of terrorist act defined in Section 15 of the Unlawful Activities (Prevention) Act. The certified copy of the said judgment is on record and exhibited as Ex. PW-1/3.

23. In his examination-in-chief, the witness has stated that vide the said judgment, the Hon'ble Special Court of NIA convicted 13 accused persons and acquitted 5 persons. Four persons named in the charge sheet were killed in an encounter in Kashmir while two persons remained absconding, out of which one was a Pakistani National. He has further stated that appeals against the said judgment and order of the Sessions Court is pending in the Hon'ble High Court of Kerala.

24. In his cross-examination, the witness has stated that the statement of Sarfaraz Nawaz was recorded when he was in judicial custody and no application was moved before the Court to take police remand. However, he volunteered that the statement was recorded with the permission of the concerned Magistrate. He further stated that the statement was recorded by the concerned investigating officer under Section 161 Cr.P.C. In reply to the question "was the statement of Sarfaraz Nawaz Inculpatory?", he replied no but stated that the accused disclosed lot of facts and his own role. He admitted that page 42 begins with an incomplete sentence and that there is no continuity in pages 41 and 42 but volunteered that the previous officer has omitted some portions of the statement for maintaining confidentiality and the said confidential portion has not been produced before the Tribunal. He also admitted that the said statement has not been proved before the Trial Court but volunteered that some of the disclosures made by the accused have been proved before the Special NIA court and the accused has been found guilty. He denied the suggestion that it was not even the case of the NIA before the Trial Court and that no evidence was led to show that any of the accused continued to be members of the SIMI after the ban on 27.09.2001 or that any of the activities for which the accused have been convicted had been carried out on behalf of SIMI and volunteered that they were charged under Section 13 of the UAP Act. He further denied the suggestion that the activities alleged against Sarfaraz Nawaz even if they happen to be true, after his links with SIMI have been severed, his subsequent activities are not relevant for justifying the ban against SIMI. He also denied the suggestion that none of the accused has continued as members of SIMI after the first ban on 27.09.2001.

25. PW-2, Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode city, Kerala appeared and produced his affidavit exhibit PW-2/A. The said witness has deposed in respect of two FIRs viz. FIR No. 533/2013 registered under Section 153(A) of IPC [Ex. PW-2/1] and FIR No. 697/2013 registered under Sections 153(A) & 153(B) of IPC [Ex. PW-2/2].

26. The witness in his affidavit has stated that a book "Dahvathum Jihadum" (which is a Malayalam translation of the book "Jahiliath Ke Khilaf Jung" written by Abdul Aleem Islahi, and translated by Usman Kadungoth) was published and exhibited at Thirurangadi Book Stall at Kozhikode for sale. The said book contained many sentences and ideas to promote enmity and hatred between different religions and questioning the secular values of India as a Nation, besides other matters inciting hatred towards certain communities and thus capable of creating communal disharmony and enmity among the people. In this regard, on the basis of a communication dated 4.9.2013 received from DSP, SBCID, Kozhikode city, the SHO, Nadakkavu registered the FIR No. 533/2013 under Section 153(A) of IPC. Certified copy of relevant portion of the book "Dahvathum Jihadum" is on record and exhibited as Ex. PW-2/3. There are four accused in the said FIR out of whom accused no. 3, P K. Abdurahiman was the former Ernakulam District President of SIMI. It is further stated in the affidavit that as part of investigation, a search was conducted at Thirurangadi Book Stall on 05.09.2013 and at Nanma Book Stall on 07.09.2013, which resulted in seizure of 19 and 4 copies of the above book respectively. Further, the statement of accused PK Abdurahiman was also recorded in which the accused had disclosed in detail about his association with SIMI, organizational structure of SIMI and ideology and activities of SIMI. He also disclosed about his publishing activities and distribution of books to incite Jihad. The said case is still under investigation and accused No. 1 Abdul Aleem Islahi is to be arrested in this case.

27. The case Crime No. 697/2013 was registered under Sections 153(A) and 153(B) of IPC on the basis of information that the publication and distribution of one book namely "Vazhiyadayaalangal" (English translation of the book "Mile Stone") was causing enmity among the people and designed to break the communal harmony and integrity of the nation, and was selling at Vachanam Book Stall, Noor Complex, Mavoor Road, Kozhikode. Certified copy of relevant portion of the book "Vazhiyadayaalangal" is on record and exhibited as Ex. PW-2/4. In his affidavit, the witness has stated that this book contains imputations and assertions promoting disharmony and feeling of enmity and hatred between different communities and different religions and questioning the secular values of India as a Nation. There are three accused in the said FIR out of which accused no. 2 PK Abdurahiman is also one of the accused in FIR No. 533/2013. The said case is still under investigation.

28. In his cross-examination, the witness has accepted that the statement of accused PK Abdurahiman was not recorded by him and that his statement was recorded in police custody. He stated that he took over the charge of these two cases on 7<sup>th</sup> March, 2014 from the previous IO. He also accepted that he neither prepared the seizure memos pertaining to these two cases nor had prepared any of the documents annexed with his affidavit except the English translation of the two books. He also accepted that these two books were not banned by the State Government of Kerala



but he volunteered that the process of banning these books is going on and the action to ban the books is likely to be taken by the government. He stated that he was neither aware of the date or year of the publication of Urdu Book ‘Jahiliath Ke Khilaf Jung’ nor of the name or place of its publisher. He admitted that none of the accused in Crime No. 533/2013 and 697/2013 have been charged with being members of the banned organization SIMI but volunteered that it is noted in the case diary that accused Nos. 2 and 3 in case Crime No. 533/2013 are members of SIMI. He also admitted that ‘Minority Rights Watch’; and ‘Islamic students Front Association’; ‘Popular Front of India’ are not banned organizations. The witness denied the suggestions that the said two cases produced by him before the Tribunal have nothing to do with SIMI or do not show the activities undertaken by or on behalf of SIMI. He also denied the suggestion that he had deliberately filed the translation of only selected sentences from the Books in order to cause prejudice before this Tribunal.

29. PW-3, Mr. G. Sreedharan, Superintendent of Police, SBCID Hqrs., Pattom, Thiruvananthapuram, Kerala appeared before the Tribunal and his statement was recorded on oath. The witness was nominated as the Nodal Officer in the matters concerning the ban on SIMI vide order dated 07.04.2014. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

30. In his examination-in-chief, the witness has stated that despite the ban on SIMI for the last many years, the activities of its cadres in the State of Kerala are continuing. He further stated that they had received inputs from Intelligence Agencies which reveal that SIMI cadres are active and in a clandestine manner spreading anti-national and communal activities. He also placed on record a sealed envelope containing reports which are sensitive in nature and received from the Intelligence Agencies and the Field Staff of Kerala Special Branch. He prayed for continuance of ban on SIMI in view of the persistent anti-national activities of SIMI cadre.

31. PW-4, Mr. C. Radhakrishna Pillai, Dy. Superintendent of Police, NIA, Kochi, Kerala appeared and produced two affidavits exhibits PW-4/A and PW-4/B. The said witness has deposed in respect of two FIRs viz. FIR No. 3/2010 registered by NIA under Sections 120(B) & 124(A) of IPC read with Sections 10 & 13(i)(b) of Unlawful Activities (Prevention) Act [Ex. PW-4/A/1] and FIR No. 4/2010 registered by NIA under Sections 122, 124(A), 120(B), 153(A) of IPC, Sections 3, 5, 10 and 13 of Unlawful Activities (Prevention) Act, 1967 and Sections 25 & 27 of Arms Act [Ex. PW-4/B/1].

32. The witness in his affidavit has stated that on 15.08.2006, five members of banned SIMI organization conspired to wage war against Government of India by organizing a secret/meeting/discussion on the subject of the role of Muslims in the independence struggle. The meeting was also attended by other 13 persons. He further stated that the stated subject of the meeting was only a cover but in reality, these persons delivered seditious and inflammatory speeches for creating disaffection and hatred against Government of India. These persons also displayed provocative pamphlets and read out papers in support of militant jihadi terrorist activities in J&K for the freedom of Kashmir. The sum and substance of their meeting was to spread such disaffection amongst the persons who participated in the meeting so that they start taking part in the unlawful activities of SIMI against the Indian State, thereby causing disturbances having a deep impact on the security of the Indian State. On the basis of the above-mentioned information, on 15.08.2006, FIR No. 159/2006 was registered by PS Binanipuram, Aluva, Ernakulam Rural District, Kerala under Sections 120(B), 124(A) IPC and Sections 10 & 13(i)(b) of Unlawful Activities (Prevention) Act against five SIMI activists. All these accused were arrested by the police. This case was subsequently investigated by a Joint Investigation team, which arraigned other 13 persons, who attended the meeting.

33. The investigation of the said FIR was subsequently transferred to NIA, which re-registered the said case as FIR No. 3/2010. The NIA filed the charge sheet (Ex. PW4/A/2) in the said matter before the NIA Special Court, Kochi, Kerala. In his examination-in-chief, the witness has stated that the case is still pending and charges are yet to be framed.

34. The witness in his second affidavit (Ex. PW-4/B) has stated that from 10<sup>th</sup> to 12<sup>th</sup> December, 2007, accused P.A. Shaduly and 29 other activists/members of SIMI organization conducted a training camp at Thangalpara (Wagamon) within the limits of Mundakayam Police Station of Kottayam District of Kerala. Accordingly on 19.06.2008, on the basis of an intelligence report furnished by Sh. R.K. Krishnakumar, the then DSP (IS), Ernakulam Range, FIR No. 257/2008 was registered by PS Mundakayam, Kottayam District under Sections 120(B), 122, 124(A) and 153(A) of IPC, Sections 5, 10 & 13 of Unlawful Activities (Prevention) Act, 1967 and Sections 25 & 27 of the Arms Act against P.A. Shaduly and 29 others five SIMI activists.

35. The investigation of the said FIR was subsequently transferred to NIA, which re-registered the said case as FIR No. 4/2010. The investigations of NIA revealed that the three days secret training camp of SIMI was conducted in a professional manner with planning. The trainees were imparted vigorous physical training on activities such as rope climbing, swimming, use of fire arms, making of petrol bombs, riding motor cycles at great speed for VIP assassination, trekking in difficult terrain and methodologies for launching terrorist strikes. The training also included indoctrination in Jihadi ideology. Further investigation revealed that the secret training camp was conducted by the banned SIMI outfit with an intention to wage war against the nation. During the investigation, 35 accused were arrested. The NIA filed the charge sheet (Ex. PW-4/B/2) in the said matter before the NIA Special Court, Kochi, Kerala against 30 accused. A supplementary charge sheet (Ex. PW-4/B/3) was also filed against 6 accused. Further investigation against the remaining

accused is in progress. A Scorpio vehicle, which was used by the accused persons for transportation, was seized from Attingal, Thiruvananthapuram District on 11.11.2008. The samples collected from the vehicle were sent to FSL and the result of FSL showed that explosive substances like Potassium Chlorate, Aluminum powder and Sulphur were detected in the samples. The forensic evidence collected from the scene of crime confirms that explosives were used in the camp. Similarly, training on preparation of Petrol Bomb and its use was also established from the Material Objects (MO) collected from the scene. In his examination-in-chief, the witness has stated that in this case also the charges have not yet been framed by the Court.

36. In his cross-examination by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, the witness (PW-4) has accepted that the two cases viz. FIR No. 3/2010 and FIR No. 4/2010 registered by NIA do not form part of the grounds in the notification dated 01.02.2014. He further stated that he was a part of the investigating team of both the cases since their registration and also that these two cases were part of the cases presented before the previous Tribunals. He also accepted that one Rashid @ Rashid Maulvi, S/o Saithalvi, who is the complainant in the case FIR No. 156/2006 and was an accused in this case for more than 28 months after the original FIR was registered, has since been tendered pardoned by the NIA Special Court. He denied the suggestion that the sole basis of stating that the training camp at Wagmon was held on 10<sup>th</sup> to 12<sup>th</sup> December, 2007 is the confessional statement of accused No. 9, Ameel Parvez. He further stated that he does not know whether any public witness was associated at the time of seizure of the Scorpio vehicle but he denied the suggestion that the said vehicle was being used and operated as a commercial vehicle. He accepted that no action has been taken against the owner of the vehicle but volunteered that this vehicle was taken on rent by the organizers of the camp. He further stated that he was aware that two air guns were purchased in November, 2007 in the name of one of the accused but accepted that no license is required for purchasing and using an air gun in Kerala. He denied the suggestion that the case FIR Nos. 3/2010 and 4/2010 filed by NIA are false and fabricated and was registered and has been kept pending with the sole aim of bolstering the case for banning SIMI. He also denied the suggestion that he had no material basis for claiming that SIMI is still continuing its activities in any manner or the anti-national activities for prejudicing the national integrity, communal harmony, sovereignty and security of the State.

## II) At Udaipur in Rajasthan:

At Udaipur, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

(i) Mr. Janardan Sharma, Inspector General of Police, CID (Int.), Jaipur, Rajasthan (PW-5);

37. PW-5, Mr. Janardan Sharma, Inspector General of Police, CID (Int.), Jaipur, Rajasthan appeared and produced his affidavit exhibit PW-5/A. The witness was nominated as the Nodal Officer for the State of Rajasthan vide order dated 3<sup>rd</sup> February, 2014 (Ex. PW-5/1).

38. The witness (PW-5) in his affidavit has stated that one accused Mohd. Rashid Shekh, who was president of SIMI from Bikaner, was found indulging in unlawful activities of SIMI with the help of several other activists and SIMI pamphlets, signboard and literature of SIMI was recovered from his possession. One of the recovered posters had two guns crossing each other and torn flags of America, England and Israel and another poster had a picture of Babri Masjid with the words "revenge is due". Accordingly, FIR No. 111/2001 was registered under Section 10 of UAP Act. The second FIR viz. FIR No. 102/2001 was registered under Sections 10 & 13 of UAP Act pursuant to incident of pasting posters by Yunus, a member of SIMI, on the front wall of madarsa, containing objectionable material designed to spread communal disharmony. The third FIR No. 345/2001 was registered against accused Niyamat Ali who was found guilty of indulging in illegal SIMI activities.

39. The witness in his affidavit has also stated that due to objectionable activities SIMI has vitiated the communal harmony in the state many times and has become a threat to the public peace and tranquility that become evident from the pamphlets and posters distributed by SIMI, which have highly objectionable content. He has annexed with his affidavit (Ex. PW-5/A) the certified copies of two pamphlets and a poster circulated by members of SIMI organization, which are exhibited as Ex. PW-5/2, PW-5/3 and PW-5/4 respectively. The witness has also annexed with his affidavit the copy of charge sheet filed in the court of ACJM, Bikaner in respect of FIR No. 111/2001; charge sheet filed in the court of Chief Judicial Magistrate, Sangod in case FIR No. 102/2001 and a copy of judgment dated 18.12.2007 in FIR No. 354/2001. In his examination in chief, the witness has stated that the accused in FIR No. 354/2001 was convicted but was released on probation by giving benefit of Section 4 of Probation of Offenders Act. It is further stated that the trial in respect of FIR No. 111/2001 and 102/2001 is in progress and evidence is being recorded.

40. In his cross examination by Mr. Mobin Akhtar, Advocate representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, PW-5 denied the suggestion that these three cases referred to in his affidavit have been intentionally mentioned so as to prejudice the proceedings in the Tribunal. He stated that he was not aware whether the judgment in FIR No. 354/2001 was set aside and remanded back for retrial and denied the suggestion that he had deliberately concealed this fact from the Tribunal. He also stated that there might be cases that may have been registered in the state of Rajasthan against SIMI and its members which resulted in acquittal. He denied the suggestion that FIR Nos. 111/2001 and 102/2001 have been falsely registered against innocent people in order to justify the ban on SIMI and

that the witnesses produced by the prosecution in these two pending cases are stock witnesses. He also denied the suggestion that the pamphlets annexed with his affidavit were not seized at the time of sealing of the offices of SIMI and have been subsequently planted on the accused persons. He also denied the suggestion that after the ban imposed on SIMI in 2001, there have been no activities relating to SIMI in the State of Rajasthan.

### III) At Mysore in Karnataka:

At Mysore, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Jayanth Vasudev Shetty, Deputy superintendent of Police, State Intelligence, Dakshina Kannada District, Karnataka (PW-6);
- (ii) Mr. N. Sadananda Shivaram Padolkar, Circle Police Inspector, Navalagund Circle, Dharwad District, Karnataka (PW-7);
- (iii) Mr. Simon C.A., Deputy Superintendent of Police, Special Enquiries Division, CID, Bangalore, Karnataka (PW-8);
- (iv) Mr. H.M. Omkaraiah, Assistant Commissioner of Police and Investigating Officer, J.C. Nagar Sub-Division, Bangalore (PW-9).

41. PW-6, Mr. Jayanth Vasudev Shetty, Deputy Superintendent of Police, State Intelligence, Dakshina Kannada District, Karnataka, appeared and produced his affidavit exhibit PW-6/A. The witness has deposed in respect of FIR No. 242/2008 registered by PS Ullal under Sections 120(B), 121(A), 122 153(A) IPC, Sections 5 & 6 of Explosive Substances Act, 1908 and Sections 10, 11, 13, 18 & 19 of Unlawful Activities (Prevention) Act, 1967 on the complaint filed by Mr. Venkatesh Prasanna, police inspector, District Crime Intelligence Bureau, Dakshina Kannada Distt., Mangalore.

42. In his affidavit the witness has stated that one Riyaz Bhatkal Shabandri, a wanted accused in bomb blasts in Mumbai, Delhi, Ahmedabad and Surat was taking shelter in the house of Mohd. Ali at Mukkacheri in Ullar, Mangalore. Accordingly, the house of Mohd. Ali was raided on 03.10.2008 at 10:30 am. During the search, Mohd. Ali disclosed that Riaz Bhatkal was the founder member of Indian Mujahiddin and an active member of SIMI. He further disclosed that Riaz Bhatkal was responsible for bomb blasts that took place in Delhi, Ahmedabad, Surat and Mumbai. On enquiry, Mohd. Ali along with his son Javed Ali admitted having given shelter to Riaz Bhatkal and that they participated in various meeting to discuss Jihad and activities of Indian Mujahiddin. On the basis of information received from Mohd. Ali and his son Javed Ali, the police conduct raid at various houses located at Chembugudde in Ullar Mangalore; and Subhas Nagar, Mangalore city and seized 5 live bombs, 10 mobile phones, a diary, a computer disk and some other documents related to Jihad etc. A car bearing No. KA 03N – 8812 was also seized which was used by accused Mudasar Yasin. After transfer of investigation on 04.10.2008 by PSI, Ullal Police Station, the police also conducted raid at various other houses and also recorded the statements of accused persons. Various incriminating materials have been seized from these houses. The witness has annexed the certified copies of various panchnamas and statements of the accused with his affidavit and same are exhibited as Ex. PW-6/1 to PW-6/17.

43. In his cross-examination, the witness has stated that since the filing of his affidavit in 2010 before the previous SIMI Tribunal, Yasin Bhatkal, who is accused No. 12 in the case has since been arrested by the NIA on 29.10.2013. He admitted that the statements of all the accused annexed with his affidavit were recorded in police custody. He also stated that the witnesses to many of the panchnamas are local people. He denied the suggestion that the sole basis for alleging that Indian Mujahhidin is a front organization of SIMI is the confessional statement of the accused Noushad and volunteered that after his arrest, certain documents and incriminating articles were seized which support their claim. He also stated that by the word 'among the other material', he had referred to live bombs that they seized. He also volunteered that on enquiry, Mohd. Ali and his son Javed Ali, disclosed that Riaz Bhatkal, who is one of the founder member of Indian Mujahhidin, visits their house and that he was an active member of SIMI and was involved in bomb blast, which took place in Delhi, Ahmedabad, Surat and Bombay regarding which Riaz Bhatkal discussed with them. He further stated that Riaz stayed in their house and his friends Noushad, Muddassar Yasin were supporting him in unlawful activities. He admitted that there is no mention of SIMI in FIR and only Indian Mujahhidin was mentioned in the FIR but he volunteered that Mr. Venkatesh Prasanna, who is the complainant in this case, mentioned about involvement of SIMI and Indian Mujahhidin. He also admitted that except for the confessional statement of Mohd. Noushad, none of the confessional statements recorded in this case make any mention of SIMI but denied the suggestion that immediately upon becoming IO of this case, he introduced the name of SIMI through the alleged confessional statement of Mohd. Noushad.

44. He further stated that in his statement Syed Mohd. Noushad had stated that in the get together, which was arranged by Parhan and Riza Bhatkal, 18 persons participated. In that meeting, Mohd. Ali Mukkechery and Shabir Bhatkal had explained about the 'Jihad' functionary and Riza Bhatkal, Iqbal Bhatkal and Ahammad Yasin had explained the location for bombing, how to prepare the bomb, how to explode, how to disappear clues, purchasing of mobile phone sim cards under the fake name etc. He denied the suggestion that he had deliberately interpolated SIMI's name into the alleged confessional statement of Noushad in order to falsely and malafidely to support the Central Government's case

against SIMI. He also denied the suggestion that there is no basis for his statement that the accused are member of SIMI and that the case detailed in his affidavit has no relevance for the purposes of the present proceedings as it is an old case and the same has been deliberately kept pending to support the continuance of a ban on SIMI.

45. PW-7, Mr. N. Sadananda Shivaram Padolkar, Circle Police Inspector, Navalagund Circle, Dharwad District, Karnataka appeared and produced his affidavit exhibit PW-7/A. The witness has deposed in respect of four FIRs (Ex. PW-7/1), viz. FIR No. 260/2008 registered at PS Golgumbuz; FIR No. 101/2008 registered at PS Adarshanagar; FIR No. 359/2008 registered at PS Gandhi chowk; and FIR No. 360/2008 registered at PS Gandhi chowk.

46. In his affidavit, the witness PW-7 has stated that all fifteen accused persons were arrested in these cases and various incriminating materials were seized from these accused. Investigation of these cases revealed the involvement of SIMI activists. The witness has annexed with his affidavit the certified copies of the statement of various accused; certified copy of the provocative pamphlets dated 04.12.2008 affixed at various places at Bijapur Town containing slogans and statements; certified copy of panchnama and certified copies of charge sheets filed in the aforesaid four FIRs. The same are exhibited as Ex. PW-2 to PW-14.

47. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-7 has stated that in FIR No. 260/2008, many of the witnesses have been examined except for a few panch witnesses whereas in other cases, no witnesses have been examined till date. He denied the suggestion that one incident was turned into four different cases and stated that the posters were pasted in separate jurisdiction of three different police stations and that is why different cases were registered. He also denied the suggestion that the decision to register four FIRs with respect to one alleged incident is also part of the conspiracy to falsely implicate SIMI. Although he accepted that the sole basis for saying that the alleged pasting of posters was done as SIMI activity is the confessional statement of accused-1, Shan-e-Karim but he denied the suggestion that the SIMI connection of the other accused is based only upon the said confessional statement and volunteered that the accused have independently stated in their confessional statements that they were participating in the activity for and on behalf of SIMI.

48. He also denied the suggestion that the posters/pamphlets on the basis of which this case has been registered does not mention anywhere that it has not been published by SIMI or that it is connected to SIMI and volunteered that the posters mentions "IBT", which stands for expression "Islamic Book Treasure" and on enquiry it was discovered that IBT is having connections with SIMI. He also stated that Shan-e-Karim's collection of books is called IBT and that is why, he can say that the pamphlet seized had a SIMI connection. He accepted that the connection of Shan-e-Karim to SIMI is made by the police on the basis of his confessional statement but volunteered that as per confessional statement, some CDs were seized from his house which contain some provocative material and that material makes reference to SIMI. He denied the suggestion that none of the accused had admitted their membership of SIMI after the first ban imposed on SIMI in September, 2001. He also denied the suggestion that the cases detailed in his affidavit have no relevance for the purposes of the present enquiry as they are old case.

49. PW-8, Mr. Simon C.A., Deputy Superintendent of Police, Special Enquiries Division, CID, Bangalore, Karnataka appeared and produced his affidavit exhibit PW-8/A. The witness has deposed in respect of FIR No. 14/2008 registered at PS Gokul Road, Hubli.

50. The witness (PW-8) in his affidavit has stated that on 30.01.2008, one Mohd. Asif D. was stopped near Airport cross, Hubli city for riding a motorcycle at very high speed. On verification, it was found that he did not have documents of the motorcycle. Hence P.I. Gokul Road PS seized the vehicle under a seizure panchnama and lodged a complaint against him and a case being FIR No. 14/2008 was registered under Sections 102 Cr.P.C. read with Section 379 IPC. During the course of investigation of the case, it was revealed that Mohd. Arif D. was a SIMI activist. He also disclosed the names of other SIMI activists. In all 21 persons were accused of whom 19 were arrested. The investigation of the case further revealed the complicity of the said accused persons in the unlawful activities of SIMI. During the investigation, the statements of several witnesses were recorded. Two witnesses namely Niyaz Ahmad and Mohd. Ismail revealed about the conspiracy meetings organized by the accused persons. They informed that Mohd. Arif D., Alla Bhaksh and Mirza Ahmad Baig used to conduct discourses wherein the massacre of muslims and the demolition of Babri Masjid were discussed in detail. Further, it was deliberated that in order to establish Islamic Government, important installations in India have to be destroyed, the Indian Economy has to be uprooted and blood shed will be caused by explosion in crowded areas. In order to achieve these objectives, more muslim youths should be brought into the SIMI organization. Further investigation revealed that the accused persons, who were active members of SIMI, were carrying out unlawful activities aimed at waging a war against India and disturbing communal harmony. The witness in his affidavit has also stated that it is learnt from the sources during investigation of Yasin Bhatkal (IM co-founder) that SIMI members have joined with IM to take shelter in different banner to continue their anti-national activities in spite of the imposition of ban on this organization by the Central Government. After completion of investigation, charge sheet was filed under Sections 120(B), 121, 121A, 122, 124A, 153A, 153B, 379, 116, 465, 468, 471, 201, 511 of IPC, Sections 4 & 5 of the Explosive Substances Act, 1908 and Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967. The witness has annexed the certified copies of various seizure panchnama, certified copies of charge sheet, certified copies of panchnama and certified copies of statements of accused persons, which are exhibited as Ex. PW-8/2 to PW-8/37.



51. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-8 has stated that the trial in FIR No. 14/2008 is going on day-to-day basis and out of 353 witnesses, 267 have been examined. He also stated that none of the statements of witnesses has been recorded under Section 164 Cr.P.C. He further stated that he does not know whether the documents/books seized in this case are banned by the State Government under Section 95 Cr.P.C. and accepted that there is no mention of any such ban in the records of the case. He denied the suggestion that the ban on SIMI was coming to an end in February, 2008 and just before the ban was to expire the case was fabricated. He also denied the suggestion that the name of SIMI has been interpolated in the voluntary statements in order to illegally and unjustifiably support the ban on SIMI. He also denied the suggestion that none of the accused has admitted their association or membership of SIMI.

52. PW-9, Mr. H.M. Omkaraiah, Assistant Commissioner of Police, J.C. Nagar, Sub-Division, Bangalore City, Karnataka appeared and produced his affidavit Ex. PW-9/A. The witness has deposed in respect of 9 cases viz. Crime Nos. 483/2008, 217/2008, 297/2008, 260/2008, 261/2008, 92/2008, 314/2008, 315/2008 & 177/2008 registered at PS-Madivala, Adugod, Koramangala, Ashokanagar, Sampangiramanagar, Bytarayanapura and Kengeri respectively.

53. In his affidavit (Ex. PW-9/A) the witness has stated that on 25.07.2008, a series of Bomb Blasts occurred in Bangalore city between 13:15 hrs. to 13:40 hrs. These blasts led to the tragic loss of human life and severe injuries to a number of persons besides causing damage to a lot of public and private property. In all nine cases were registered in the various police stations at Bangalore. He further stated that the Madivala PS Crime No. 483/2008 is the prime case and all the accused and the witnesses are common to all the other eight matters pending trial before 34<sup>th</sup> Special Additional Sessions Court, Parappan Agrahara, Bangalore. During the investigation of the cases the involvement of key SIMI activists has come to light and various charges were leveled against each accused.

54. During the course of investigation and the information provided by A-1 Naseer, the books (i) Malim-Fi-I-Tarriq (Miles stone); (ii) Al-Jihad-Ul-Islam (Abu-ul-modudi); (iii) Biography of Hasan-Ul-Bannah; and (iv) Allahu-Theunnathu (What allah seek) were seized and also a chart of SIMI which has words written on it "AYODHYA TO JERUSALEM, THE JIHAD WILL GO ON" published by SIMI was also seized in the house of A-14 Fayis who died in encounter at J&K by the military forces. Investigation further revealed that during the month of March, 2008, accused 1 and 3 while going to Bengaluru to identify the prime localities for bomb blasts, had visited the rented house at A-1, Naseer, where discussion was held between accused 1 and 3 regarding the conspiracy to carry out serial bomb blast at Bengaluru city, to wage war against India, to damage the economic fabric of the country, to take revenge against Hindus, to avenge the Gujarat riots and the demolition of Babri Masjid. In furtherance of the said conspiracy, accused 3, approached the accused No. 22 (Wali @ Rehan @ Rasheed Obedulla), who was an LeT Commander with accused 23 and 25 for waging war against India by indulging in unlawful activities, to cause damage to the economic fabric of the country by using explosive substance causing loss of life of citizens and damage to the property of the nation for which the accused No. 22, 23 and 25 agreed to help monetarily.

55. After completion of the investigation, charge sheets were filed in each of the cases. Additional reports have also been filed in all the above mentioned cases pertaining to bomb blasts in Bangalore city against the accused No. 27 to 32 as contemplated under Section 173(8) Cr.P.C. Further, on 04.10.2013, the NIA court, Ernakulam convicted life sentence to 11 accused who were involved in Bangalore Serial Bomb cases-2008. The witness had filed the certified copies of statements of witnesses; panchnamas; charge statement of A-1 and the certified copy of the charge sheet, which are exhibited as Ex.PW-9/1 (colly) to PW-9/5 (colly).

56. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-9 has stated that in the main case, which is Crime No. 483/2008, PS-Modivala, 173 witnesses have been examined by the Trial Court. He further stated that the statement of none of the witnesses in these cases has been recorded under Section 164 Cr.P.C. and these statements were recorded during the police remand of the accused. In response to the Tribunal's question, the witness replied that there was recovery in these cases. The cross-examination of the witness was deferred on the request of Mr. Ashok Agrwaal.

#### IV) At Delhi:

At Delhi, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Sanjeev Kumar Yadav, Deputy Commissioner of Police, Special Cell, Delhi (PW-10);
- (ii) Mr. Rakesh Bhatt, C.S.P., Civil Lines, Raipur, Chattisgarh (PW-23);
- (iii) Mr. Jyoti Narayan, DIG, NIA, New Delhi (PW-29); and
- (iv) Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India, New Delhi (PW-30)



57. PW-10, Mr. Sanjeev Kumar Yadav, Deputy Commissioner of Police, Special Cell, Delhi appeared and produced his affidavit Ex. PW-10/A. The witness has deposed in respect of FIR No. 54/2011 at PS- Special Cell, Delhi under Sections 471, 489-B, 489-C of IPC, Section 12 of Passport Act and Section 25 of Arms Act.

58. The witness in his affidavit has stated that on the night intervening 21/22.11.2011, on the basis of specific information, one Mohd. Quateel Siddiqi @ Sajan @ Siraj @ Vivek Mishra, suspected to be a member of Indian Mujahiddin was apprehended from near Anand Vihar Inter State Bus Terminal, Delhi. On his cursory search, one 9 mm loaded pistol made in Brazil containing 7 live cartridges in its magazine was recovered from his possession. On the search of his bag, besides other articles, Fake Indian Currency Notes worth Rs.2 lacs; One loaded magazine of 9 mm pistol containing 7 live cartridges and one envelope containing two Indian passports one in the name of Seraj Ahmad but bearing the photograph of Quateel @ Sajjan and the other passport in the name of Ahmad Zeauddin and one driving license in the name of Vivek Mishra but bearing photograph of Quateel @ Sajjan were recovered. Accordingly, FIR 54/2011 was registered by PS Special Cell, Delhi.

59. Investigation of the case revealed that Quateel Siddiqui is a member of the banned terrorist outfit Indian Mujahiddin and has been involved in several terrorist activities in India. Accordingly, provisions of Section 120B IPC and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act were added in the said FIR. During the course of investigation, 24 accused persons (including Quateel Siddiqui), all members of the terrorist outfit Indian Mujahiddin have so far been arrested and a huge quantity of explosive material, IEDs, arms & ammunition has been recovered from their possession/at their instances from their hideouts. However, fourteen accused, who have indulged in terrorist activities are still wanted in this case and were absconding. The witness has further stated that during the course of investigation of the said FIR, an arms and ammunition manufacturing factory, established by this module of Indian Mujahiddin for fabrication/assembly of arms & ammunition for carrying out terrorist activities in Delhi & other parts of India was also discovered and seized at Nangloi, Delhi. A huge quantity of explosive material, arms & ammunition and apparatus for manufacture/fabrication of the same were recovered from there. It is further stated that this included the 9 mm pistol, which was used by accused persons for firing on foreign nationals on 19.09.2010 near Jama Masjid regarding which FIR No. 65/2010 was registered and is pending trial.

60. The witness has further stated in his affidavit that one of the accused namely Tarique Anjum Ahsan, while he was a student in 1997, had attended a seminar of SIMI which was held in Patna, Bihar. In that conference, one of the speakers by the name of Hashim Raja had talked of Jihad and the activities of SIMI, which had a profound effect on him. He also made a statement in his affidavit that "since SIMI had been banned in the year 2001, Tarique Anjum Ahsan along with other SIMI activists in the year 2003, at Bhatkal, Karnataka, had regrouped and floated a new organization namely Indian Mujahiddin to carry on Jihad" (Mark 'A'). It is further stated that the investigation further revealed that another accused Mohd. Bashir Hassan Talha had in 1997 met various SIMI activists and started participating in the activities of SIMI. He was also part of the module in Bhatkal, Karnataka where SIMI cadres had regrouped and Indian Mujahiddin was formed. The investigation of said FIR further revealed that the activists of SIMI/Indian Mujahiddin especially Iqbal Bhatkal, Riyaz Bhatkal are still continuing with their unlawful activities and the acts of terrorism were committed at the instance of Ahmad Siddibappa @ Imran @ Shahrukh @ Asif @ Shoeb @ Yasin Bhatkal @ Ahmad, who got directions from Iqbal Bhatkal, Riyaz Bhatkal and Amir Raza Khan (Chief of Indian Mujahiddin) based in Karachi, Pakistan. Ahmad Siddibappa in his statement has admitted that he along with Riaz Bhatkal and Iqbal Bhatkal planned to carry out terrorist activities around Chinnaswamy Stadium, Bangalore in which IPL matches were being conducted and in July, 2010, he and Riaz Bhatkal had further planned a terrorist attack in Delhi in order to defeat Commonwealth Games. He further disclosed that he had planned to attack a German Bakery in Paharganj, Karolbagh, Connaught Place and other places. The witness has annexed the certified copies of statements of Tarique Anjum Ahsan (Ex. PW-10/4), Bashir Hasan (Ex.PW-10/5), Fasih Mehmooh (Ex.PW-10/6), Ahmad Siddidappa (Ex.PW-10/7), Assadullah Akthar (Ex.PW-10/8) as also the certified copies of four supplementary charge sheets filed in FIR No. 54/2011. The same are exhibited as Ex.PW-10/9 to PW-10/12.

61. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that he does not have any photograph or any other document to establish that Tariq Anjum Ahsan attended a Seminar of SIMI held in 1997 at Patna and volunteer that it is disclosed in his disclosure statement. He also admitted that except the disclosure statement, there is no documentary or photographic evidence to establish that such a meeting was even held. He also admitted that neither of these meetings/Seminars/Conference was banned by the State Government or Central Government. He stated that the basis for saying that Tariq Anjum Ahsan was a member of SIMI prior to its first ban in September, 2001 is his disclosure statement and the disclosure statements of others who have been arrested in this case. However, he denied the suggestion that the so-called confessional statements of Tariq Anjum Ahsan recorded in this case are false and concocted. He further accepted that Tariq Anjum Ahsan has not stated but has implied in his confessional statement dated 08.02.2012 that the 'new moniker' of SIMI is 'Indian Mujahiddin'. The confessional statements of other accused also say that the new name of SIMI is Indian Mujahiddin. He also accepted that by the statement made in para 8 of his affidavit (Mark 'A'), he is stating that Indian Mujahiddin was a new organization started in 2003 by former SIMI activists after SIMI was banned in 2001. He admitted that it is not stated anywhere in the charge sheet (Ex.PW-10/2) annexed to his affidavit that Indian Mujahiddin is the new name of SIMI but volunteered that it is mentioned in the disclosure statements of the arrested

accused Tariq Ahmed Ahsan, Bashir Ahmed Siddibappa and Farih Mehmood. He, however, denied the suggestion that no such statement has been made by the accused persons in their disclosure statements that Indian Mujahiddin is a front organization of SIMI or that it is the new name of SIMI. He also denied the suggestion that the activities of Mohd. Bashir Hasan Talah and Tariq Ahmed Ahsan after the ban on SIMI in September, 2001, if any, were done in their individual capacities and had no connection with SIMI. He further denied the suggestion that the name of SIMI has been interpolated in the confessional statements of the accused persons annexed with his affidavit to support the ban on SIMI.

62. PW-23, Mr. Rakesh Bhatt, C.S.P., Civil Lines, Raipur (Chhatisgarh) appeared and produced his affidavit Ex. PW-23/A. The witness has deposed in respect of FIR No. 740/2013 (Ex.PW-23/1) registered at PS-Civil Lines, District Raipur under Sections 3, 7, 10, 11, 13, 15, 16 & 18 of the Unlawful Activities (Prevention) Act, 1967, Sections 121, 124A, 153A of IPC, Sections 25 & 27 of Arms Act and Sections 3 & 4 of Explosive Act. The witness is the investigation officer of the said case since 14.11.2013.

63. The witness in his affidavit has stated that on 14.01.2013, the Incharge Police Officer Civil Lines, received information through an informer about one Umer Siddiqui a suspicious activist of SIMI, used to give shelter to various members of the banned organization SIMI and Indian Mujahiddin terrorist organization from the year 1999. On the basis of the said information, crime branch team caught Umer Siddiqui at Nurani Chowk, who informed the police that he has been Ansar of Raipur in SIMI since the year 1999. He further stated that he and his group organized a camp of SIMI in forest of Barnawapara and the purpose of the meeting was to strengthen the organization SIMI and collect funds for aiding the terrorist of Indian Mujahiddin and SIMI. Accordingly, FIR No. 740/2013 was registered by PS Civil Lines, Raipur.

64. During the course of investigation, Abdul Wahid, accused no.2, was taken into custody and during the search of his house blank membership form of SIMI organization, some cash and 315 Bor cartridge were recovered. The investigation further revealed that Umer Siddiqui, accused no. 1, was involved in planning of the bomb blast in Body Gaya as well as in Patna Rally of Sh. Narendra Modi and further also revealed that they did a reiki of Ambikapur, Nagpur and Delhi as the rallies of Sh. Narendra Modi was to be carried out in all these cities. On the basis of the revealed information, left out explosives after the blasts in Patna and Bodhgaya were found with Azhar, 32 Bor revolver with Azizullah i.e. accused no. 3 were discovered and seized. Umer Siddiqui also revealed that Hyder Abdullah in his speeches stated that the Indian government is "Kafir" and further said that the Muslims were not treated well in India. The confessional statements of three witnesses were recorded before the First Class Judicial Magistrate wherein they clearly stated that they all were known to Umer Siddiqui who was teaching them to collect funds and prepare bombs and explosives and practice Jihad in the country. The witness has annexed the certified copies of memo under Section 27 of the Evidence Act of the accused persons along with the confessional statements of three witnesses namely Mohd. Faizan, Abdul Mohsin Khan and Mohd. Abdul Rizyan and certified copy of challan, which were exhibited as Ex.PW-23/2 to PW-23/11.

65. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that the story in the FIR is false or that there is no informer and that Umer Siddiqui was not arrested in the manner described in the FIR. He accepted that the address of SIMI was not mentioned in the blank membership form seized from the accused but denied the suggestion that the form was fabricated and printed by the police. He also accepted that all the accused were granted bail in this case under Section 167(2) Cr.P.C. on the ground of delay in filing the charge sheet. He also accepted that all the three persons whose confessional statements have been recorded are the witnesses and not the accused. The witness denied the suggestion that this case has nothing to do with SIMI and further denied that the 'Camp' at Barnawapara was actually a family outing in which the wives and children of the people were also present and volunteered that the camp was organized by Umer Siddiqui and these persons participated in the same. Umer Siddiqui and Haider Abdullah made speeches in the camp. He further stated that on 26.11.2003, Umer Siddiqui further revealed that Azhar's laptop had Lashkare Toiba and Hizbul Mujahiddin's video of Training Camp, Maulvi's anti national provoking speeches and also some objectionable speeches against Hindu Gods etc. which were used to motivate them. He further denied the suggestion that he had withheld the material evidence pertaining to the case detailed in his affidavit from this Tribunal.

66. PW-29, Mr. Jyoti Narayan, DIG, NIA, New Delhi appeared and produced his affidavit Ex. PW-29/A. The witness has deposed in respect of two FIRs viz. FIR No. 361/2013 of PS GRP Patna registered under Sections 307, 326, 121, 121(A), 120(B) & 34 IPC, Section 3 & 5 of Explosive Substances Act, Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act and Sections 151 & 153 of Railway Act, and FIR No. 451/2013 of PS Gandhi Maidan, Patna registered under Sections 324, 326, 307, 302, 120B, 121, 121A of IPC, Sections 3, 4 & 5 of Explosive Substances Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act.

67. In his affidavit the witness has stated that he is the Supervisory Officer of FIR No. 361/2013 and FIR No. 451/2013, which are related to the bomb blasts in Patna on 27.10.2013 in the rally of Sh. Narendra Modi. The cases were initially registered by the local police but subsequently the investigation of the said cases was transferred to NIA, which re-registered the cases as RC 10/13/NIA/DLI (Ex. PW-29/1) and RC 11/13/NIA/DLI (Ex.PW-29/2) in NIA PS New Delhi. He further stated that investigation of cases RC 10/13 and RC 11/13 shows the involvement of SIMI and its

activists in illegal and anti-national activities in the State of Bihar, Jharkhand and Chattisgarh. During investigation, the involvement of 16 accused persons in both the cases came into light.

68. The witness has further stated that during further investigation, it is revealed that the accused Umer Siddique and Azharuddin are members of SIMI. In his confessional statement, Umer Siddique stated that he has been associated with SIMI since 1997 and even after the ban on SIMI, he continued to organize meetings and programmes of SIMI in Raipur. He also provided shelter to absconding accused in RC 10/13 & RC 11/13 in Raipur. Azharuddin in his confessional statement has stated that he has been associated with SIMI for the last two years and knew Umer, who organizes programmes of SIMI in Raipur. The witness in his affidavit has further stated that Mohd. Faizan Latif, one of the witnesses in RC 10/13 & RC 11/13 in his statement under Section 161 Cr.P.C. has stated that Azhar had taken him to the meeting of SIMI in 2012 where Umer and Haider were saying about bringing Islamic government in India and for Jihad in India. They were asking to collect funds of Jehadis and for making bombs. He also revealed that Azhar told him that he will explode bomb at public place and run to Afghanistan. Another witness Mujammil Shadab in his statement has stated that the accused Haider had taken him to a SIMI programme in Hazaribagh, where Haider asked them to be prepared for Jihad and to do Naxal arms training. The witness has annexed the certified copy of the statements of aforesaid persons which are exhibited as Ex.PW-29/4 to PW-29/8.

69. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question whether the investigation revealed the connection of 16 accused persons with SIMI, stated that they had sufficient oral and documentary evidence and even laptop and digital evidence to show their connection with SIMI but denied to reveal the said information. Further, in reply to the question whether, as per investigation, he feel SIMI is still existing, the witness stated that they had sufficient evidence and that as per the independent witnesses, intercepts on calls, analysis of laptop and other evidence, CCTV clippings, it is clear that SIMI is still active. He further stated that not only they are active, they have their regular training sessions, collecting sufficient funds, arranging programmes, motivating people and creating modules all over the country. He denied the suggestion that no statements of accused under Section 161 Cr.P.C. were recorded. He further denied the suggestion that NIA has no basis for alleging that SIMI has been active in India after it was first banned on 27<sup>th</sup> September, 2001.

70. PW-30, Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India appeared and produced her affidavit Ex. PW-30/A. The witness has also placed before the Tribunal sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

71. The witness in her affidavit has stated that as per the information received after 3<sup>rd</sup> February, 2012 from various intelligence agencies, National Investigation Agency and the State Governments, despite the ban, SIMI and its members have continued to carry on their unlawful activities under the garb of various names/banners/cover organizations. They have indulged in radicalizing and brainwashing the minds, and indoctrination of Muslim youth by jihadi propaganda and through provocative taqreers, CDs etc. She has further stated that SIMI has been carrying on its activities, including terrorist and organizational activities, undertaking clandestine training and raising funds through illegal means. SIMI has also been making efforts to establish links with terrorist outfits, to expand its network and to carry out violent actions. She further stated that the object of SIMI, as per its own constitution, is contrary to the basic fabric of the Indian Constitution.

72. In her cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question whether the issue of reasonableness of the restrictions upon SIMI come up during the preparation of the Note before the Cabinet, the witness stated that all the factors were taken into account including the inputs received from the States and Intelligence Agencies. When the witness was asked to name the Central Agencies from which the inputs were received, the witness replied that they had their intelligence agencies apart from NIA. She denied the suggestion that the alleged States inputs have been manipulated to mislead the Cabinet as well as this Tribunal to illegally and unjustifiably support the ban on SIMI. When the witness was asked to point out which part of the SIMI's constitution is contrary to the basic fabric of the Indian Constitution, she replied that she was talking about the Oath of Allegiance for Ansar. She denied the suggestion that the allegation against the constitution of SIMI being contrary to the basic fabric of the Indian Constitution is not contained in any of the previous Notifications banning SIMI. She further denied the suggestion that the present ban on SIMI is arbitrary and unjustified and it is a result of non-application of mind. She also denied the suggestion that the Background Note is a result of manipulation and that it conceals material facts and is factually incorrect. She also denied the suggestion that the Background Note has no basis in law.

**(V) At Hyderabad in Andhra Pradesh:**

At Hyderabad, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. N. Madhusudhana Reddy, Deputy Inspector General of Police, Counter Intelligence Cell, Intelligence Department, Hyderabad, Andhra Pradesh (PW-11);

- (ii) Mr. B. Koteshwar Rao, Inspector of Police, Special Investigating Team, Hyderabad City, Andhra Pradesh (PW-12);

73. PW-11, Mr. N. Madhusudhana Reddy, IPS, Deputy Inspector General of Police, Counter Intelligence Cell, Intelligence Department, Hyderabad, Andhra Pradesh appeared and produced his affidavit as Exh. PW-11/A. The witness has been appointed as the Nodal Officer for the State of Andhra Pradesh for SIMI related matters. He has stated that in spite of the ban imposed by the Central Government in the past on the SIMI, as per the reports of the Intelligence Agencies and the investigations conducted in the various cases, it has been revealed that members of SIMI are still persistently involved in carrying out the unlawful activities of SIMI in a clandestine manner thereby disrupting communal harmony and indulging in anti-national activities and actions which are detrimental to the sovereignty and integrity of India. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

74. The witness has given a brief summary of cases registered against the SIMI cadres in the State of Andhra Pradesh viz., CR No. 1/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 302, 307, 436, 121A and 153A of IPC, Sections 3 & 5 of Explosive Substances Act, 1908, Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967 and Section 4 of Prevention of Damage to Public Property (PDPP) Act, 1984; CR No. 2/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 307, 436, 121A and 153A of IPC, Sections 4 & 5 of Explosive Substances Act, 1908 and Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967; CR No. 3/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 302, 307, 436, 121A and 153A of IPC, Sections 3 & 5 of Explosive Substances Act, 1908, Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967 and Section 4 of Prevention of Damage to Public Property (PDPP) Act, 1984; CR No. 02/2009 under Sections 120(B), 302, 307, 121, 121(A), 122, 124(A) IPC and Sections 25 & 27 of the Arms Act, 1959 read with Section 34 of IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967; FIR No. 287/2011 registered by Central Crime Station CCS/SIT, Hyderabad under Sections 120B, 121A, 125, 126 of IPC and Sections 10, 13 & 3 of Unlawful Activities (Prevention) Act, 1967; FIR No. 380/2011 registered by PS Begumpet, Hyderabad under Sections 420, 468, 120B of IPC; Crime No. 274/2011 registered under Section 420, 468, 120(B) of IPC; and Crime No. 245/2011 registered at PS Narayanaguda under Section 177 & 419 of IPC. The witness has annexed the certified copies of charge sheets filed in the aforesaid cases as well as the certified copy of the confessional statement of accused Afak Iqbal.

75. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that the confessional statement of Afak Iqbal was recorded in Ahmedabad and stated that he was not present when the statement was recorded. He also stated that to the best of his knowledge Darsgah-e-jehad-o-Shahadath (DJS) of A.P., T.G.I. (Tahareek-e-Galba-Islam), WeI (WAhadat-e-Islami); TTSI (Tahreek-Tahafuuz-Shair-e-Islam); Al-Umma and Tanzeem Islahum Muslimeen are not banned either by the State Government or the Central Government and volunteered that all these organizations are interlinked. The persons working with WeI and TTSI are members of other organizations also. Although, he denied revealing further information since the information is secret and confidential. He denied the suggestion that Tanzeem Islahum Muslimeen is a non-existent or fictitious organization. He also stated that he does not know whether SIMI has been mentioned in FIR and volunteered that it is mentioned in charge sheet. He denied the suggestion that they had not verified from any other documents that the accused persons are members of SIMI and volunteered that the information is based on secret documents, which cannot be disclosed. He also denied the suggestion that after the ban on SIMI in September, 2001, it ceased to exist and has not conducted any activity thereafter.

76. PW-12, Mr. B. Koteshwar Rao, Inspector of Police, Special Investigation Team, Hyderabad City, Andhra Pradesh, appeared and produced his affidavit as Exh. PW-12/A. The witness has deposed in respect of four FIRs viz. FIR No. 126/2012 registered at PS Saidabad under Sections 147, 148, 324, 153A and 149 IPC; 128/2012 registered at PS Saidabad under Sections 147, 148, 324, 427, 153A and 149 IPC, 130/2012 registered at PS Saidabad under Sections 147, 148, 427, 153A and 149 IPC and 133/2012 registered at PS Saidabad under Sections 147, 148, 435, 153A and 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

77. FIR 126/2012 was registered pursuant to a complaint lodged by Sh. Mahesh Reddy at Saidabad Police Station that on 08.04.2012 when he and his brother were proceeding to Saidabad on their motorcycle, they were beaten up by some unknown persons indulging in sloganeering and rioting. FIR 128/2012 was registered pursuant to a complaint lodged by Sh. Bangari Prakash, Corporator, BJP, Mahidipatnam at Saidabad Police Station that on 08.04.2012 when he along with others were going to Madannapet to bring confidence among the people of the locality after Hanuman temple was maligned by some miscreants, 40 – 50 local people attacked them with lethal weapons and started pelting stones at Saidabad ACP office.

78. FIR 130/2012 was registered pursuant to a complaint lodged by Sh. Srinivas Reddy, at Saidabad Police Station on 09.04.2012 that when he along with his wife was going to hospital in his car, some unknown culprits pelted stones on his car in Saidabad colony, due to which the front glass, back glass and right side glasses of the car were broken. FIR 133/2012 was registered pursuant to a complaint lodged by Sh. D. Rahul Singh, that on 08.04.2012 he along with his wife was coming from Balanagar on his motor cycle and when they reached near ACP Office, Malkpet, about 50-100 members started pelting stones towards them due to which he received injury on his back.



79. Investigation of the all the aforesaid cases were transferred to SIT on 13.04.2012. During the course of investigation, seventeen persons were identified who indulged in rioting and were arrayed as accused 1 to 17. After completion of investigation, charge sheets were filed against the accused in the court of XIV Addl. Chief Metropolitan Magistrate, Nampally, Hyderabad. Investigation of the said cases revealed that a mob of over 100 persons had formed an unlawful assembly on the main road near ACP Office, Malakpet, Saidabad, purportedly to protest against the incident of some Hindu youth attacking pushcart vendors belonging to Muslim community. The purported attack on the pushcart vendors was in protest against the alleged defiling, by throwing of cow-flesh, in Hanuman Temple, Kurmaguda, Madannapet. The alleged defiling of the Hanuman Temple was aimed at creating communal tensions between the two communities. The witness has further said that his investigation further revealed that SIMI activists actively participated in the above noted incidents and provoked the mob to commit unlawful activities and rioting. They are acting like sleeper cells and helping to create communal disturbances and causing breach of peace in the society.

80. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that none of the accused in the four cases produced by him before the Tribunal have been charged for membership of any unlawful organization and also that UAP Act has not been applied in these cases. He also accepted that an organization called the Hindu Vahini has been charged with defiling the said Temple. When the witness was shown a copy of the newspaper report published in the English edition of the Times of India dated 14.04.2012 (Mark PW-12/DA) titled 'Saffron Extremists desecrated temple to trigger riots: Cops', he accepted the said report as correct but stated that he was not aware whether this report is based on a press conference held by the Police Commissioner. He also accepted that the incident of defiling of temple was done by Hindu boys to provoke a riot, however, he denied the suggestion that the sequence of events started with the defilement of the Hindu temple by some Hindu boys who falsely attributed it to the Muslims. On that basis, Hindus were aroused and attacked Muslim residences and establishments. Thereafter, the members of the Muslim community retaliated by stone pelting. He admitted that he had not mentioned about the stone pelting by both communities. He, however, denied the suggestion that he had produced these four cases before the Tribunal to malafidely and falsely support the ban on SIMI.

**(VI) At Patna in Bihar:**

At Patna, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Dr. Paresh Saxena, Inspector General of Police, ATS, Bihar (**PW-13**);
- (ii) Mr. Baliram Kumar Choudhari, Additional Superintendent of Police (Town), Patna District, Patna, Bihar (**PW-14**);

81. PW-13, Dr. Paresh Saxena, Inspector General of Police, ATS, Bihar appeared and produced his affidavit Ex.PW 13/A. The witness has been appointed as the Nodal Officer for SIMI related matters in the State of Bihar. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

82. The witness in his affidavit has stated that intelligence reports received from different agencies clearly show that many SIMI members have joined Indian Mujahiddin. As per reports, SIMI is supporting militant outfits like Indian Mujahiddin, Lashkar-e-Toiba, Tehrik-e-Taliban, Jaish-e-Mohammed etc. and SIMI and IM have stepped up their activities and are planning to target right wing political leaders. Serial blasts in Patna on 27<sup>th</sup> October, 2013 in a political rally show their persistent resolve to indulge into terrorist activities. Further, the members of SIMI have started operating under a new name Student Islamic Organization of India. Intelligence reports further revealed that in October, 2013, members of SIMI had a clandestine meeting with the 'Islamic Sangh Nepal' where it was decided to assassinate Sh. Narendra Modi. Intelligence reports further revealed that Mohd. Hasib Raza, a known SIMI activist, has been continuously been involved in carrying out terrorist plans and activities.

83. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that activities by former SIMI members cannot be attributed to SIMI. He also denied the suggestion that his statement that members of SIMI had started operating under a new name, i.e. Students Islamic Organization of India is false to his knowledge. On being asked, had his affidavit been actually based on intelligence reports, he would never have said that SIO had any link with SIMI, he replied that the intelligence reports corroborate the fact that despite ban there has been continuous activities of SIMI. It has been enrolling students and youth, holding elections and raising new cadres besides organizing meetings under covers of organizations such as SIO and MSF and the intelligence reports also indicate that these active SIMI members, whenever apprehended, have posted to be members of SIO or MSF and they are involved in anti-national and terrorist activities. Although he stated that to his knowledge, no action has been initiated against SIO or MSF for illegal activities. He denied the suggestion that paras 9 to 11 of his affidavit are designed to prejudice the Tribunal against SIMI and further denied that the facts pertaining to SIMI stated in his affidavit are false and concocted and he had no material basis to show that SIMI continues to exist.



84. PW-14, Sh. Baliram Kumar Choudhary, Additional Superintendent of Police, Patna Town, Patna appeared and produced his affidavit Ex.PW 14/A. The witness in his affidavit has deposed about FIR No. 466/2013 registered at PS Gandhi Maidan under Sections 121(A) & 123 of IPC and Sections 17, 18, 18B and 20 of Unlawful Activities (Prevention) Act.

85. The witness in his affidavit has stated that on 13.11.2013, on the basis of secret inputs, SI Rajbindu Prasad lodged a complaint at PS Gandhi Maidan stating that active members of Indian Mujahiddin, on instructions from their bosses in Pakistan and on the basis of financial and other logistical support provided by them, are waiting to spread terrorism in the State of Bihar by conducting bomb blasts at various places. It was also stated that IM was recruiting fresh members to further carry out their unlawful activities. Names of Mohd. Haider and Monu @ Tehsin Akhtar @ Hasan is specifically mentioned in the complaint. Accordingly on 13.11.2013, FIR No. 466/2013 was registered at PS Gandhi Maidan. It is further stated that Umar Siddiqui in his statement recorded under Section 164 Cr.P.C. in NIA case RC No. 07/2013/NID/DLI which pertains to bomb blast at Bodh Gaya stated that he had met the accused in FIR No. 466/2013 namely Mohd. Haider at Raipur and that Mohd. Haider was a member of SIMI and that Haider had on three occasions met the members of Indian Mujahiddin. He also named the other accused in FIR No. 466/2013 namely Monu @ Tahsin and stated that Monu @ Tahsin had demanded explosives from him and has also told Haider to work with them as they wanted to use SIMI members. He further stated that Mohd. Haider was the master mind commander of serial blast occurred at Patna and Bodh Gaya. He also stated that Mohd. Haider is holding post of 'Amir' of Bihar and Jharkhand state in SIMI organization and on his instruction serial blasts have been done in the township of Patna on 27.10.2013 by the members of SIMI organization. The witness has stated that the investigation of FIR No. 466/2013 is still going on.

86. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he had not arrested the two accused namely Mohd. Haider and Monu @ Tehsil Akhtar in FIR No. 466/2013 and that the statements of the accused persons were also not recorded by him. He admitted that there is no mention of SIMI in the FIR and that the statements of these two witnesses were recorded soon after the registration of FIR. He also admitted that the statements of the two accused in NIA case No. RC-07/2013/NID/DLI recorded under Section 164 Cr.P.C. by a 1<sup>st</sup> Class Judicial Magistrate do not mention that any questions were put to them by the recording Magistrate in order to ascertain their willingness to record their confession, but he denied the suggestion that the statements were not voluntarily or that they were coerced to make statements. He also denied the suggestion that the case produced by him has no connection with SIMI and that the investigation conducted by him does not reveal that the accused are in any manner connected with SIMI. He also denied the suggestion that the case deposed by him has been registered with the sole object of malafide supporting the Central Government's decision to further extend the ban on SIMI.

**(VII) At Ahmedabad in Gujarat:**

At Ahmedabad, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

(i) Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat (PW-15);

87. PW-15, Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat appeared and produced his affidavit Ex.PW-15/A. He has deposed in respect of FIR No. (CR No.) 24/2013 (Ex.PW-15/2) registered at PS-Ranip under Sections 130, 224, 120(b) of IPC and under Sections 42 and 45 of the Prisons Act.

88. The witness in his affidavit has stated that the accused persons in FIR no. 24/2013 hatched a conspiracy with each other and tried to escape from the prison by digging a tunnel. On 10.02.2013, the accused persons were caught red handed while digging the tunnel and accordingly FIR No. 24/2013 was registered. During the course of investigation it was revealed that accused No. 1, Hafiz Hussain @ Adnam Jaid tajuddin Gaus Mohit Dul Mulla, who was lodged in barrack No. 4/2 of Chhotachakkar of the jail premises procured some books from the jail library and after thorough study of these books he hatched a conspiracy with the other co-accused to escape from the prison and regroup. It was further revealed that all the accused persons also procured prohibited items like haxo blade, screw driver, compass, level pipe etc. The accused persons started digging tunnel from barrack no. 4/2 wherein there was a water tank between the toilet and bathroom outside the barrack and no guard or other jail officials would be able to notice their movement. The accused persons were successful in digging a tunnel which was 16.5 feet deep and 213 feet long. The end of the tunnel was stretched out of the jail premises. Initially 14 persons were arrayed as accused, however, during investigation involvement of further 10 accused persons came to light. The charge sheet (Ex.PW-15/4) was filed against all the 24 accused persons before the competent court. The witness has also annexed the certified copy of the seizure memo (Ex.PW-15/3) of the articles seized in the said FIR.

89. The witness in his affidavit has further stated that the accused persons in FIR No. 24/2013 are also the accused in the offence bearing CR No. 236/2008 registered at PS-Shahibaug under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967, and which is commonly called as the serial bomb blast case wherein the city of Ahmedabad and Surat were subject to bomb blasts on 26<sup>th</sup> July, 2008. The investigation of the serial bomb blast case revealed that all the accused persons in CR No. 236/2008 are members of SIMI and SIMI's new form Indian Mujahiddin.

All the 58 accused persons of the serial bomb blast cases were kept in the yards 4/1, 4/2, 4/3, 5/1 & 5/2. The State Government of Gujarat invoked Section 268 Cr.P.C. w.e.f. 27.10.2009 directing all the accused persons in CR No. 236/2008 not to be removed from the Ahmedabad Central Jail, Sabarmati, Ahmedabad.

90. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the 24 accused named in FIR No. 24/3013 were first arrested in the Ahmedabad and Surat serial Bomb Blast cases. He admitted that the police investigation does not suggest that the accused persons got assistance from outside in digging the tunnel from which they attempted to escape. He further stated that as per police estimates based on investigation, it took about 3 months to dig the tunnel. The accused in this case used gardening tools such as spades and Tasla (Basket) to dig the tunnel. He also stated that the Jail Authorities did not conduct any investigation into the attempted jail break. He further stated that he was not aware that DIG (Jails), Mr. Amit Vishwakarma prepared a report on the attempted Jail Break case which held the Guards, Jailors and the Superintendent of Jail guilty of negligence and dereliction of duty. He stated that he did not find any involvement of Jail officials in CR No. 24/2013 and therefore no jail official has been made accused in this case. However, he accepted that another case FIR No. 17/2013 has been registered in connection with the attempted jail break against 9 accused out of which five are jail officials. The witness has stated that during investigation, he found the accused in FIR No. 17/2013 were involved to reduce the length of the tunnel, therefore, he made complaint to PS-DCB, which is having jurisdiction of all the police stations falling under Ahmedabad and thus, FIR No. 17/2013 was registered at PS-DCB.

91. The witness has accepted that during the course of recording the statements of jail officials, the jail staffs informed him that accused persons used to threaten them that they would lodge complaint against the jail staffs and used to keep the jail staffs engaged in such threats and dialogues and hence prevented them from completing their petrol. He also accepted that the basis to say that the accused were members of SIMI in the present case are the same as the basis that is stated in the charge sheet of the serial bomb blast cases. He denied the suggestion that the jail break attempt case has nothing to do with SIMI and stated that it is incorrect for the reason that the accused persons mentioned in FIR No. 24/2013, who are members of SIMI, hatched a conspiracy and acted in furtherance of the said conspiracy to escape from the prison and re-group. It is thus clear that despite ban, SIMI members are still active and are still indulging in subversive anti-national activities aimed at destroying the unity and sovereignty of India. In response to the Tribunal's question, which are the documents, which form the basis of the aforesaid statement, the witness replied that the accused persons have made confessional statements during investigation in police custody and disclosed the aforesaid facts. The witness denied the suggestion that he had no basis for saying that the SIMI members are still active and are still indulging in subversive and anti-national activities. He further denied the suggestion that there is nothing in his investigation to show that the accused tried to break out of prison in furtherance of the activities of SIMI or in order to carry on the activities for SIMI.

#### **(VIII) At Mumbai in Maharashtra:**

At Mumbai, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

(i) Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit (PW-16).

92. PW-16, Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit, Maharashtra appeared and produced his affidavit Ex.PW-16/A. He has deposed in respect of FIR No.25/2012 (Ex.PW-16/1) registered at PS-Begampura, Aurangabad City under Sections 307, 333, 335, 336, 338, 352, 353 and 34 of IPC and Sections 3, 25 and 27 of Indian Arms Act.

93. The witness in his affidavit has stated that on 26.03.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information received by their informant that one person namely Abrar @ Ismail, who was absconding accused in 2008 Ahmedabad case and an active hardcore member of Indian Mujahiddin and SIMI, was coming to meet his accomplices at about 12:00 noon at Aurangabad. Accordingly, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation firing one persons namely Abrar @ Ismail and Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police head constable was also injured due to firing by accused. After incident of firing, local police was informed immediately and FIR No. 25/2012 was registered. During interrogation of the accused Abrar @ Ismail and Shakir @ Khalil Khilji, they disclosed that they and other members of SIMI namely Abu Fazal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, Madhya Pradesh in the year 2006. In the said meeting they urged the members to carry on jehad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. Abrar also disclosed that in 2011 he committed dacoities in Gujarat and Madhya Pradesh to generate funds for Jihad and had also planned to loot trucks of copper scrap for the said purpose.

94. During investigation it was further revealed that one more accused namely Anwar Hussain was also involved in the crime. He assisted the other accused persons by driving them from Indore to Aurangabad on the date of incident. His statement was also recorded by the witness. He revealed that he is a member of SIMI. Investigation further revealed that one Jafar Hussain had assisted the accused persons by providing the SIM card at the time of incident. He also revealed that he is a member of SIMI and took part in various activities. He further disclosed that even after the imposition of ban

on SIMI, he continued to recruit members and took meetings at the house of Akil Khilji. A copy each of the statement of Abrar @ Ismail, Anwar Hussain and Jafar Hussain along with English translation has been placed on record and exhibited as Ex. PW-16/2, PW-16/4 and PW-16/6 respectively.

95. The witness has further submitted that after investigation, first charge sheet (Ex.PW-16/3) was filed against two accused namely Abrar @ Ismail and Shakir @ Khalil Khilji. Thereafter, two additional charge sheets (Ex.PW-16/5 & PW-16/7) were filed against Anwar Hussain and Jafar Hussain. Certified copies of each of the charge sheets were placed on record.

96. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the investigation of the said case was done by the local police for the first three days and after that he took over the investigation and remained incharge till the filing of the third charge sheet. Although he was not aware whether the investigation was handed over to the CID because doubts were expressed by members of the public regarding the genuineness of the encounter in which the accused persons are stated to have been arrested. He denied the suggestion that the statements of the accused annexed with his affidavit are false and that the accused did not make any such statement. He also denied the suggestion that this is the reason why no steps were taken to get their statements recorded under Section 164 Cr.P.C. In response to the question whether he verified the alleged membership of SIMI of the accused from any independent documentary source other than the statement under Section 161 Cr.P.C., he replied that there is a case pending against Khalil Khilji in PS-Khandwa, Madhya Pradesh under Section 153 IPC, Sections 3, 10, & 13 of Unlawful Activities (Prevention) Act and Sections 25 and 27 of the Arms Act. He further replied that for the other accused, he is solely relying upon the confessional statements of the accused persons to assert that they are members of SIMI.

**(X) At Jabalpur in Madhya Pradesh:**

At Jabalpur, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh (PW-17);
- (ii) Mr. Ajay Kaithwas, Deputy Superintendent of Police, ATS Indore, Madhya Pradesh (PW-18);
- (iii) Mr. Brijest Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh (PW-19);
- (iv) Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh (PW-20);

97. PW-17, Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh appeared and produced his affidavit Ex.PW-17/A. He has deposed in respect of FIR No.22/2013 (Ex.PW-17/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307 and 34 of IPC and Sections 25 and 27 of Indian Arms Act.

98. The witness in his affidavit has stated that there were confidential reports that terrorists of SIMI namely Abu Faisal, Amjad, Aslam, Mehboob and Ajajuddin after escaping from Khandwa jail on October 1, 2013 would sneak into border districts of Madhya Pradesh and Maharashtra. On the basis of intelligence reports, separate teams of ATS and CTG (Counter Terrorism Group) arrived at Kharkiya rest house under Sendhwa police station of Barwani district on December 18, 2013. At around 2:15 am on 24.12.2013, when ATS personnel located three suspects and started chasing them, the suspects opened fire at ATS and CTG personnel on which CTG party fired back. After the police encounter, three SIMI activists/terrorists were caught namely Abu Faisal, Khalid and Irfan Nagori with three weapons country made 0.32 pistols, cash and fake ID's. In this regard, FIR was lodged with Sendhwa police station which was later transferred to STF/ATS for further investigation. The forensic report of handwash of aforesaid three accused found to have traces of Nitrate present implying the use of firearms by the three accused.

99. The witness has further stated that Abu Faizal in his voluntary statement described his organization's name as SIMI and that after escaping from Khandwa jail, he had stayed at the residence of Khalid, took money from him and chalked out plans for arranging arms and explosives and having used false identity in the name of Sushil and Ibrahim. He also described about targeting Narendra Modi, create blast at Muzaffarnagar, kidnap American citizens, targeting judges who gave judgment in Babri Masjid demolition, targeting owner of Diamond Comics and also targeting the then home minister Sushil Kumar Shinde. Accused Irfan Nagori in his voluntary statement had disclosed that he met Khalid Muchale at Guddus place in Mahidpur who told him to bring bombs and weapons to Solapur. Sajid @ Guddu prepared the bag containing pistol and another bag containing Detonator, Gelatin and three bombs. They handed over the bag of pistols to Ismail and that of explosives to Khalid Muchale who gave it to Umer. He further stated that their main target was Narendra Modi. Accused Khalid Ahmed Muchale in his voluntary statement has stated that earlier in 2008 he had been arrested along with SIMI members and had been awarded a punishment of five years. He met Abu Faizal in Bhopal jail where he conspired with Abul Faizal to escape from Bhopal Jail and made arrangement of explosive material, pistol, cartridges etc. for Abu Faizal. He also informed about targeting Narendra Modi, Praveen Togadia and Sushil Kumar Shinde. Copies of statements of the three accused along with English translation are annexed with the affidavit of PW-17.

100. On the basis of information from the three accused, one SIMI activist namely Sadique was arrested by ATS on 24.12.2013. On the basis of information revealed by him, three computer processing units, printers, scanners, pen drives, hard disc, SD cards, foreign currency etc. were seized from his residence cum shop. The pen drives were found to have incriminating files stored including Al Quaida Mouth "Piece" Inspire, Forged ID's of accused Abu Faizal, AK 47 operational manual, training material about software programe, photographs of absconding and other SIMI activists etc. The computer files contained material glorifying and provoking suicide attacks, explaining ways and means to causing road accidents by blocking roads with trees, how to spread fire in forest, how to use capsule lens as bomb igniter, manufacturing process about Action Peroxide explosives etc. The witness has annexed the true copies of the a CFSL reports along with his affidavit.

101. Further interrogation of accused Sadiq led to arrest of Umer Dandoti who was found trying to flee carrying a bag containing three bombs each containing twelve Gelatin stick, three circuits of twelve detonator, thirty five Gelatin stick loose, two bundles of 24 and 48 detonators loose and one 9 mm pistol with 7 live rounds. Examination of the said material by forensic lab and bomb disposal squad revealed that explosive seized were high explosives. On information provided by Irfan Nagori, ATS arrested Adil, Aziz @ Aju, Wahid and Javed Nagori on 01.01.2014 and 800 gelatin rods, 12 primed gelatin rods, 54 detonators and pipe bomb were seized from their possession. In this regard a separate case in PS STF/ATS Bhopal No. 1/2014 under Sections 307, 34 of IPC and Sections 3 & 5 of Explosive Act was registered. The witness in his affidavit has further stated that during investigation it is proved that accused being members of banned organization SIMI hatched criminal conspiracy and in order to realize their criminal conspiracy raised funds, collected arms and explosives, fixed targets, made fake identity cards, developed bombs through explosives and executed their plans with utmost confidentiality. Still others were helping the absconding SIMI terrorist by providing shelter, money etc. After completion of investigation against accused Abu Faisal, Khalid, Irfan Nagori, Sadique Lunje, Umer DAndoti, Ismail Mashalkar, Irfan Muchale, Amaan and Gulrej, challan was submitted in CJM Court, Bhopal on 22.05.2014.

102. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question that the provisions of Unlawful Activities (Prevention) Act were added subsequently in these FIRs, had replied that FIRs were registered as per the incidents and sections of Unlawful Activities (Prevention) Act were included after the facts of the case came to light during the investigation. He further stated that after thorough investigation they found out that SIMI activists collectively committed these crimes to generate money and for target killing and other illegal activities. He denied the suggestion that cases attributed to accused Abu Faisal vide paragraph 10 of his affidavit are on the basis of confessional statements recorded in police custody except Crime Nos. 198/2006 and 542/2013 and volunteered that they had concrete evidence like seizure of explosive material, weapons, incriminating documents, jihadi literature, which form basis of the outcome of the investigation. He also denied the suggestion that the attribution of these crimes to SIMI and its activists is solely based upon confessions made in the police custody and that SIMI had nothing to do with the crimes alleged to have been committed by the accused. He stated that he had not got recorded the statement of any of these accused under Section 164 Cr.P.C. but volunteered that there was no use of getting the statement recorded under Section 164 Cr.P.C. as sufficient evidence was available against these accused. He denied the suggestion that no material has been recovered that would show the involvement of SIMI in the case deposed by him and that he had no basis for connecting this case or any of the accused to SIMI.

103. PW-18, Mr. Ajay Kaithwas, Dy. Superintendent of Police, ATS Indore, Madhya Pradesh appeared and produced his affidavit Ex.PW-18/A. He has deposed in respect of FIR No.1/2014 (Ex.PW-18/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307, 34 of IPC, Sections 25 & 27 of Arms Act, Sections 3 & 5 of Explosive Substance Act and Section 13 of Unlawful Activities (Prevention) Act.

104. The witness in his affidavit has stated that on information provided by Irfan Nagori accused in CR No. 22/2013, raids were conducted on 01.01.2014 and accused Javed Nagori, Aju @ Aju, Wahid, and Adil Nagori were arrested from Mahidpur and cache of ammunition were seized from the possession of the accused including one pipe bomb, one primed bomb, 800 super power Gelatin rods, 11 Primed Bomb, 540 live detonators, one 12 bore live cartridge. During investigation, it was revealed that SIMI activists Khalid Ahmed, Abu Faisal, Irfan Nagori, Sadiq and Umer, who were accused and already been arrested in CR No. 22/2013, were also involved in the same case. Other accused/SIMI activists namely Abdul Majid and Sajid involved in the same crime surrendered before the CJM Court, Bhopal on 22.01.2014 & 30.01.2014 respectively.

105. Abdul Majid in his voluntary statement has stated that he is an active member of SIMI. He also revealed information about manufacture and testing of bomb/s to eliminate targets. He also stated that he along with Sajid, Irfan Nagori, Khalid Ahmed went for testing of explosive near village Delchi Khurd, but in the meantime police patrolling party passed from nearby road, so they could not test the explosive and after hiding the bomb in one hollow pipe, they ran away from the spot. Accused Sajid in his voluntary statement has stated that he is an active member of SIMI and in spite of ban he was running the SIMI organization actively. He used to hold SIMI meeting in his room with absconder Saliq and accused Abu Faisal and Khalid Ahmed. Accused Khalid Ahmed in his voluntary statement has stated that he himself, as also Abu Faisal are "Ameer" in SIMI organization; Adil Nagori is the "Ameer" of Ujjain; Javed and Sajid are the head of Mahidpur SIMI organization. He further stated that to take revenge of Gujarat and Muzzaffarnagar communal



incident(s), he managed to brain wash other SIMI members, namely Wahid, Ajj, Majid, Sajid and Juber for the purpose of target killings in Sholapur, Maharashtra. He also convinced Irfan Nagori and Sajid Nagori to come to Solapur with arms and ammunition for this purpose.

106. Accused Javed Nagori in his voluntary statement has stated that he is an active member and head of SIMI organization in Mahidpur. He used to organize meetings of SIMI organization under his control and direction. He collected funds to run the organization, and stored arms and ammunitions to achieve nefarious objectives of the SIMI organization. Further investigations revealed that accused Abdul Wahid and Abdul Aziz were found to be involved in continuous meetings with other co-accused persons for the purpose of SIMI activities and they were involved in providing transport facilities to accused Abu Faizal. The witness in his affidavit has stated that Investigation in the case and the video statement transcripts of each of the accused reveal that the activities of SIMI include hatching criminal conspiracy for plotting murders, including conspiracy to murder/assassinate judges and prominent politicians and ATS officers, carrying out bomb explosions at public places. The witness has annexed the certified copies of the memos of Section 27 of Evidence Act, seizure memos, Statements of accused persons, memo of verification and confirmation, FSL and BDDS report and charge sheets etc. The same on record and exhibited as Ex. PW-18/1 to PW-18/28.

107. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness denied the suggestion that SIMI has no connection with the accused arrested in FIR Nos. 22/2013 and 1/2014. He also denied the suggestion that the basis for saying that the accused arrested in FIR Nos. 22/2013 and 1/2014 connected with SIMI are the confessions made by the said accused to the police. He further denied the suggestion that the confessions recorded in police custody are false and fabricated and that is why the statements of these accused were not got recorded under Section 164 Cr.P.C. before the Magistrate. He further denied the suggestion that he had no material basis to make the statement pertaining to SIMI contained in his affidavit and that the name of SIMI has been interpolated in this case on instructions from his superior officers merely to support the case of Central Government to extend the ban on SIMI.

108. PW-19, Mr. Brijesh Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh appeared and produced his affidavit Ex.PW-19/A. He has deposed in respect of FIR No. 424/2014 registered at PS-Maharana Pratap Nagar, Bhopal, Madhya Pradesh under Sections 295A, 153B and 34 of IPC.

109. The witness in his affidavit has stated that on 17.05.2014, certain members of SIMI, being accused and under trial in some pending cases including accused in FIR No. 01/2014, was to be taken from Central Jail to District Court, Bhopal. These members of SIMI after being produced before the District Court, Bhopal started shouting anti-national slogans. English translation of the slogan is "*Taliban zindabad, Islam zindabad, Pakistan zindabad, Palestine se lekar Afghanistan tak hamara raj hoga, .... ab Modi ki bari hai*". Accordingly, FIR No. 424/2014 was registered. The witness in his affidavit has stated that the action of the accused SIMI members is demonstrative of the divisive nature of the ideology propagated by SIMI and its members. He further stated that the accused persons in FIR No. 1/2014 registered by ATS Bhopal, who were also part of the incident enumerated above, have revealed the existence of a very wide and active SIMI network not only in the State of Madhya Pradesh but also all over India.

110. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the case is still under investigation and the charge sheet has not yet been filed in the case. He stated that out of 18 people produced on that date, 12 of them are accused in CR No. 1/2014, PS ATS, Bhopal. He admitted that no slogan was shouted about SIMI or in favour of SIMI on that date. He also stated that he was not aware whether S.P, Bhopal had stated to the media that the episode was not a planned one; that the accused wanted media's attention and that he did not think that there was a conspiracy behind this incident. In reply to the question whether he had verified from independent documentary source that the accused were members of SIMI, he replied that FIRs mentioned the accused as being members of SIMI, therefore, he had mentioned in his affidavit that they are members of SIMI. He denied the suggestion that the facts pertaining to SIMI stated in his affidavit are false and concocted.

111. PW-20, Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-20/A. The witness has been appointed as the Nodal Officer for SIMI related matters. He has deposed in respect of three FIRs viz. FIR No. 541/2013, 542/2013 and 209/2013.

112. The witness in his affidavit has stated that the accused persons namely Abu Faisal, Ajajuddin, Guddu @ Mehboob, Aslam, Jakir, Amjad & Mirza Abid Beg made a hole in wall of toilet of ward no. 2 of District Jail, Khandwa and escaped by jumping across the safety wall. While they were fleeing and passing through Siddhapuram & Warco City near Bhandariya Road, they were stopped by a patrolling party, with which the accused persons had a scuffle. The constable/patrolling party was attacked by the accused persons with the intention of causing death which resulted in grievous injuries to Constable Lokesh Hirwea and Sainik Suresh Tiwari. Their government rifles were snatched and the accused persons fled in the motorcycle belonging to these constables. Accordingly, on the report of Constable Lokesh Hirwea, FIR No. 541/2013 was registered at PS-Kotwali Khandwa under Sections 395, 307, 353 & 332 of IPC. During primary investigations the details about the jailbreak emerged and FIR No. 542/2013 was also registered by PS-Kotwali under Section 224 of IPC. After further investigation, Sections 3, 10, 13 & 16 of Unlawful Activities (Prevention) Act



and Sections 120(B) and 75 of IPC were also added in the said FIRs. The witness has further stated that from investigations of the cases, it is revealed that the accused persons in FIR No. 541/2013 & 542/2013 are the members of banned organization SIMI. The cases are still under trial.

113. The witness in his affidavit has further stated that in April, 2006, an incident took place on the occasion of Mahavir Jayanti when a procession organized by some people from the Jain community was attacked by some miscreants who also indulged in vandalism. During the course of investigation, SIMI activists were found to be involved in this incident and accordingly FIR No. 236/2006 was registered at PS-Kotwali. During the course of trial, the concerned Magistrate passed an order dated 10.01.2013 directing that a separate case be registered against Mohd. Khalil in view of the complicity of the said accused in activities relating to SIMI. Accordingly, FIR No. 209/2013 was registered and Mohd. Khalil was arrested on 22.08.2013. On completion of investigation, Final Report was forwarded to Chief Judicial Magistrate. The case is presently under trial.

114. The witness has also annexed the certified copies of order dated 23.08.2013 in Sessions Case No. 180/2006 (Ex. PW-20/2) passed by Mr. Sanjeev Shrivastava, Third Upper Sessions Judge, East Nimad, Khandwa, Madhya Pradesh; order dated 30.04.2013 in Sessions Case No. 203/2008 (Ex. PW-20/3) passed by Mr. Ramesh Mavi, Addl. Fourth Upper Sessions Judge, Khandwa, Madhya Pradesh; order dated 10.01.2013 in Criminal Review Case No. 116/2012 (Ex. PW-20/4) passed by Mr. G.S. Dubey, Addl. First Upper Session Judge, Khandwa Madhya Pradesh and certified copies of Final Report of Crime Nos. 209/2013, 541/2013 & 542/2013 (Ex. PW-20/5 and PW-20/6). He stated that in the judgment passed in SC No. 180/2006, ten SIMI activists were sentenced to three years imprisonment and a fine of Rs. 500 was imposed on each accused. In SC No. 203/2008, two SIMI activists were sentenced to two years rigorous imprisonment and a fine of Rs. 5000 was imposed on each accused under Section 3 and 10 of the Unlawful Activities (Prevention) Act and sentenced to five years rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under Section 3/13(2) of the UAP Act.

115. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he cannot say as to what was the basis for separating the trial of Mohd. Khalil and for the directions to add the Section 124A IPC and Sections 3, 10 & 13 of Unlawful Activities (Prevention) Act as passed by Addl. District and Sessions Judge in his order dated 10.01.2013. He admitted that Addl. District and Sessions Judge did not specifically direct to register a case under the said Sections and volunteer that the CJM, Khandwa wrote a letter dated 17.01.2013 to SP, East Nimad, District Khandwa and SHO, PS City Kotwali, Khandwa and it was in pursuance to the said order, case was registered against Mohd. Khalil under Section 124A IPC and Sections 3, 10 & 13 of Unlawful Activities (Prevention) Act. When Mr. Ashok Agrwaal confronted the witness with the certified copy of the appeal bearing No. 643/2013 (Ex.DW-20/1) against the order dated 02.02.2013 passed in SC No. 180/2006, the witness has submitted that though he was not aware of the appeal filed by the accused persons, however, it seems that the appeal has been filed by the five accused, who were convicted by the Sessions Court vide judgment dated 02.02.2013 in Trial Case No. 180/2006. Although, he was not aware whether the persons convicted pursuant to the trial in Crime No. 202/2008 have filed any appeal against the order of conviction. He admitted that some accused in both these cases were acquitted by the Trial Court vide aforesaid judgments. He admitted that the FIR No. 209/2013 does not mention the name SIMI and that the magazine Tehrik-e-Millat recovered from the accused was published by SIMI. However, he denied the suggestion that the magazine Tehrik-e-Millat has nothing to do with SIMI and that the said magazine was never published by SIMI.

**X) At Coonoor in Tamil Nadu:**

At Coonoor, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

- (i) Ara. Arularasu, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu (PW-21).

116. PW-21, Ara Arularasu, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu appeared before the Tribunal and produced his affidavit Ex. PW-21/A. The witness has been appointed as the Nodal Officer for SIMI related matters in the State of Tamil Nadu. The witness has annexed the certified copy of judgment dated 29.02.2012 in S.C. No. 459/2011 (Ex.PW-21/1) passed by the court of Additional District and Sessions Judge – Fast Track Court No. II, Coimbatore. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

117. The witness in his affidavit has stated that on 25.6.1999 at about 1615 hours at 100 feet road near Fourth Cross Junction Mosque, Gandhipura, B-3, Kattor PS Limits, Coimbatore city, the accused persons were seen distributing May and June, 1999 issues of the SIMI magazines titled 'Seithi Madal', containing articles which were seditious in nature knowing that said articles will bring hatred and excite disaffection towards the Government establishment by law and are prejudicial to communal harmony between Muslims and other religions. According, a case was registered being CR No. 722/1999 at PS B-3 Katoor. The Additional District and Sessions Judge, Fast Track Court No. 2, Coimbatore vide judgment dated 29.02.2012 convicted five accused persons, who are members of SIMI, under Section 124(A) and 153(B)

inter-alia for treating/portraying the Indian Army and Indian Government as their enemy and thereby promoting hatred and ill-will, besides inciting communal passion against the Indian Government in their publications.

118. The witness in his affidavit has further stated that intelligence reports reveal that SIMI activists are regrouping themselves in the State of Tamil Nadu under the banner of Wahadat-e-Islami Hind (WeIH). The activists of SIMI are using the platform of WeIH to expand their militant outreach among Muslim youth under the guise of spreading Islamic ideology. SIMI activists under the guise of WeIH continue to hold meetings, classes, symposium, seminars etc. to spread their anti-national ideology. One such copy of invitation of WeIH of the Conference held in Madurai district on 13.1.2013 was enclosed by the witness along with his affidavit.

119. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that Wahadat-e-Islami Hindi was in existence for few years. He accepted that the meeting held on 13.01.2013 was not illegal or unlawful. It was not banned. He also accepted that no criminal case has been registered for holding the meetings. He stated that since he was not the IO of CR No. 722/1999, he was not aware whether the allegedly incriminating articles that are the subject matter of CR No. 722/1999 are substantial translations of articles published in the Hindu and the New Indian Express in March, 1999. He also showed his unawareness that the content of these articles has been reported by International Organizations like Amnesty International and by the London Times. He accepted that the first judgment of the Trial Court dated 05.01.2004 was appealed before the High Court, which set aside the said judgment vide order dated 08.03.2011 while directing the retrial of the case. However, he was not aware whether an appeal has been filed against the judgment in retrial dated 29.02.2012.

120. Mr. Agrwaal, learned Advocate has submitted a photocopy of the said Criminal Appeal, which is taken on record and marked 'Mark-A'. The witness has accepted that the material seized in CR No. 722/1999 was not banned by the Government. In reply to the question that he had no material basis to make the statement that SIMI activists are regrouping themselves under the banner of WeIH and that the unlawful activities of SIMI and its members are still going in a clandestine manner, he stated that they had intelligence reports regarding regrouping of the SIMI Cadre in the garb of Wahadat-e-Islami Hindi and to act against the Indian Government. The witness denied the suggestion that the cases detailed in his affidavit have no relevance for the purpose of the present trial.

#### **XI) At Aurangabad in Maharashtra:**

At Aurangabad, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

(i) Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra (PW-22).

121. PW-22, Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra appeared before the Tribunal and produced his affidavit Ex. PW-22/A. The witness has deposed in respect of FIR No. 131/2012 (Ex. PW-22/1) registered by PS Nizampura Bhiwandi under Section 307 and 120(b) of IPC. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

122. The witness in his affidavit has stated that on 03.08.2012, while the complainant Manoj Raicha was travelling by his car, with his armed police bodyguard Police Constable Acharekar, three shots were fired at him from a fire arm. One bullet grazed his right upper arm. Thereafter, the complainant lodged a complaint with the police about the threat to his life extended at the hands of accused Saquib Nachan on 6<sup>th</sup> July, 2011. Accordingly, on the basis of which, FIR No. 131/2012 was registered. It is stated that the motive behind the offence which is alleged against Saquib Abdul Hameed Nachan and his co-accused is to create a rift between Hindus and Muslims and to cause communal riots and with this motive only the said accused Saquib Abdul Hameed Nachan hatched the conspiracy to eliminate the first informant Sh. Manoj Raicha, Advocate, who is an active member of the Vishwa Hindu Parishad and Govansh Saurakshan Samiti. On 04.08.2012, supplementary statement of the complainant was recorded. It was stated in the supplementary statement that his police bodyguard Acharekar has seen one person running away from the lane by the side of Masjid after the incident, who was later identified as accused No. 2 Guddu @ Mohd. Hafeez Khan and that he has seen him prior to the incident at about 10:00 p.m. on red colour Pulser Motorcycle along with another person. During the investigation, the shirt of the complainant bearing blood stains and black spot of bullet were seized under seizure panch-nama.

123. It is further stated in the affidavit that accused No. 2 Guddu gave a memorandum statement leading to discovery of a country made pistol and 6 live cartridges from the house of absconding accused Abu Bakar. Further, a read colour Pulser Motorcycle was also recovered from the place near public toilet near a mosque. It is further stated that the accused No. 1 in his statement revealed that he has been a member of SIMI from the year 1982. He further revealed that Saquib Nachan still clandestinely continues to work for SIMI and still a strong sympathizer of the organization. During the investigation, the confessional statements of witnesses A, B, C & D under Section 164 Cr.P.C. were recorded in which witness A & B have given the evidence regarding the conspiracy hatched by the accused persons whereas witness C & D have given the evidence with regard to the conversation which took place between the accused No. 2 Guddu and absconding accused Abu Bakar after the incident and the consequential displeasure shown by the accused No. 3 Shamil Nachan on their failure to successfully execute the plan. After completion of the investigation, charge sheet and

supplementary charge sheet were filed in the matter and the case is pending trial in the court of Special Judge, MCOCA, Thane, Maharashtra.

124. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that the accused No. 3 is on bail but volunteered that against the bail granted by the High Court, they had filed a petition for cancellation of the bail in the Supreme Court. However, Supreme Court has not granted any stay in the case. He also admitted that two empty cartridges were recovered from the spot of the incident but denied the suggestion that the seizure is fraudulent and the items stated to be recovered are fraudulent. He also admitted that the complainant changed his story in his supplementary statement that was recorded on 04.08.2012. He also admitted that the complainant, in his original complaint, had stated that Saquib Nachan had threatened him in September, 2011 at the time when he was produced before the Court in connection with the Lalit Jain murder case but in the supplementary statement recorded on 04.08.2012, he modified his earlier statement and stated that the threat was held out to him on 06.07.2011. He admitted that the threat by Saquib Nachan to Mr. Raicha was made in the court premises. He also admitted that he did not question Mr. Raicha, complainant or sought his explanation for the contradictions in material particulars between his original complaint and supplementary statement. He further admitted that the first statement of witness 'A' recorded on 07.11.2012 did not support the case of the prosecution in any manner. However, he denied the suggestion that the witness was coerced to give second statement under Section 164 Cr.P.C. on 09.11.2012 for this reason. He further denied the suggestion that there are marked differences between the statement under Section 164 Cr.P.C. of witness 'A' and his statement under Section 161 Cr.P.C. recorded by the police. However, he admitted that the High Court has recorded in its order while granting bail to accused Nos. 3 & 4 that there is significant differences between the second statement of witness 'A' recorded under Section 164 Cr.P.C. and his statement recorded under Section 161 Cr.P.C. He also accepted that while granting bail to accused Nos. 3 & 4, High Court has noted that the call date record do not support the theory of conspiracy being hatched at the Restaurant "Oye Punjabi Dhaba" as stated by the prosecution. He denied the suggestion that he had no basis for saying that the accused persons undertook any of the acts stated in his affidavit on behalf of SIMI or in furtherance of its objectives and volunteered that the accused have confessed to their acting on behalf of SIMI in their confessional statements made before the police.

#### **(XII) At Bhopal in Madhya Pradesh:**

At Bhopal, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Shailendra Singh Chauhan, Addl. S.P. (Crime), Bhopal, Madhya Pradesh (**PW-24**);
- (ii) Mr. R. C. Rajput, DSP (Crime), District Indore, Madhya Pradesh (**PW-25**);
- (iii) Mr. Suhas Dravid, S.D.O.P., Shajapur District, Madhya Pradesh (**PW-26**);

125. PW-24, Mr. Shailendra Singh Chauhan, Addl. S.P. (Crime), Bhopal, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-24/A. The witness was nominated as the Nodal Officer in respect of cases relating to SIMI in Bhopal District, Madhya Pradesh. The witness has annexed the certified copies of various judgments passed in cases relating to SIMI along with their English Translation. The said judgments are collectively marked as Ex.PW-24/1 (colly).

126. In his affidavit the witness (PW-24) has stated that for the last many years the entire State of Madhya Pradesh and particularly Bhopal District has witnessed activities of SIMI despite the ban imposed initially in 2001 resultantly various cases have been registered against/related to SIMI members/SIMI activists which are still pending adjudication. He has also stated that cases being CR No. 574/2001, PS Shahjanabad; CR No. 295/2001, PS Gautam Nagar; CR No. 482/2001, PS Talaiya; and CR No. 584/2001, PS Aish Bagh have culminated in judgments against the accused SIMI members. He has also stated that upholding of the ban imposed by the Central Government vide notification dated 01.02.2014 is necessary to prevent/curtail the illegal and unlawful activities of SIMI.

127. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that no case has been registered against SIMI in the district of Bhopal between 04.02.2014 to 01.02.2014. He accepted that the four cases for which he had produced judgments along with his affidavit were all registered within 5 to 6 weeks of first ban on SIMI in September, 2001. He further stated that to the best of his knowledge, apart from the four cases mentioned above, only 9 cases pertaining to SIMI are pending in the district of Bhopal. The witness has stated that he was not aware that some of the cases registered in the district of Bhopal resulted in acquittal. He was also not aware that the conviction in CR No. 295/2001 has been set aside by the Appellate Court. But he denied the suggestion that he had not produced any material before this Tribunal to show that SIMI continues to be active.

128. PW-25, Mr. R. C. Rajput, DSP (Crime), District Indore, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-25/A. The witness was nominated as the Nodal Officer of District Indore in respect of cases relating to SIMI. The witness has annexed the certified copies of various judgments passed in cases relating to SIMI along with their English Translation. The said judgments are collectively marked as Ex.PW-25/1 (colly).

129. In his affidavit the witness (PW-25) has stated that the activities of SIMI and SIMI activists in Indore District, Madhya Pradesh have been relentless and unabated despite the ban on SIMI which resulted in registration of various cases against SIMI and its activists, which are still pending adjudication. He has also stated that recent judgments have been passed by various trial courts in cases being CR No. 479/2001, PS Aerodrome; CR No. 288/2001, PS Chhoti Gwaltoli; CR No. 266/2001, PS Chhoti Gwaltoli; CR No. 251/2001, PS Chhoti Gwaltoli and CR No. 459/2006 PS Khajrana resulting in conviction of accused persons. He further stated that it is imperative to continue the ban against SIMI to maintain the public law and order and in the interests of communal harmony and security of the State.

130. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that charges have been framed in all the 13 cases mentioned in his affidavit which are still pending adjudication. He accepted that four out of the five cases listed by him under the heading of 'decided cases' in his affidavit (Ex.PW-25/A) were registered within a month of first ban on SIMI in September, 2001. He also accepted that in case FIR No. 459/2006, the accused has been convicted under Section 153(A) of IPC and not under the provisions of UAP Act and that the State Government had declined to grant sanction for prosecution under the UAP Act in this case. But he denied the suggestion that he had no basis for saying that SIMI continues to be active.

131. PW-26, Mr. Suhas Dravid, S.D.O.P., Shajapur District, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-26/A. The witness was nominated as the Nodal Officer of District Shajapur in respect of cases relating to SIMI. The witness has annexed the certified copies of judgments dated 02.05.2013 passed in Criminal Case No. 688/2007 (Ex.PW-26/1); dated 14.02.2014 passed in Criminal Appeal No. 206/2013 (Ex.PW-26/2); and dated 14.02.2014 passed in Criminal Appeal No. 210/2013 (Ex.PW-26/3) along with their English Translation.

132. In his affidavit the witness (PW-26) has stated that he was deposing in respect of Crime No. 686/2001 registered under Sections 10 & 13 of the UAP Act which has culminated in judgments passed by the Court of Second Additional Sessions Judge, Shazapur, and which establish the deep tentacles of SIMI in Shajapur. He further stated that on 7.11.2001, Sh. Dalip Singh Chaudhury, SI, PS Kotwali, Shazapur district received information that two accused were standing near Mahupura Pull and were propagating/ advertising about the activities of SIMI. During the raid in the area, it was discovered from the site that two accused were talking to 2-3 other persons and showing them the magazine, which is the September edition of a magazine titled 'Islamic Movement'. The accused No. 2 stated that he is the General Secretary of SIMI, Shajapur. Accordingly, FIR No. 686/2001 was lodged on the same day. Accused No. 1 also surrendered himself during the pendency of investigation. The witness further stated that on 02.05.2013, the Judicial Magistrate First Class in his verdict held that the two accused had committed offences against society and sentenced them rigorous imprisonment for 1 year each along with a fine of Rs.500/- each. The accused went into first appeal, which was dismissed by the Second Additional Sessions Judge, Shajapur on 14.02.2014 confirming the sentence imposed by the trial court. Criminal Revision Petitions filed by the accused against the judgment is pending in the High Court of Madhya Pradesh.

133. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he was not aware that the State Government had not issued an order banning the issue of 'Islamic Movement' under Section 95 Cr.P.C. but he denied the suggestion that holding a copy of such a magazine is not an offence even today and volunteered that it is an offence to propagate the cause of SIMI. He also denied the suggestion that the police took out the documents seized in this case from the office of the SIMI that was sealed on 27<sup>th</sup> September, 2001 and subsequently planted the same upon the accused to fabricate a case against them. He also denied the suggestion that the statement "establishes the deep tentacles of SIMI in Shajapur" in para 5 of his affidavit is a deliberate lie designed to mislead the Tribunal. He also denied the suggestion that this case is a false case registered with the purpose of supporting the ban imposed by the Central Government on SIMI on 27<sup>th</sup> September, 2001.

### (XIII) At Port Blair in Andaman & Nicobar Islands:

At Port Blair, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Vishal Garg, Addl. Superintendent of Police, CIB-II, NIA, New Delhi (PW-27);
- (ii) Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi (PW-28);

134. PW-27, Mr. Vishal Garg, Addl. Superintendent of Police, NIA, New Delhi appeared before the Tribunal and produced his affidavit Ex. PW-27/A. He has deposed in respect of the three cases registered by NIA viz. 07/2013/NIA/DLI, 08/2013/NIA/DLI & 09/2013/NIA/DLI under Sections 153A, 324, 307, 427 & 452 of IPC, Sections 3 & 4 of Explosive Substances Act, Section 17 of Criminal Law Amendment Act and Sections 16, 18, 20 and 23 of Unlawful Activities (Prevention) Act, which are related to serial bomb blasts at Bodh Gaya, Bihar on 07.07.2013.

135. The witness in his affidavit has stated that with a view to terrorize the Indian citizens and international tourists, total thirteen bombs were planted at different places of Bodh Gaya including the main temple complex out of which ten bombs were exploded and three live bombs were recovered which were defused later on. The blast caused extensive



damage to the secular image of the country. During the investigation, role of five planters of the bombs along with other key conspirators namely Haider @ Abdullah @ Salim Ansari @ Black Beauty, Mujibullah @ Mujib, Taufiq Ansari, Fariq (since dead), Imtiyaz, Numan, Umer Siddiqui and Azharuddin Qureshi had emerged. The witness has further stated that he personally interrogated the arrested accused persons who made disclosure about the activities of SIMI and the conspiracy hatched by SIMI members. The statements of accused Umer Siddiqui and Azharuddin Qureshi, recorded under Section 164 Cr.P.C. is enclosed with the affidavit. It is further stated that during the investigation of accused Ahmed Sidibappa @ Yasin Bhatkal (arrested by NIA in RC 06/2012), it was found that Yasin Bhatkal used to chat with IM Chief Riyaz Bhatkal (reportedly present in Pakistan) on internet, in which they also discussed about targeting Bodhgaya. The role of the SIMI members has also been mentioned in detail in the internet chat of Mohd. Ahmed Siddibappa @ Yasin Bhatkal and Riyaz Bhatkal.

136. The witness has further stated that the statement of several witnesses/accused were recorded under Sections 161 Cr.P.C. and also under Section 164 Cr.P.C. which further established the activities of SIMI in Ranchi/Raipur and their intention to terrorize the people of India and that SIMI operatives contacted several local persons at Raipur and Ranchi to obtain their assistance, support and providing infrastructural support for operations to carry out attack at religious place Bodh Gaya to avenge the alleged atrocities on Rohngiyas Muslims in Myanmar. The investigation also revealed that Umer Siddiqui was one of the principal conspirator in the conspiracy of SIMI and had personally motivated several persons including Haider Ali, Azharuddin and other activists on religious lines to wage war against other communities in India. It was also revealed that in pursuance of the conspiracy, the Indian Mujahiddin accused Asadullah Akhtar made efforts to some SIMI operatives out of India, for further sending them to Pakistan to get trained in terrorist activities, which clearly establishes that the SIMI has been continuously receiving assistance by the IM operatives based at Pakistan. The charge sheet has been filed in the aforesaid cases.

137. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the charge sheet was filed against Umer Siddiqui, Azharuddin Qureshi and Imtiaz Ansari. In reply to the question that the Magistrate has not put any question to the accused persons (Umer Siddiqui and Azharuddin Qureshi) to ascertain whether the confession was made voluntary, he stated that no question was put as to the voluntariness of the statement of the accused under Section 164 Cr.P.C. but volunteered that the Magistrate has given certificate under Section 164(4) Cr.P.C. and it is also noted that he has explained to both the accused persons that they are not bound to make a confession and if they do so that may be used as evidence against them. He denied the suggestion that the statements of the accused under Section 164 Cr.P.C. were not made voluntarily and that the accused were threatened and coerced to make these statements. He also denied the suggestion that the recording Magistrate has mechanically put a certificate at the end of the said statements. He also denied the suggestion that the witnesses were threatened that if they did not depose as told to do, they would be implicated in false cases. He further denied the suggestion that NIA's allegations about the SIMI's association with Indian Mujahiddin are baseless and false. He also denied the suggestion that the meaning attributed to the internet chats is arbitrary and baseless and that the implication of SIMI via these alleged chats is baseless and false to the knowledge of NIA.

138. PW-28, Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi appeared before the Tribunal and produced his affidavit Ex. PW-28/A. He has deposed in respect of the case No. RC 06/2012/NIA/DLI registered under Sections 120B, 121A and 122 of IPC and Sections 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which relates to an ongoing criminal conspiracy by the operatives of the Indian Mujahiddin, a terrorist organization, to commit terrorist acts by attacking various public places in India.

139. The witness in his affidavit has stated that on 29.08.2013, on reliable source information, two of the accused persons named in the FIR and who were terrorists of Indian Mujahiddin i.e Mohd. Siddibappa @ Yasin Bhatkal and Asadullah Akhtar @ Haddi were arrested at India-Nepal border town. During subsequent investigation, the role of some SIMI operatives including Manzer Imam, Ozair Ahmed and Haider Ali @ Abdullah was established as having sheltered and actually assisted the IM operatives including Tahseen Akhtar @ Monu, for the commission of terrorist acts. The statements of several witnesses were recorded under Sections 161 and 164 of Cr.P.C. at Ranchi, which further established the activities of SIMI in Ranchi in furthering the terrorist conspiracy of the Indian Mujahiddin. Investigation of the case further revealed that in pursuance of the conspiracy, the IM operatives contacted several SIMI operatives in order to obtain their assistance at a national level. An option of providing infrastructural support for operations of the IM was suggested, and efforts were being made to contact senior SIMI operatives like Safdar Nagori.

140. The witness has further stated that during investigation it has been established that the Muslim Student Federation (MSF) was formed in the states of Jharkhand and Bihar only to serve as a frontal organization of SIMI and to organize and radicalize youth on religious fundamentalism. The activities of MSF/SIMI in Ranchi resulted in the radicalization of several individuals including Haider Ali and Ozair Ahmed, and provided the fertile ground for the furtherance of the conspiracy hatched by the IM operatives. He has further stated that during the examination of one Hedayatullah, it emerged that the accused Manzer Imam had indicated to him that the MSF or the SIMI had split into two groups – a small one consisting of 20-25 operatives which had ideologically joined the activities of the IM and the other which was still continuing with the earlier activities of SIMI. The statement of Hedayatullah recorded under Section 164 Cr.P.C. has been annexed with the affidavit of the witness. The witness has further stated that the investigation has also



revealed that the conspiracy of Indian Mujahiddin, to commit terrorist in India, is still being continued with active support and guidance from its senior leadership, hiding in Pakistan. The emails exchanged amongst the co-conspirators reveal that there is an ongoing conspiracy to commit various terrorist act in India and the threat to National security and the safety of its citizens and property from the operative of the SIMI persists. The charge sheet and the supplementary charge sheet has been filed in the aforesaid case.

141. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the FIR No. RC 06/2012/NIA/DLI makes no mention of SIMI. He also admitted that the first charge sheet dated 17.07.2013 does not allege that any of the five accused were members of SIMI but volunteered that on receiving the information the matter was further investigated, and in the supplementary charge sheet there were specific allegations against the accused persons belonging to SIMI. In the supplementary charge sheet, two out of the four accused were found to be involved in the activities of SIMI. He also admitted that he was not present during the recording of statements under Sections 161 & 164 Cr.P.C. but volunteered that the statements have been recorded by the investigating team of which he is the supervisor and chief. He denied the suggestion that the statements recorded under Section 164(4) Cr.P.C. of the witnesses were not voluntary and that these statements were coerced from the said witnesses by holding out various kinds of threats and inducements and further that these persons were told that if they do not depose as they were told to do by the NIA, they would be implicated in false cases. In reply to the question about the results of the investigation so far, the witness has stated that they had already charge sheeted two accused persons namely Manzar Imam and Uzair Ahmed for their part in the conspiracy of the Indian Mujahiddin, who were earlier SIMI operatives and that another SIMI operative Haider Ali has also been arrested in the instant case. He further stated that total number of accused persons are 33 and at present 9 have already been charge sheeted. Earlier some of them were SIMI/IM operatives.

142. He denied the suggestion that in the first charge sheet it is stated that the Indian Mujahiddin is a break away group of former SIMI activists whereas in the supplementary charge sheet it is stated that Indian Mujahiddin was formed independently in the early 2004 and volunteered that there is no contradiction between the two statements since IM was constituted towards the end of 2003 and early 2004 and the operatives who initially formed the Indian Mujahiddin had a SIMI background as they were earlier associated with SIMI activities. He accepted the Mohd. Ahmed Siddibappa, in his statement under Section 164 Cr.P.C., has stated that he knows SIMI, but he is not a member of SIMI and he had no interaction with SIMI people. However, he denied the suggestion that Mohd. Ahmed Siddibappa was never a member of SIMI. In reply to the Tribunal's question, whether as per investigation, it is established that SIMI is still existing and their activities are still going on, the witness answered in affirmative and stated that not only they are holding meetings and keeping contact with each other, but the decisions are taken only after consulting the senior operatives of SIMI. He further stated that Riyaz Bhatkal has mentioned in internet chat to Yasin Bhatkal that decisions can only be conveyed after consulting with seniors.

143. In reply to the question how the Section 164 statement of Manzar Imam recorded in case No. SC 2/11 related to the case presented by the witness i.e. Case No. 06/2012, the witness replied that the statement of Manzar Imam is relevant to the instant case since it proves that Manzar Imam was an active member of SIMI and that he was working towards achieving aims of the conspiracy, which was same as that hatched by the IM operatives, i.e. of waging Jihad. He admitted that Section 164 statement of Manzar Imam makes no mention of Riaz Bhatkal, Iqbal Ahmed, Mohd. Ahmed Siddibappa, Uzair Ahmed and Haider Ali but volunteered that it is a general tactic used by terrorists to not reveal parts of ongoing active conspiracy, which can result in future attacks. This is precisely the reason why during his earlier Section 164 statement, the accused Manzar Imam did not make any mention of ongoing association with operatives of Indian Mujahiddin. The same was confirmed through investigation. He denied the suggestion that Manzar Imam being alleged to be a part of SIMI is a fabrication of the Central Government and of some of the State Governments of India.

144. He admitted that the Section 164 statement of accused Asadullah Akhtar makes no mention of SIMI and also no mention of Manzar Imam, Uzair Ahmed and Haider Ali but denied the suggestion that Asadullah Akhtar has never been associated with SIMI. He volunteered that Asadullah Akhtar has not been claimed in the charge sheet to be a SIMI member. However, investigation has clearly brought out that Asadullah Akhtar was making efforts to send some SIMI operatives to Pakistan for getting trained in order to joint he activities of Indian Mujahiddin. He further stated that the same has emerged in an internet chat between IM operatives Mirza Shadab Baig based in Pakistan and the accused Asadullah Akhtar and the name of SIMI has been mentioned in the form of 'CIMI'. He further stated that it must be understood that terrorists generally use understandable codes or solely misspell them to abbreviate them in order to avoid detection by any legally intercepting agency. In reply to the question whether he had annexed any statutory certificate before this Tribunal to prove the authenticity of the alleged chat extracts, the witness answered no but volunteered that certificate has been filed along with the charge sheet before the Trial Court and that the Certificate proves the internet chat has been taken from Yahoo i.e the service provider. He denied the suggestion that the meaning attributed to he chats is arbitrary and baseless and that the implication of SIMI via these chats is baseless and false to the knowledge of NIA.

145. The witness has stated that MSF was formed after the first ban on SIMI in September, 2001. It was based in Ranchi and it had approximately 40-50 members in that area. In response to question whether any case has been registered against MSF, he stated that no case has been registered against MSF. However, cases are registered against

members of SIMI and MSF is same as SIMI. Further, in reply to question whether MSF is a banned organization, he stated that since MSF is a frontal organization of SIMI, there is no question of it not been banned, and that no separate order is required to ban MSF. However, he denied the suggestion that MSF has no connection with SIMI and never had any connection with it. He also denied the suggestion that he had no basis for ascertaining that MSF is a front organization of SIMI.

146. In addition to the above prosecution witnesses, the following four public witnesses have also appeared to depose before the Tribunal and filed their affidavits:

- (i) Mr. M. Karthick, S/o V. Mohan, Hindu Munnani, Coonoor Thaluk Secretary, Coonoor (GPW-1);
- (ii) Mr. Akhtar Sayeed Siddiqui, S/o Abdul Kalam Sahab, Bhopal (GPW-2);
- (iii) Mr. Azizuddin, S/o Saifuddin, Bhopal (GPW-3); and
- (iv) Mohd. Mahir, S/o Mohd. Zakir, Bhopal (GPW-4).

The statements of the aforesaid four public witnesses were recorded on oath.

147. GPW-1, Mr. M. Karthick, in his examination-in-chief, has stated that Hindu Munnani, of which he is the Coonoor Thaluk Secretary, is an organization of Hindus and its aims and objectives are to protect the interests of the Hindus and conducting 'Vinayak Chaturthi festivals'. He further stated that he came to depose before the Tribunal because he wants the ban on SIMI to continue. He further stated that despite the ban on SIMI in the year 2001, its members are functioning clandestinely under various organizations and if they are not banned it would be a threat to the Indian Constitution and the Indian Nation.

148. In his cross-examination by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, he stated that he had no personal knowledge of the contents of his affidavit or of his deposition before this Tribunal and volunteered that all the annexures annexed with his affidavit are downloaded from the internet. However, he denied the suggestion that he was a put up witness or that he was not deposing of his own volition.

149. GPW-2, Mr. Akhtar Sayeed Siddiqui, in his statement, has stated that the people who have been arrested for SIMI activities or who otherwise indulged in unlawful activities should not be left unpunished. However, those who are innocent should not be implicated in false cases and should not be kept in custody for long and be released quickly. He requested that such cases should be decided quickly in a time-bound manner so that innocent people are not arrested.

150. It is pertinent to mention here that an opportunity was given to learned counsel for the parties to cross-examine the said witness, however, they refused to cross-examine the witness.

151. GPW-3, Mr. Azizuddin, in his statement, has stated that after the ban on SIMI for the last 14 years, not even one member of SIMI has been convicted or punished by the courts and if any lower court had convicted any person, he has been acquitted by the Sessions Court. He further stated that there is media propaganda against SIMI and prayed that the ban on SIMI should be removed.

152. In his cross-examination by Mr. Rajeev Mehra, Sr. Advocate for the Central Government, he admitted that three cases were registered against his son Izazuddin in the year 2009 and he was arrested, and is facing trial in those cases. He also admitted that several other cases were also registered against his son in the year 2011 and 2013. He further admitted that his son was lodged in Central Jail, Bhopal in cases related to SIMI activities. He further stated that the cases he referred to in his statement means only the cases registered in Bhopal.

153. GPW-4, Mohammad Mahir, in his statement, has stated he is a member of the Indian National Congress and a social activist. He further stated that SIMI was a social organization for the welfare of the community members and that due to the negative propaganda made by media against SIMI, till date 111 false cases have been registered against various persons of Muslim community in the last 14 years. Out of these 111 cases, in 97 cases, the accused have been acquitted either by the Trial Court or by the Appellate Court. Remaining 14 cases are pending trial.

154. In his cross-examination by Mr. Rajeev Mehra, Sr. Advocate for the Central Government, he stated that he was not aware of the full form of SIMI and that he had not read the constitution or the objectives of SIMI. He also stated that he was not aware of the ideology of SIMI. He further stated that the basis of his deposition in his affidavit is based on information derived from newspaper reports. He further stated that he was not aware that many active members have been convicted for being members of SIMI and volunteered that if they have been convicted, they have been rightly convicted.

155. Before proceeding to consider the legal issues and appreciation of evidence brought on record, it is considered appropriate and in the fitness of things to briefly discuss the guidelines for holding an enquiry of this nature. Even though the provisions of the Act are clear and unambiguous, the observation of the Hon'ble Supreme Court in *Jamaat-e-Islami Hind Vs. Union of India (1995) 1 SCC 428*, which are extensively relied upon by learned counsel for both the parties, deserve to be noticed in sufficient detail to examine the issue of sufficiency of cause available with the Central Government to ban SIMI. The Hon'ble Supreme Court in this case examined, in detail, the nature of enquiry

contemplated under the Act and as to what are the principles which govern the holding of such an enquiry. The said pronouncement by the Supreme Court has examined in detail the manner of conduct of the enquiry for the purposes of adjudicating the sufficiency of cause to ban SIMI. It would also be appropriate to reproduce some of the observations made in the said judgment. On the nature of enquiry as contemplated under the Act, the Hon'ble Supreme Court in paragraph 11 has observed as under:

“The nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under sub-section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced the them”.

156. Again in para 17, the Hon'ble Supreme Court has observed that “the materials on which the adjudication is to be made with opportunity to show cause given to the association, must be substantially in consonance with the materials required to support a judicial determination”.

157. On the issue of appreciation of the material based on which the Central Government decided to ban the organization, the Hon'ble Supreme Court, in para 19, has observed as under:

“The test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, 1967, is equally applicable in accordance with the decision in *V.G. Row*. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the expression ‘adjudication’.”

158. On the issue of the procedure to be followed by the Tribunal in holding the inquiry to test the sufficiency of cause, the Hon'ble Supreme Court, in paragraphs 21 & 22, has observed as under:

“.... The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility on conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence or material in respect of which the Central Government claims non-disclosure on the grounds of public interest.”

“..... the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest.....”

159. In para 26 of the said pronouncement, the Hon'ble Supreme Court has further observed as under:

“..... the provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.”

160. Thus, summarily, the Hon'ble Supreme Court in *Jamaat-e-Islami Hind (supra)* held that there should be an objective determination of factual existence of grounds which can withstand the test of credibility. The procedure adopted must also withstand the test of applicability of the principles of natural justice.

161. Keeping the aforesaid guidelines in view, it would be appropriate at this stage to consider the legal issues raised by the parties during the course of the proceedings, which may be summarized as under:

1. The issue of *Locus Standi* of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to participate in these proceedings;
2. The claim of Privilege by the Central Government in respect of certain documents placed before the Tribunal in a sealed cover;
3. The reliance on the voluntary/confessional statements made by the accused persons while in police custody and hearsay evidence.

**Locus-Standi of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam:**

162. Mr. Rajeev Mehra, learned Senior Advocate raised the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to participate in these proceedings on the ground that they neither admit to be the office bearers of a continuing SIMI organization nor do they claim to be its members. It is submitted that the Tribunal issued a notice to the banned organization under Section 4(2) of the Act calling upon the banned association affected by the Notice, in writing, to show cause, within 30 days from the date of service of such notice as to why the association should not be declared unlawful. Referring to Section 4(3) it is argued that the said section provides that after considering the cause, if any, **shown "by the association" or "the office bearers" or "members thereof" the Tribunal shall hold an enquiry on sufficiency of the cause.** While referring to Section 41 of the Act, it is submitted that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam claim that SIMI as an organization ceased to exist after the first ban in September, 2001 even though in terms of Section 41 of the Act, an association is not deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but it is deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. It is submitted that there is nothing which prevents Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam from admitting that they are the office bearers or members of the continuing SIMI organization and are legally entitled to participate in these proceedings. However, in the absence of such an admission they cannot be permitted to participate in these proceedings and cross-examine the witnesses whose evidence is being brought on record by the Central Government in support of the Notification banning SIMI.

163. Learned senior counsel attempted to draw a distinction between the different terms used in Section 4 and Section 6 of the Act. By referring to sub-section (2) of Section 4, learned senior counsel submitted that the said sub-section restricts issuance of the show cause notice to the association, while sub-section (3) of the said Section 4 widens the scope of notice to include, apart from the association, the office bearers or the members of the said association. It is further submitted that the term "any person aggrieved" used in sub-section (2) of Section 6 are restrictive in character to be used only to represent for cancellation of notification and not for issuance of notice by this Tribunal for responding thereto or for participating in the proceedings of the Tribunal. Relying on the decision of the Hon'ble Supreme Court in *Oriental Insurance Company Limited Vs. Hansraj Bhai V. Kodala (2001) 5 SCC 175*, learned senior counsel contended that "when the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature, unless context otherwise requires. However, in relation to the same subject matter, if words of different import are used in the same statute, there is a presumption that they are not used in the same sense".

164. Learned senior counsel also referred to the judgment of the Hon'ble Supreme Court in *Harbhajan Singh Vs. Press Council of India & Ors., (2002) 3 SCC 722* to contend that the basic rules of interpretation of statutes is to adopt a literal meaning of the words used and that grammatical and full meaning is to be assigned to the words used while interpreting the provision to honour the rule. It is, thus, submitted that the intent of Section 4(3) of the Act restricts the right of participation in these proceedings to the Association or its office bearers or members and since Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam do not fall in this category, therefore, their participation in these proceedings and the cross-examination conducted on their behalf is liable to be ignored.

165. Mr. Ashok Agrwal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, on the other hand submits that Mr. Humam Ahmed Siddiqui being the erstwhile President of Uttar Pradesh Zone and Mr. Misbah-Ul-Islam being a former member of SIMI, are entitled to participate in these proceedings, cross-examine the witnesses being examined by the Central Government in support of the Notification banning SIMI and contest the ban on SIMI. He referred to sub-section (2) of Section 6 of the Act to submit that "any person aggrieved" "at any time" may seek cancellation of the Notification issued under Section 3 of the Act, whether or not the declaration made therein has been confirmed by the Tribunal. Learned counsel argued that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam are aggrieved by the ban imposed on SIMI and, hence, being "aggrieved persons" and are within their right to oppose confirmation of the ban by the Tribunal. He further submits that SIMI was banned for the first time in September, 2001



and since then the ban has been continued by successive Notifications which have been confirmed by respective Tribunals, except by the Tribunal constituted in the year 2008. The organization as such has thereafter ceased to exist since September, 2001 and Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam be not expected to invite prosecution and punishment under Sections 10 & 13 of the Act by continuing to represent themselves as office bearers or members of a banned organization. It is further claimed that while SIMI was in existence, it was known for doing philanthropic work and Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam having been office bearers and members of the organization are aggrieved party in that sense and are entitled to participate in these proceedings and object to confirmation of the ban by the Tribunal. Learned counsel also relies on the principles of natural justice to claim participation in these proceedings.

166. Mr. Ashok Agrwal also referred to the public notices issued at each of the places of the sitting of the Tribunal in different States on different dates to contend that the Tribunal invited public participation for or against the continuation of the ban on SIMI and if such public participation is being invited by calling upon the general public to appear and tender evidence, it cannot deny the right of the former office bearers, whether in the capacity as the “aggrieved persons”, or even in their capacity as “independent public witnesses” to participate in these proceedings and cross-examine the witnesses being produced by the Central Government in support of the Notification banning SIMI.

167. Learned counsel further submitted that the words used in the Act must be construed so as to support a construction which is purposive and which should meet the basic principles of natural justice and constitutionalism involved therein. He further submitted that the Tribunal should not adopt an interpretation of the Statute which would lead to absurdity of denying an opportunity to the affected parties to participate in these proceedings. It is submitted that a wider interpretation of the Statute is called for as it takes away the fundamental right of the respondents to form an association. Learned counsel referred to the judgments of the Hon’ble Supreme Court in *Indian Handicrafts Emporium & Ors. Vs. Union of India & Ors.* (2003) 7 SCC 589; *Tahsildar Singh & Anr. Vs. State of U.P.*, AIR 1959 SC 1012; *New India Assurance Company Ltd. Vs. Nusli Neville Wadia & Anr.*, (2008) 3 SCC 279; *S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors.* (1985) 1 SCC 591; *Oriental Insurance Co. Ltd. Vs. Hansrajhai V. Kodala & Ors.* (2001) 5 SCC 175; and *Harbhajan Singh Vs. Press Council of India & Ors.*, (2002) 3 SCC 722 to submit that the Tribunal should look at the scheme of the Act and liberally interpret the words used by the legislature to arrive at the decision on the issue of the *locus standi* of the respondents to participate in these proceedings.

168. The fact that ban on SIMI has continued since 27<sup>th</sup> September, 2001 is not disputed. It has ceased to exist and operate, on ground, is also not disputed, even though the Central Government claims that SIMI, as an organization, is continuing to exist and indulge in activities which are prejudicial to national integrity and a threat to the secular democratic setup of India. However, any person, with the intent to assist the Tribunal in forming a fair opinion in the matter of sufficiency of cause, especially when public participation is invited from all across the States where the activities of SIMI are stated to be continuing, does make out a case that Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam should be allowed to participate in these proceedings.

169. It cannot be disputed that the ban on any organization takes away from them their fundamental right to association as guaranteed by the Constitution. An Act is primarily an offshoot of the Constitution and is intended to fulfill, in letter and spirit, the purpose and vision of the Constitution. The legislature must legislate within the four-walls of the Constitution. It can never be the intent of the legislature, while banning an unlawful Association, to deprive its members, the basic right of representation against such ban. Such right of representation by the Association, office-bearers, members or any aggrieved person, even though it may not withstand any test of logic or reasoning, is a fundamental right of any democratic society governed by a constitutional government. Thus, even if the language of the Statute is flawed, the principles of natural justice and equity must enlighten the interpretation of the words used in the Statute. The words “Association”, “Office-bearers” and “members” appearing in Section 4(3) of the Act must, therefore, be liberally interpreted keeping in view the object and purpose of the Act, which cannot be anything other than to afford a fair opportunity to the aggrieved persons to contest the ban and the words of the Statute must be interpreted to include the office bearers and members of the Association at the time when the Association was banned for the first time and/or any aggrieved person. I also find substance in the argument advanced by the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam that an admission of their being the office bearers or members of a banned organization does expose them to the perils of prosecution under Section 10 & 13 of the Act and, therefore, while deciding the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam, Tribunal has to be conscious of the possible impact of such admissions. Even otherwise, principles of natural justice in an enquiry of this nature must get precedence over legal technicalities.

170. Accordingly, in view of the aforesaid discussion, the objection raised on behalf of the Central Government to the locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam, to participate in these proceedings and cross-examine the witnesses being examined by the Central Government in support of the Notification banning SIMI, is rejected and it is held that Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam are entitled to participate in these proceedings and cross-examine the witnesses produced by the Central Government, not only in their capacity as former members of SIMI but also as individuals aggrieved by the notification banning SIMI.



**Claims of Privilege by the Central Government**

171. During the course of recording of evidence of the witnesses, a witness each from the States of Kerala, Andhra Pradesh, Bihar, Tamil Nadu and Maharashtra handed over to the Tribunal a set of documents each in sealed envelopes, claiming their contents to be confidential and, thus, claiming privilege on disclosure of these documents to the respondents on the ground of public interest in terms of proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968.

172. Mr. Ashok Agrwal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam objected to the said claim of privilege as also the manner of claiming privilege by the Central Government in respect of documents submitted to the Tribunal at different places during its sittings in different States in sealed envelopes. It was contended that non-disclosure of the contents of the envelope to Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam severely prejudice their right to resist the ban on SIMI and also their right to object to the contents of the sealed envelopes. It is submitted that such non-disclosure jeopardizes their right of representation against the contents of the sealed envelopes being submitted by the senior officers from the State Governments during the recording of their evidence. He, thus, submits that all such evidence brought before the Tribunal in sealed envelopes is liable to be discarded and ignored altogether while examining the sufficiency of evidence before the government while banning SIMI organization. It is also submitted that non-disclosure of the documents and information placed before the Tribunal in sealed cover is violative of the principles of natural justice and impinges upon their right to defend the SIMI organization. It is contended that the ground of 'public interest' espoused by the Central Government to deny disclosure of information to the intervenors affects their right to effectively resist the ban on SIMI. It is further submitted that the Supreme Court in its various pronouncements have categorically laid down the process and manner of claiming privilege and each such claim must be clearly explained on affidavit indicating the nature of a document and the reasons for seeking privilege and non-disclosure of the document to the other side. He submits that the Central Government must follow the said process in *letter and spirit* and must file an affidavit detailing the grounds on which privilege is sought in respect of each document with respect to which privilege is claimed before this Tribunal.

173. Mr. Ashok Agrwal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam referred to Section 123 of the Indian Evidence Act, 1872 to contend that the mode prescribed in the said section must be followed to support their plea of claiming privilege. He submitted that in terms of Section 123 of the Indian Evidence Act, 1872, no officer is authorized to give any evidence derived from unpublished official records relating to any affairs of the State, except with the permission of the officer at the Head of the Department concerned, who is authorized to give or withhold such permission as he thinks fit. It is contended that the envelopes submitted before the Tribunal by the senior offices of the State Government during the recording of evidence in different States, apparently, do not comply with the mandate of Section 123 of the Indian Evidence Act, 1872 and, thus, the Tribunal should discard all such material which has been placed before the Tribunal in sealed envelopes stated to be containing confidential documents.

174. In support of his contentions, learned counsel refer to the decision of the Supreme Court in *Sudhir Kumar Vs. State of Punjab (AIR 1961 SC 493)*; *R.K. Jain Vs. Union of India & Ors. (AIR 1993 SC 1769)* and *S.P. Gupta Vs. Union of India & Ors. (AIR 1982 SC 149)*. He repeatedly made a reference to the following observations made by the Hon'ble Supreme Court in **R.K. Jain's case (supra)**:

"..... It is now settled law that the initial claim for public interest immunity to produce unpublished official records (for short 'State documents') should be made through an affidavit generally by the Minister concerned, in his absence by the Secretary of the department or head of the department. In the latter case the court requires an affidavit of the Minister himself to be filed. The affidavit should indicate that the documents in question have been carefully read and considered and the deponent has been satisfied, supported by reasons or grounds valid and germane, as to why it is apprehended that public interest would be injured by disclosure of the document summoned or called for....."

175. While referring to the judgment of the Hon'ble Supreme Court in *S.P. Gupta's case (supra)*, the learned counsel laid emphasis on the following observations:-

"Now obviously the weight of the likely injury to the cause of justice will vary according to the nature of the proceeding in which the disclosure is sought, the relevance of the document and the degree of likelihood that the document will be of importance in the litigation. The particular nature of the proceeding and the importance of the document in the determination of the issues arising in it are vital considerations to be taken into account in determining what are the relevant aspects of public interest which are to be weighed and what is the outcome of that weighing process. Perhaps the most striking example of the way in which the nature of the case will bear upon the judicial process of weighing aspects of public interest is afforded by the well recognized rule that where a document is necessary to support the defence of an accused person whose liberty is at stake in a criminal trial, it must be disclosed whatever be the nature of the document."

176. Sub-Rule (2) of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968 (hereinafter referred to as 'Rules') obligates the Tribunal to not make such books of accounts or other 'documents' a part of the record of the proceedings before it, which are claimed by the Central Government to be of a confidential nature. The said Rule reads as under:-

**3. Tribunal and District Judge to follow rules of evidence.—**

(1) -----

*[(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—*

*(a) make such books of account or other documents a part of the records of the proceedings before it; or*

*(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.]*

177. Further, the 'proviso' to Rule 5 of the Rules, which provides for which documents should accompany a reference to the Tribunal, provides that the Central Government is not obliged to disclose any fact to the Tribunal which it considers is against 'public interest' to disclose. The said proviso to Rule 5 of the Rules read as under:

"Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose"

178. Learned ASG, relying on *S.P. Gupta's case* drew attention to the observations made by the Hon'ble Supreme Court in para 69 of the judgment where it has been observed that, "it does appear that cabinet papers, minutes of discussions of heads of departments, and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to this class which in the public interest must be regarded as protected against disclosure." Learned ASG submits that the documents submitted before the Tribunal are high level documents relating to the inner working of the government machinery and also are concerned with framing of government policies and their non-disclosure to the respondents is in public interest.

179. Even though the aforesaid Rules empower the Government to claim the privilege of confidentiality of a document in public interest, however, any such claim of confidentiality or privilege by the Central Government cannot be accepted on its face value, which would be to the detriment to the contesting respondents. Every such claim has to be examined, as held in *S.P. Gupta's case*, on the test of character of the document and if on objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document which is identified on an act of balancing public interest against the interest of the individual, an office bearer or the association which has been banned. However, if the document fails the test of character as being confidential or if it emerges that its disclosure to the other side does not result in injury to 'public interest', certainly its disclosure cannot be denied to the contesting respondents.

180. To satisfy myself 'objectively' on the issue of 'public interest', claimed by the Central Government while claiming privilege in respect of certain documents, the Joint Secretary (Home) of the Central Government, who is an officer of a very senior rank in the government, was examined in camera in respect of each of the documents submitted in the sealed envelopes in the five States as well as by the Central Government. The said witness took me through all the documents explaining in detail the source and character of the documents and how its disclosure to the respondents would injure public interest and how the disclosure of these documents to the other side would jeopardize not only the interest and safety of certain individuals but would also expose the affairs of the State which cannot be permitted to be brought in public domain. I have objectively assessed each of the documents submitted in the sealed envelopes and also carefully considered the contents of the documents, the statement and reasoning explained by the Joint Secretary (Home) during her examination in camera and I am convinced that the documents submitted by the witnesses in sealed envelopes are sensitive and of such a character that their disclosure will injure public interest and therefore, the same cannot be disclosed to the respondents.

181. Since a senior office of the Central Government has been examined in-camera on the contents of each of the documents submitted in sealed envelopes, the requirements of Section 123 of the Indian Evidence Act, 1872 also get substantially complied with even though the said section is not applicable *stricto sensu* to these proceedings. Accordingly, the contention raised by the respondents on the issue of claim of privilege by the Central Government is rejected.

**Confessional Statements before Police Authorities**

182. The next issue raised by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, that the cases which have been cited by the Central Government as, *inter alia*, the basis for the ban on SIMI are primarily based on statements recorded under Section 161 of Cr.P.C. by the police authorities or the so-called confessional statements recorded while the accused were in police custody. He submits that these statements may be in relation to crimes committed by individuals but they cannot be read so as to form the basis for banning SIMI. It is submitted that the so-called confessional statements are inadmissible under Section 25 of the Evidence Act and, hence, they cannot be used to form the foundation for banning SIMI. Relying on *Emperor Vs. Harisingh Ganpat Singh, 1910 Bombay Law Reporter (Vol. XII) 899*, learned counsel argued that a confession that is inadmissible against the maker is “a fortiori” inadmissible against another person who is implicated by it and behind whose back it was made. Learned counsel then referred to sub-rule (1) of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968 to contend that the Tribunal is obliged to follow, “as far as practicable”, the rules of evidence laid down in the Indian Evidence Act, 1872. The said rule reads as under:-

**3. Tribunal and District Judge to follow rules of evidence** – (1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).”

.....

183. Mr. Ashok Agrwaal, learned counsel argued that the use of the term “as far as practicable” as noted above, should not be interpreted so as to restrict, in any manner, its applicability to these proceedings. He submits that Rules of Evidence contained in the Indian Evidence Act have to be strictly followed, except with respect to confidential material.

184. Learned counsel then referred to Section 25 of the Indian Evidence Act to submit that the said section makes a confessional statement made by an accused before a police office, while in his custody, inadmissible whereas in the present proceedings the Central Government is seeking to use such confessional statements to ban the respondent organization. Relying on *Khatri Vs. State of Bihar, (1981) 2 SCC 493*, he submitted that statements made under Section 161/162 Cr.P.C. may be admissible in a subsequent/ other proceedings such as the present proceedings before this Tribunal, “provided that it is otherwise relevant under the Indian Evidence Act”. Learned counsel also referred the judgment of the Hon’ble Supreme Court delivered in the case of *Vinay D. Nagar Vs. State of Rajasthan, (2009) 5 SCC 597*, to submit that mere lifting of the bar imposed by Section 162 Cr.P.C. is not by itself sufficient to make a statement recorded by the police admissible evidence. Such a statement can be admitted in evidence only by virtue of any of the provisions contained in the Indian Evidence Act. It is argued that confessions and other statements to the police under Section 161/162 Cr.P.C. will not become admissible unless they show the provision of the Evidence Act under which these statements are admissible.

185. Learned ASG, on the other hand, argued that confessional statements recorded by the police under Section 161 Cr.P.C. are admissible, even against third parties so long as they are not sought to be used in the “inquiry or trial in respect of any offence under investigation at the time when such statement was made”. Relying on *Mahanta Singh Natha Singh Vs. Het Ram Pakhar, AIR 1954 Punjab 27*, the learned ASG submitted that Section 25 does not forbid the use of a statement made by a thief or a robber in a case in which the thief or robber is not being tried for having committed the robbery or an allied offence. Learned ASG laid emphasis on the following observations in the said case:-

“Section 25 merely forbids the use of a confession made to a police officer in a trial of the accused person for having committed an offence. This Section does not forbid the use of a statement made by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like.”

186. Learned ASG also referred to the judgment in *Suman Vs. State of Tamil Nadu & Anr., AIR 1986 Madras 318*, in support of the aforesaid proposition. Learned ASG also submitted that the bar of Section 162 would not be attracted in respect of an offence other than which was under investigation at the time when such statement was made. In support of this argument, learned ASG relied on the observations made by the Hon’ble Supreme Court in Para 5 of Khatri’s case, which read as under:-

“.... It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but by the express terms of Section, this bar is applicable only where such statement is sought to be used ‘at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in course of an investigation under Chapter XII is sought to be used in any proceedings other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted.”

187. I have carefully gone through the judgments cited at the Bar. I have also been taken through the reports of the previous Tribunals on the subject.

188. The relevant Sections 25 & 26 of the Indian Evidence Act read as under:

*25. Confessions to police officer not to be proved. – No confession made to a police officer, shall be proved as against a person accused of any offence.*

*26. Confession by accused while in custody of police not to be proved against him - No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*

189. The import of the aforesaid two sections is unambiguous. Confession made by an accused before police officers are inadmissible in evidence, which cannot be brought on record by prosecution “to obtain conviction”. So far as their applicability to the present proceedings is concerned, it is very obvious that these proceedings are not a trial “to obtain conviction” of any accused. Even otherwise, the Rules of Evidence as contained in the Indian Evidence Act are not stricto sensu applicable to these proceedings. Their applicability is confined by use of the term “as far as practicable”.

190. The term ‘as far as practicable’ in Rule 3(1) of the Rules has to be interpreted in the context of the purpose & object of the Act, which is to ‘prevent’ unlawful activities by imposing reasonable restrictions on freedom of speech and expression; right to assemble peacefully and without arms; and right to form association or unions. Thus, the object is preventive in character by restricting certain freedoms, which are otherwise available to individuals and associations. The process of restricting of certain freedoms will entail a restrictive interpretation of concerned Acts and Statutes, which regulate such freedoms. Thus, when the Legislature used the terms ‘as far as practicable’ in sub-rule (1) of Rule 3 of the Rules, the intent cannot be read of widening the scope of applicability of the Indian Evidence Act. It can only be interpreted to mean restrictive applicability of the Indian Evidence Act.

191. Furthermore, under Section 25 of the Evidence Act, the restriction is limited to the use of the confessional statement by the prosecution to obtain conviction. As noted above, the proceedings before the Tribunal are not in the nature of a trial of any accused to secure conviction. Even the Hon’ble Supreme Court in *Jamaat-e-Islami Hind (supra)* has observed, in para 22, that the materials need not be confined only to legal evidences in the strict sense. The confessions recorded under Sections 161 and 164 of Cr.P.C. may not stand the test of a judicial scrutiny and may ultimately result in the acquittal of the accused but so far as their relevance for the purposes of reliance by the Tribunal or the Central Government at the time of imposing the ban, they are important indicators of the activities and cadres of the banned organization and, thus, cannot be ignored or brushed aside.

192. Accordingly, in view of the discussion above, the plea for discarding or disregarding the evidence adduced by way of confessional statements recorded under Section 161 Cr.P.C. by the police officer while the accused were in police custody, is rejected.

193. Now I will consider the evidence which has been produced by the Central Government. During the period from 3<sup>rd</sup> February, 2012 till the issue of the Notification dated 1<sup>st</sup> February, 2014 banning SIMI, eighteen fresh cases have been registered in different parts of the country against members of SIMI, who are stated to be continuing their anti-national activities despite the continuous ban since 27<sup>th</sup> September, 2001. Four new cases are registered in the State of Andhra Pradesh; one case in Chhatisgarh; two cases in Gujarat; two cases in Kerala; three cases in Madhya Pradesh and five cases in Maharashtra. One fresh case has been registered by the NIA. During recording of the evidence in different states, senior police officers from the State Governments and the NIA deposed in respect of these cases. The said witnesses were examined by the learned counsel representing the respondents.

194. The Central Government in all examined 30 witnesses in support of the Notification dated 1<sup>st</sup> February, 2014 banning SIMI. All the witnesses who deposed before the Tribunal, as noted earlier, were cross-examined by the learned counsel representing Mr. Human Ahmed Siddiqui and Mr. Misbah-Ul-Islam. Even though the cases cited during the recording of evidence also pertained to the period prior to 3<sup>rd</sup> February, 2012, the Tribunal is considering, for the purposes of ascertaining ‘sufficient cause’, only those cases which are registered and intelligence inputs which pertained to the period after 3<sup>rd</sup> February, 2012.

195. It is pertinent to mention here that no evidence was adduced on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam despite opportunity.

196. PW-2, Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode city, deposed in respect of two FIRs viz. FIR No. 533/2013 registered under Section 153(A) of IPC [Ex. PW-2/1] and FIR No. 697/2013 registered under Sections 153(A) & 153(B) of IPC [Ex. PW-2/2].

197. The witness in his affidavit has stated that a book “Dahvathum Jihadum” (which is a Malayalam translation of the book “Jahiliath Ke Khilaf Jung” written by Abdul Aleem Islahi, and translated by Usman Kadungoth) was published and exhibited at Thirurangadi Book Stall at Kozhikode for sale. The said book contained many sentences and ideas to



promote enmity and hatred between different religions and questioning the secular values of India as a Nation, besides other matters inciting hatred towards certain communities and thus capable of creating communal disharmony and enmity among the people. In this regard, on the basis of a communication dated 4.9.2013 received from DSP, SBCID, Kozhikode city, the SHO, Nadakkavu registered the FIR No. 533/2013 under Section 153(A) of IPC. There are four accused in the said FIR out of whom accused no. 3, P K. Abdurahiman was the former Ernakulam District President of SIMI.

198. During investigation, a search was conducted at Thirurangadi Book Stall on 05.09.2013 and at Nanma Book Stall on 07.09.2013, which resulted in seizure of 19 and 4 copies of the above book respectively. Further, the statement of accused PK Abdurahiman was also recorded in which the accused had disclosed in detail about his association with SIMI, organizational structure of SIMI and ideology and activities of SIMI. He also disclosed about his publishing activities and distribution of books to incite Jihad.

199. The case Crime No. 697/2013 was registered under Sections 153(A) and 153(B) of IPC on the basis of information that the publication and distribution of one book namely "Vazhiyadayaalangal" (English translation of the book "Mile Stone") was causing enmity among the people and designed to break the communal harmony and integrity of the nation, and was selling at Vachanam Book Stall, Noor Complex, Mavoor Road, Kozhikode. Certified copy of relevant portion of the book "Vazhiyadayaalangal" is on record and exhibited as Ex. PW-2/4. In his affidavit, the witness has stated that this book contains imputations and assertions promoting disharmony and feeling of enmity and hatred between different communities and different religions and questioning the secular values of India as a Nation. There are three accused in the said FIR out of which accused no. 2 PK Abdurahiman, who is also one of the accused in FIR No. 533/2013 is a former District President of SIMI.

200. During his cross-examination the said witness stated that it is noted in the case diary that accused no. 2 & 3 in this case are members of SIMI. The witness denied the suggestions that the said two cases produced by him before the Tribunal have nothing to do with SIMI or do not show the activities undertaken by or on behalf of SIMI.

201. PW-12, Mr. B. Koteswar Rao, Inspector of Police, Special Investigation Team, Hyderabad City, Andhra Pradesh has deposed in respect of four FIRs viz. FIR No. 126/2012 registered at PS Saidabad under Sections 147, 148, 324, 153A and 149 IPC; 128/2012 registered at PS Saidabad under Sections 147, 148, 324, 427, 153A and 149 IPC, 130/2012 registered at PS Saidabad under Sections 147, 148, 427, 153A and 149 IPC and 133/2012 registered at PS Saidabad under Sections 147, 148, 435, 153A and 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

202. FIR 126/2012 was registered pursuant to a complaint lodged by Sh. Mahesh Reddy at Saidabad Police Station that on 08.04.2012 when he and his brother were proceeding to Saidabad on their motorcycle, they were beaten up by some unknown persons indulging in sloganeering and rioting. FIR 128/2012 was registered pursuant to a complaint lodged by Sh. Bangari Prakash, Corporator, BJP, Mahidipatnam at Saidabad Police Station that on 08.04.2012 when he along with others were going to Madannapet to bring confidence among the people of the locality after Hanuman temple was maligne by some miscreants, 40 – 50 local people attacked them with lethal weapons and started pelting stones at Saidabad ACP office.

203. FIR 130/2012 was registered pursuant to a complaint lodged by Sh. Srinivas Reddy, at Saidabad Police Station that on 09.04.2012 when he along with his wife was going to hospital in his car, some unknown culprits pelted stones on his car in Saidabad colony, due to which the front glass, back glass and right side glass of the car were broken. FIR 133/2012 was registered pursuant to a complaint lodged by Sh. D. Rahul Singh, that on 08.04.2012 he along with his wife was coming from Balanagar on his motor cycle and when they reached near ACP Office, Malkpet, about 50-100 members started pelting stones towards them due to which he received injury on his back.

204. Investigation of the all the aforesaid cases were transferred to SIT on 13.04.2012. During the course of investigation seventeen persons were identified who indulged in rioting and were arrayed as accused 1 to 17. After completion of investigation, charge sheets were filed against the accused in the court of XIV Addl. Chief Metropolitan Magistrate, Nampally, Hyderabad. Investigation of the said cases revealed that a mob of over 100 persons had formed an unlawful assembly on the main road near ACP Office, Malakpet, Saidabad purportedly to protest against the incident of some Hindu youth attacking pushcart vendors belonging to Muslim community. The purported attack on the pushcart vendors was in protest against the alleged defiling, by throwing of cow-flesh, in Hanuman Temple, Kurmaguda, Madannapet. The alleged defiling of the Hanuman Temple was aimed at creating communal tensions between the two communities. The witness has further said that his investigation further revealed that SIMI activists actively participated in the above noted incidents and provoked the mob to commit unlawful activities and rioting. They are acting like sleeper cells and helping to create communal disturbances and causing breach of peace in the society.

205. In his cross-examination the witness denied the suggestion that he had produced these four cases before the Tribunal to malafidely and falsely supports the ban on SIMI.



206. PW-15, Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat deposed in respect of FIR No. (CR No.) 24/2013 (Ex.PW-15/2) registered at PS-Ranip under Sections 130, 224, 120(b) of IPC and under Sections 42 and 45 of the Prisons Act.

207. The witness in his affidavit has stated that the accused persons in FIR no. 24/2013 hatched a conspiracy with each other and tried to escape from the prison by digging a tunnel. On 10.02.2013, the accused persons were caught red handed while digging the tunnel and accordingly FIR No. 24/2013 was registered. During the course of investigation it was revealed that accused No. 1, Hafiz Hussain @ Adnam Jaid Tajuddin Gaus Mohit Dul Mulla, who was lodged in barrack No. 4/2 of Chhotachakkar of the jail premises procured some books from the jail library and after thorough study of these books he hatched a conspiracy with the other co-accused to escape from the prison and regroup. It was further revealed that all the accused persons also procured prohibited items like haxo blade, screw driver, compass, level pipe etc. The accused persons started digging tunnel from barrack no. 4/2 wherein there was a water tank between the toilet and bathroom outside the barrack and no guard or other jail officials would be able to notice their movement. The accused persons were successful in digging a tunnel which was 16.5 feet deep and 213 feet long. The end of the tunnel was stretched out of the jail premises. Initially 14 persons were arrayed as accused, however, during investigation involvement of further 10 accused persons came to light. The charge sheet was filed against all the 24 accused persons before the competent court.

208. The witness in his affidavit has further stated that the accused persons in FIR No. 24/2013 are also the accused in the offence bearing CR No. 236/2008 registered at PS-Shahibaug under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967, and which is commonly called as the serial bomb blast case wherein the city of Ahmedabad and Surat were subject to bomb blasts on 26<sup>th</sup> July, 2008. The investigation of the serial bomb blast case revealed that all the accused persons in CR No. 236/2008 are members of SIMI and SIMI's new form Indian Mujahiddin.

209. In his cross-examination the witness denied the suggestion that the jail break attempt case has nothing to do with SIMI and stated that it is incorrect for the reason that the accused persons mentioned in FIR No. 24/2013, who are members of SIMI, hatched a conspiracy and acted in furtherance of the said conspiracy to escape from the prison and regroup. It is thus clear that despite ban, SIMI members are still active and are still indulging in subversive anti-national activities aimed at destroying the unity and sovereignty of India. In response to the Tribunal's question, which are the documents, which form the basis of the aforesaid statement, the witness replied that the accused persons have made confessional statements during investigation in police custody and disclosed the aforesaid facts. The witness denied the suggestion that he had no basis for saying that the SIMI members are still active and is still indulging in subversive and anti-national activities. He further denied the suggestion that there is nothing in his investigation to show that the accused tried to break out of prison in furtherance of the activities of SIMI or in order to carry on the activities for SIMI.

210. PW-16, Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit, Maharashtra deposed in respect of FIR No.25/2012 (Ex.PW-16/1) registered at PS-Begampura, Aurangabad City under Sections 307, 333, 335, 336, 338, 352, 353 and 34 of IPC and Sections 3, 25 and 27 of Indian Arms Act.

211. The witness in his affidavit has stated that on 26.03.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information received by their informant that one person namely Abrar @ Ismail, who was absconding accused in 2008 Ahmedabad case and an active hardcore member of Indian Mujahiddin and SIMI, was coming to meet his accomplices at about 12:00 noon at Aurangabad. Accordingly, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation firing two persons namely Abrar @ Ismail and Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police head constable was also injured due to firing by accused. After incident of firing, local police was informed immediately and FIR No. 25/2012 was registered. During interrogation of the accused Abrar @ Ismail and Shakir @ Khalil Khilji, it was disclosed that they and other members of SIMI namely Abu Fazal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, Madhya Pradesh in the year 2006. In the said meeting they urged the members to carry on jehad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. Abrar also disclosed that in the year 2011, he committed dacoities in Gujarat and Madhya Pradesh to generate funds for Jihad and had also planned to loot trucks of copper scrap for the said purpose.

212. During investigation it was further revealed that one more accused namely Anwar Hussain was also involved in the crime. He assisted the other accused persons by driving them from Indore to Aurangabad on the date of incident. His statement was also recorded by the witness. He revealed that he is a member of SIMI. Investigation further revealed that one Jafar Hussain had assisted the accused persons by providing the SIM card at the time of incident. He also revealed that he is a member of SIMI and took part in various activities. He further disclosed that even after the imposition of ban on SIMI, he continued to recruit members and took meetings at the house of Akil Khilji. A copy each of the statement of Abrar @ Ismail, Anwar Hussain and Jafar Hussain along with English translation has been placed on record and exhibited as Ex. PW-16/2, PW-16/4 and PW-16/6 respectively.

213. In his cross-examination the witness in response to the question whether he verified the alleged membership of SIMI of the accused from any independent documentary source other than the statement under Section 161 Cr.P.C., has replied that there is a case pending against Khalil Khilji in PS-Khandwa, Madhya Pradesh under Section 153 IPC, Sections 3, 10, & 13 of Unlawful Activities (Prevention) Act and Sections 25 and 27 of the Arms Act. He further replied that for the other accused, he is solely relying upon the confessional statements of the accused persons to assert that they are members of SIMI.

214. PW-17, Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh deposited in respect of FIR No.22/2013 (Ex.PW-17/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307 and 34 of IPC and Sections 25 and 27 of Indian Arms Act.

215. The witness in his affidavit has stated that there were confidential reports that terrorists of SIMI namely Abu Faisal, Amjad, Aslam, Mehboob and Ajajuddin after escaping from Khandwa jail on October 1, 2013 would sneak into border districts of Madhya Pradesh and Maharashtra. On the basis of intelligence reports, separate teams of ATS and CTG (Counter Terrorism Group) arrived at Kharkiya rest house under Sendhwa police station of Barwani district on December 18, 2013. At around 2:15 am on 24.12.2013, when ATS personnel located three suspects and started chasing them, the suspects opened fire at ATS and CTG personnel on which CTG party fired back. After the police encounter, three SIMI activists/terrorists were caught namely Abu Faisal, Khalid and Irfan Nagori with three weapons country made 0.32 pistols, cash and fake ID's. In this regard, FIR was lodged with Sendhwa police station which was later transferred to STF/ATS for further investigation. The forensic report of handwash of aforesaid three accused found to have traces of Nitrate present implying the use of firearms by the three accused.

216. The witness has further stated that Abu Faizal in his voluntary statement described his organization's name as SIMI and that after escaping from Khandwa jail, he had stayed at the residence of Khalid, took money from him and chalked out plans for arranging arms and explosives and having used false identity in the name of Sushil and Ibrahim. He also described about targeting Narendra Modi, create blast at Muzaffarnagar, kidnap American citizens, targeting judges who gave judgment in Babri Masjid demolition, targeting owner of Diamond Comics and also targeting the then Home Minister, Sushil Kumar Shinde. Accused Irfan Nagori in his voluntary statement had disclosed that he met Khalid Muchale at Guddus place in Mahidpur who told him to bring bombs and weapons to Solapur. Sajid @ Guddu prepared the bag containing pistol and another bag containing Detonator, Gelatin and three bombs. They handed over the bag of pistols to Ismail and that of explosives to Khalid Muchale who gave it to Umer. He further stated that their main target was Narendra Modi. Accused Khalid Ahmed Muchale in his voluntary statement has stated that earlier in 2008 he was arrested along with SIMI members and awarded punishment of five years. He met Abu Faizal in Bhopal jail where he conspired with Abul Faizal to escape from Bhopal Jail and made arrangement of explosive material, pistol, cartridges etc. for Abu Faizal. He also informed about targeting Narendra Modi, Praveen Togadia and Sushil Kumar Shinde. Copies of statements of the three accused along with English translation are annexed with the affidavit of PW-17.

217. On the basis of information from the three accused, one SIMI activist namely Sadique was arrested by ATS on 24.12.2013. On the basis of information revealed by him, three computer processing units, printers, scanners, pen drives, hard disc, SD cards, foreign currency etc. were seized from his residence cum shop. The pen drives were found to have incriminating files stored including Al Quaida Mouth "Piece" Inspire, Forged ID's of accused Abu Faizal, AK 47 operational manual, training material about software programe, photographs of absconding and other SIMI activists etc. The computer files contained material glorifying and provoking suicide attacks, explaining ways and means to causing road accidents by blocking roads with trees, how to spread fire in forest, how to use capsule lens as bomb igniter, manufacturing process about Action Peroxide explosives etc.

218. Further interrogation of accused Sadiq led to arrest of Umer Dandoti who was found trying to flee carrying a bag containing three bombs each containing twelve Gelatin stick, three circuits of twelve detonator, thirty five Gelatin stick loose, two bundles of 24 and 48 detonators loose and one 9 mm pistol with 7 live rounds. Examination of the said material by forensic lab and bomb disposal squad revealed that explosive seized were high explosives. On information provided by Irfan Nagori, ATS arrested Adil, Aziz @ Aju, Wahid and Javed Nagori on 01.01.2014 and 800 gelatin rods, 12 primed gelatin rods, 54 detonators and pipe bomb were seized from their possession. In this regard a separate case in PS STF/ATS Bhopal No. 1/2014 under Sections 307, 34 of IPC and Sections 3 & 5 of Explosive Act was registered. The witness in his affidavit has further stated that during investigation it was established that accused being members of banned organization SIMI hatched criminal conspiracy and in order to realize their criminal conspiracy raised funds, collected arms and explosives, fixed targets, made fake identity cards, developed bombs through explosives and executed their plans with utmost confidentiality. Still others were helping the absconding SIMI terrorist by providing shelter, money etc.

219. In his cross-examination the witness has stated that after thorough investigation they found that SIMI activists collectively committed these crimes to generate money and for target killing and other illegal activities. He denied the suggestion that cases attributed to accused Abu Faisal vide paragraph 10 of his affidavit are on the basis of confessional statements recorded in police custody.

220. PW-18, Mr. Ajay Kaithwas, Dy. Superintendent of Police, ATS Indore, Madhya Pradesh deposed in respect of FIR No.1/2014 (Ex.PW-18/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307, 34 of IPC, Sections 25 & 27 of Arms Act, Sections 3 & 5 of Explosive Substance Act and Section 13 of Unlawful Activities (Prevention) Act.

221. The witness in his affidavit has stated that on information provided by Irfan Nagori accused in CR No. 22/2013, raids were conducted on 01.01.2014 and accused Javed Nagori, Ajij @ Aju, Wahid, and Adil Nagori were arrested from Mahidpur and cache of ammunition were seized from the possession of the accused including one pipe bomb, one primed bomb, 800 super power Gelatin rods, 11 Primed Bomb, 540 live detonators, one 12 bore live cartridge. During investigation, it revealed that SIMI activists Khalid Ahmed, Abu Faisal, Irfan Nagori, Sadiq and Umer, who were accused and already been arrested in CR No. 22/2013, were also involved in the same case. Other accused/SIMI activists namely Abdul Majid and Sajid involved in the same crime surrendered before the CJM Court, Bhopal on 22.01.2014 & 30.01.2014 respectively.

222. He has stated that accused Abdul Majid in his voluntary statement has stated that he is an active member of SIMI. He also revealed information about manufacture and testing of bomb/s to eliminate targets. He also stated that he along with Sajid, Irfan Nagori, Khalid Ahmed went for testing of explosive near village Delchi Khurd, but in the meantime police patrolling party passed from nearby road, so they could not test the explosive and after hiding the bomb in one hollow pipe, they ran away from the spot. He has further stated about accused Sajid who in his voluntary statement has stated that he is an active member of SIMI and in spite of ban he was running the SIMI organization actively. He used to hold SIMI meeting in his room with absconder Saliq and accused Abu Faisal and Khalid Ahmed. The witness has stated that the accused Khalid Ahmed in his voluntary statement has stated that he himself, as also Abu Faisal are "Ameer" in SIMI organization; Adil Nagori is the "Ameer" of Ujjain; Javed and Sajid are the head of Mahidpur SIMI organization. He further stated that to take revenge of Gujarat and Muzzaffarnagar communal incident(s), he managed to brain wash other SIMI members, namely Wahid, Ajij, Majid, Sajid and Juber for the purpose of target killings in Sholapur, Maharashtra. He also convinced Irfan Nagori and Sajid Nagori to come to Solapur with arms and ammunition for this purpose.

223. PW-18, Mr. Ajay Kaithwas, DSP, ATS, Indore, Madhya Pradesh had also stated about accused Javed Nagori who in his voluntary statement has stated that he is an active member and head of SIMI organization in Mahidpur. He used to organize meetings of SIMI organization under his control and direction. He collected funds to run the organization, and stored arms and ammunitions to achieve nefarious objectives of the SIMI organization. Further investigations revealed that accused Abdul Wahid and Abdul Aziz were found to be involved in continuous meetings with other co-accused persons for the purpose of SIMI activities and they were involved in providing transport facilities to accused Abu Faizal. The witness in his affidavit has stated that Investigation in the case and the video statement transcripts of each of the accused reveal that the activities of SIMI include hatching criminal conspiracy for plotting murders, including conspiracy to murder/assassinate judges and prominent politicians and ATS officers, carrying out bomb explosions at public places.

224. In his cross-examination the witness denied the suggestion that SIMI has no connection with the accused arrested in FIR Nos. 22/2013 and 1/2014. He also denied the suggestion that the only basis for saying that the accused arrested in FIR Nos. 22/2013 and 1/2014 connected with SIMI are the confessions made by the said accused to the police.

225. PW-19, Mr. Brijesh Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh deposed in respect of FIR No. 424/2014 registered at PS-Maharana Pratap Nagar, Bhopal, Madhya Pradesh under Sections 295A, 153B and 34 of IPC.

226. The witness in his affidavit has stated that on 17.05.2014, certain members of SIMI, being accused and under trial in some pending cases including accused in FIR No. 01/2014, was to be taken from Central Jail to District Court, Bhopal. These members of SIMI after being produced before the District Court, Bhopal started shouting anti-national slogans. English translation of the slogan is "*Taliban zindabad, Islam zindabad, Pakistan zindabad, Palestine se lekar Afghanistan tak hamara raj hoga, ..... ab Modi ki bari hai*". Accordingly, FIR No. 424/2014 was registered. The witness in his affidavit has stated that the action of the accused SIMI members is demonstrative of the divisive nature of the ideology propagated by SIMI and its members. He further stated that the accused persons in FIR No. 1/2014 registered by ATS Bhopal, who were also part of the incident enumerated above, have revealed the existence of a very wide and active SIMI network not only in the State of Madhya Pradesh but also all over India.

227. In his cross-examination the witness admitted that no slogan was shouted about SIMI or in favour of SIMI on that date. In reply to another question during cross-examination as to whether he had verified from independent documentary source that the accused were members of SIMI, he replied that FIRs mentioned the accused as being members of SIMI, therefore, he had mentioned that they are members of SIMI. He denied the suggestion that the facts pertaining to SIMI stated by him are false and concocted.

228. PW-20, Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh has deposed in respect of three FIRs viz. FIR No. 541/2013, 542/2013 and 209/2013. He has stated that the accused persons namely Abu Faisal,

Ajajuddin, Guddu @ Mehboob, Aslam, Jakir, Amjad & Mirza Abid Beg made a hole in wall of toilet of ward No. 2 of District Jail, Khandwa and escaped by jumping across the safety wall. While they were fleeing and passing through Siddhapuram & Warco City near Bhandariya Road, they were stopped by a patrolling party, with which the accused persons had a scuffle. The constable/patrolling party was attacked by the accused persons with the intention of causing death which resulted in grievous injuries to Constable Lokesh Hirwea and Sainik Suresh Tiwari. Their government rifles were snatched and the accused persons fled in the motorcycle belonging to these constables. Accordingly, on the report of Constable Lokesh Hirwea, FIR No. 541/2013 was registered at PS-Kotwali Khandwa under Sections 395, 307, 353 & 332 of IPC. During primary investigations the details about the jailbreak emerged and FIR No. 542/2013 was also registered by PS-Kotwali under Section 224 of IPC. After further investigation, Sections 3, 10, 13 & 16 of Unlawful Activities (Prevention) Act and Sections 120(B) and 75 of IPC were also added in the said FIRs. The witness has further stated that from investigations of the cases, it is revealed that the accused persons in FIR No. 541/2013 & 542/2013 are the members of banned organization SIMI.

229. The witness in his affidavit has further stated that in April, 2006, an incident took place on the occasion of Mahavir Jayanti when a procession organized by some people from the Jain community was attacked by some miscreants who also indulged in vandalism. During the course of investigation, SIMI activists were found to be involved in this incident and accordingly FIR No. 236/2006 was registered at PS-Kotwali. During the course of trial, the concerned Magistrate passed an order dated 10.01.2013 directing that a separate case be registered against Mohd. Khalil in view of the complicity of the said accused in activities relating to SIMI. Accordingly, FIR No. 209/2013 was registered and Mohd. Khalil was arrested on 22.08.2013. On completion of investigation, Final Report was filed before the Chief Judicial Magistrate. The case is presently under trial.

230. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the FIR No. 209/2013 does not mention the name SIMI and that the magazine Tehrik-e-Millat recovered from the accused was published by SIMI. However, he denied the suggestion that the magazine Tehrik-e-Millat has nothing to do with SIMI and that the said magazine was never published by SIMI.

231. PW-22, Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra has deposed in respect of FIR No. 131/2012 (Ex. PW-22/1) registered by PS Nizampur Bhiwandi under Section 307 and 120(b) of IPC.

232. The witness in his affidavit has stated that on 03.08.2012, while the complainant Manoj Raicha was travelling by his car, with his armed police bodyguard Police Constable Acharekar, three shots were fired at him from a fire arm. One bullet grazed his right upper arm. Thereafter, the complainant lodged a complaint with the police about the threat to his life extended at the hands of accused Saquib Nachan on 6<sup>th</sup> July, 2011, on the basis of which, FIR No. 131/2012. It is stated that the motive behind the offence which is alleged against Saquib Abdul Hameed Nachan and his co-accused is to create a rift between Hindus and Muslims and to cause communal riots and with this motive only the said accused Saquib Abdul Hameed Nachan hatched the conspiracy to eliminate the first informant Sh. Manoj Raicha, Advocate, who is an active member of the Vishwa Hindu Parishad and Govansh Saurakshan Samiti. On 04.08.2012, supplementary statement of the complainant was recorded. It was stated in the supplementary statement that his police bodyguard Acharekar has seen one person running away from the lane by the side of Masjid after the incident, who was later identified as accused No. 2 Guddu @ Mohd. Hafeez Khan and that he had seen him prior to the incident at about 10:00 p.m. on red colour Pulser Motorcycle along with another person. During the investigation, the shirt of the complainant bearing blood stains and black spot of bullet were seized under seizure panch-nama.

233. He has further stated that accused No. 2 Guddu gave a memorandum statement leading to discovery of a country made pistol and 6 live cartridges from the house of absconding accused Abu Bakar. Further, a read colour Pulser Motorcycle was also recovered from the place near public toilet near a mosque. It is further stated that the accused No. 1 in his statement revealed that he has been a member of SIMI from the year 1982. He further revealed that Saquib Nachan still clandestinely continues to work for SIMI and still a strong sympathizer of the organization.

234. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that the seizure is fraudulent and the items stated to be recovered are fraudulent. He denied the suggestion that he had no basis for saying that the accused persons undertook any of the acts stated in his affidavit on behalf of SIMI or in furtherance of its objectives and volunteered that the accused have confessed to their acting on behalf of SIMI in their confessional statements made before the police.

235. PW-27, Mr. Vishal Garg, Addl. Superintendent of Police, NIA, New Delhi has deposed in respect of the three cases registered by NIA viz. 07/2013/NIA/DLI, 08/2013/NIA/DLI & 09/2013/NIA/DLI under Sections 153A, 324, 307, 427 & 452 of IPC, Sections 3 & 4 of Explosive Substances Act, Section 17 of Criminal Law Amendment Act and Sections 16, 18, 20 and 23 of Unlawful Activities (Prevention) Act, which are related to serial bomb blasts at Bodh Gaya, Bihar on 07.07.2013.

236. The witness has stated that with a view to terrorize the Indian citizens and international tourists, total thirteen bombs were planted at different places of Bodh Gaya including the main temple complex, out of which ten bombs were



exploded and three live bombs were recovered which were defused later on. The blast caused extensive damage to the secular image of the country. During the investigation, role of five planters of the bombs along with other key conspirators namely Haider @ Abdullah @ Salim Ansari @ Black Beauty, Mujibullah @ Mujib, Taufiq Ansari, Fariq (since dead), Imtiyaj, Numan, Umer Siddiqui and Azharuddin Qureshi had emerged. The witness has further stated that he personally interrogated the arrested accused persons who made disclosure about the activities of SIMI and the conspiracy hatched by SIMI members. The statements of accused Umer Siddiqui and Azharuddin Qureshi, recorded under Section 164 Cr.P.C. is enclosed with the affidavit. It is further stated that during the investigation of accused Ahmed Sidibappa @ Yasin Bhatkal (arrested by NIA in RC 06/2012), it was found that Yasin Bhatkal used to chat with IM Chief Riyaz Bhatkal (reportedly present in Pakistan) on internet, in which they also discussed about targeting Bodhgaya. The role of the SIMI members has also been mentioned in detail in the internet chat of Mohd. Ahmed Siddibappa @ Yasin Bhatkal and Riyaz Bhatkal.

237. The witness has further stated that the statement of several witnesses/accused were recorded under Sections 161 Cr.P.C. and also under Section 164 Cr.P.C. which further established the activities of SIMI in Ranchi/Raipur and their intention to terrorize the people of India and that SIMI operatives contacted several local persons at Raipur and Ranchi to obtain their assistance, support and providing infrastructural support for operations to carry out attack at religious place Bodh Gaya to avenge the alleged atrocities on Rohngiyas Muslims in Myanmar. The investigation also revealed that Umer Siddiqui was one of the principal conspirator in the conspiracy of SIMI and had personally motivated several persons including Haider Ali, Azharuddin and other activists on religious lines to wage war against other communities in India. It was also revealed that in pursuance of the conspiracy, the Indian Mujahiddin accused Asadullah Akhtar made efforts to some SIMI operatives out of India, for further sending them to Pakistan to get trained in terrorist activities, which clearly establishes that the SIMI has been continuously receiving assistance by the IM operatives based at Pakistan.

238. In his cross-examination by Mr. Ashok Agrwaal, the witness (PW-27) in reply to the question that the Magistrate has not put any question to the accused persons (Umer Siddiqui and Azharuddin Qureshi) to ascertain whether the confession was made voluntary, he stated that no question was put as to the voluntariness of the statement of the accused under Section 164 Cr.P.C. but volunteered that the Magistrate has given certificate under Section 164(4) Cr.P.C. and it is also noted that he has explained to both the accused persons that they are not bound to make a confession and if they do so that may be used as evidence against them.

239. PW-28, Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi has deposed in respect of the case No. RC 06/2012/NIA/DLI registered under Sections 120B, 121A and 122 of IPC and Sections 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which relates to an ongoing criminal conspiracy by the operatives of the Indian Mujahiddin, a terrorist organization, to commit terrorist acts by attacking various public places in India.

240. The witness has stated that on 29.08.2013, on reliable source information, two of the accused persons named in the FIR and who were terrorists of Indian Mujahiddin i.e Mohd. Siddibappa @ Yasin Bhatkal and Asadullah Akhtar @ Haddi were arrested at India-Nepal border town. During subsequent investigation, the role of some SIMI operatives including Manzer Imam, Ozair Ahmed and Haider Ali @ Abdullah was established as having sheltered and actually assisted the IM operatives including Tahseen Akhtar @ Monu, for the commission of terrorist acts. The statements of several witnesses were recorded under Sections 161 and 164 of Cr.P.C. at Ranchi, which further established the activities of SIMI in Ranchi in furthering the terrorist conspiracy of the Indian Mujahiddin. Investigation of the case further revealed that in pursuance of the conspiracy, the IM operatives contacted several SIMI operatives in order to obtain their assistance at a national level. An option of providing infrastructural support for operations of the IM was suggested, and efforts were being made to contact senior SIMI operatives like Safdar Nagori.

241. The witness has further stated that during investigation it has been established that the Muslim Student Federation (MSF) was formed in the states of Jharkhand and Bihar only to serve as a frontal organization of SIMI and to organize and radicalize youth on religious fundamentalism. The activities of MSF/SIMI in Ranchi resulted in the radicalization of several individuals including Haider Ali and Ozair Ahmed, and provided the fertile ground for the furtherance of the conspiracy hatched by the IM operatives. He has further stated that during the examination of one Hedayatullah, it emerged that the accused Manzer Imam had indicated to him that the MSF or the SIMI had split into two groups – a small one consisting of 20-25 operatives which had ideologically joined the activities of the IM and the other which was still continuing with the earlier activities of SIMI. The witness has also stated that the e-mails exchanged amongst the co-conspirators reveal that there is an ongoing conspiracy to commit various terrorist acts in India and the threat to National security and the safety of its citizens and property from the operative of the SIMI persists.

242. In his cross-examination by Mr. Ashok Agrwaal, the witness (PW-28) admitted that the first charge sheet dated 17.07.2013 does not allege that any of the five accused were members of SIMI but volunteered that on receiving the information the matter was further investigated, and in the supplementary charge sheet there were specific allegations against the accused persons belonging to SIMI. In the supplementary charge sheet, two out of the four accused were found to be involved in the activities of SIMI. He denied the suggestion that the statements recorded under Section 164(4) Cr.P.C. of the witnesses were not voluntary and that these statements were coerced from the said witnesses by holding out various kinds of threats and inducements and further that these persons were told that if they do not depose as



they were told to do by the NIA, they would be implicated in false cases. In reply to the question about the results of the investigation so far, the witness has stated that they had already charge sheeted two accused persons namely Manzar Imam and Uzair Ahmed for their part in the conspiracy of the Indian Mujahiddin, who were earlier SIMI operatives and that another SIMI operative Haider Ali has also been arrested in the instant case. He further stated that total number of accused persons is 33 and at present 9 have already been charge sheeted. Earlier some of them were SIMI/IM operatives.

243. In reply to the Tribunal's question, whether as per investigation, it is established that SIMI is still existing and their activities are still going on, the witness answered in affirmative and stated that not only they are holding meetings and keeping contact with each other, but the decisions are taken only after consulting the senior operatives of SIMI. He further stated that Riyaz Bhatkal has mentioned in internet chat to Yasin Bhatkal that decisions can only be conveyed after consulting with seniors.

244. The witness has stated that MSF was formed after the first ban on SIMI in September, 2001. It was based in Ranchi and it had approximately 40-50 members in that area. In response to question whether any case has been registered against MSF, he answered in the negative but stated that cases are registered against members of SIMI and MSF is same as SIMI. Further, in reply to question whether MSF is a banned organization, he stated that since MSF is a frontal organization of SIMI, therefore, no separate order is required to ban MSF. However, he denied the suggestion that MSF has no connection with SIMI and never had any connection with it. He also denied the suggestion that he had no basis for ascertaining that MSF is a front organization of SIMI.

245. PW-29, Mr. Jyoti Narayan, DIG, NIA, New Delhi has deposed in respect of two FIRs viz. FIR No. 361/2013 of PS GRP Patna registered under Sections 307, 326, 121, 121(A), 120(B) & 34 IPC, Section 3 & 5 of Explosive Substances Act, Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act and Sections 151 & 153 of Railway Act, and FIR No. 451/2013 of PS Gandhi Maidan, Patna registered under Sections 324, 326, 307, 302, 120B, 121, 121A of IPC, Sections 3, 4 & 5 of Explosive Substances Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act.

246. The witness has stated that he is the Supervisory Officer of FIR No. 361/2013 and FIR No. 451/2013, which are related to the bomb blasts in Patna on 27.10.2013 in the rally of Sh. Narendra Modi. The cases were initially registered by the local police but subsequently the investigation of the said cases was transferred to NIA, which re-registered the cases as RC 10/13/NIA/DLI (Ex. PW-29/1) and RC 11/13/NIA/DLI (Ex. PW-29/2) in NIA PS New Delhi. He further stated that investigation of cases RC 10/13 and RC 11/13 shows the involvement of SIMI and its activists in illegal and anti-national activities in the State of Bihar, Jharkhand and Chattisgarh. During investigation, the involvement of 16 accused persons in both the cases came into light.

247. The witness has further stated that during further investigation, it is revealed that the accused Umer Siddique and Azharuddin are members of SIMI. In his confessional statement, Umer Siddique stated that he has been associated with SIMI since 1997 and even after the ban on SIMI, he continued to organize meetings and programmes of SIMI in Raipur. He also provided shelter to absconding accused in RC 10/13 & RC 11/13 in Raipur. Azharuddin in his confessional statement has stated that he has been associated with SIMI for last two years and knew Umer, who organizes programmes of SIMI in Raipur. The witness in his affidavit has further stated that Mohd. Faizan Latif, one of the witnesses in RC 10/13 & RC 11/13 in his statement under Section 161 Cr.P.C. has stated that Azhar had taken him to the meeting of SIMI in 2012 where Umer and Haider were saying about bringing Islamic government in India and for Jihad in India. They were asking to collect funds of Jihadis and for making bombs. It is also revealed that Azhar told him that he will explode bomb at public place and run to Afghanistan. Another witness Mujammil Shadab in his statement has stated that the accused Haider had taken him to a SIMI programme in Hazaribagh, where Haider asked them to be prepared for Jihad and to undergo Naxal arms training.

248. In his cross-examination by Mr. Ashok Agrawal, the witness (PW-29), in reply to the question whether the investigation revealed the connection of 16 accused persons with SIMI, stated that they had sufficient oral and documentary evidence and even laptop and digital evidence to show their connection with SIMI but denied to reveal the said information. Further, in reply to the question whether, as per investigation, he feels SIMI is still existing, the witness stated that they had sufficient evidence and that as per the independent witnesses, intercepts on calls, analysis of laptop and other evidence, CCTV clippings, it is clear that SIMI is still active. He further stated that not only they are active, they have their regular training sessions, collecting sufficient funds, arranging programmes, motivating people and creating modules all over the country.

249. PW-30, Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India appeared and produced her affidavit Ex. PW-30/A. The witness has also placed before the Tribunal sealed envelope containing confidential intelligence information on the activities of the SIMI cadres. The witness has stated that as per the information received after 3<sup>rd</sup> February, 2012 from various intelligence agencies, National Investigation Agency and the State Governments, despite the ban, SIMI and its members have continued to carry on their unlawful activities under the garb of various names/banners/cover organizations. They have indulged in radicalizing and brainwashing the minds, and indoctrination of Muslim youth by jihadi propaganda and through provocative tagreers, CDs etc. She has further stated that SIMI has been carrying on its activities, including terrorist and organizational activities, undertaking clandestine training and raising funds through illegal means. SIMI has also been making efforts to establish links with terrorist

outfits, to expand its network and to carry out violent actions. She further stated that the object of SIMI, as per its own constitution, is contrary to the basic fabric of the Indian Constitution.

250. In her cross-examination by Mr. Ashok Agrwaal, the witness, in reply to the question whether the issue of reasonableness of the restrictions upon SIMI come up during the preparation of the Note before the Cabinet, the witness stated that all the factors were taken into account including the inputs received from the States and Intelligence Agencies. When the witness was asked to name the Central Agencies from which the inputs were received, the witness replied that they had their intelligence agencies apart from NIA. She denied the suggestion that the alleged States inputs have been manipulated to mislead the Cabinet as well as this Tribunal to illegally and unjustifiably support the ban on SIMI. When the witness was asked to point out which part of the SIMI's constitution is contrary to the basic fabric of the Indian Constitution, she replied that she was talking about the Oath of Allegiance for Ansar. She denied the suggestion that the allegation against the constitution of SIMI being contrary to the basic fabric of the Indian Constitution is not contained in any of the previous Notifications banning SIMI; and that the present ban on SIMI is arbitrary and unjustified and it is a result of non-application of mind.

251. The appreciation of the aforesaid evidence is only for the purpose of making an assessment of "sufficiency of material" as available to the Central Government when the Notification No. S.O. 299(E) dated 1<sup>st</sup> February, 2014 was issued and not whether the said material can withstand judicial scrutiny during a trial in a court of law. There may be defects, incoherency, contradictions and procedural irregularities during the recording of these statements, which may prove fatal during the trial when placed under the scanner of Indian Evidence Act, but for the purpose of these proceedings, they are material which can be relied upon to determine "sufficiency of cause" and would also constitute material which the agencies, responsible for enforcement of law and order, could not have ignored for recommending suitable action under the Unlawful Activities (Prevention) Act. A small single lead in a statement, whether recorded by the police or otherwise, can lead to unearthing of organized acts of crime and conspiracy and keeping in view the objects of the Act, such statements/information may become relevant for action under the Act.

252. Apart from the above oral evidence brought on record by the Central Government, the intelligence reports and other confidential material submitted by the State Governments and the Central Government, which has been explained in detail page by page by the Joint Secretary (Home) of the Central Government, leads to an inescapable conclusion that activists of SIMI are continuing to group as an association and indulging in activities which are detrimental to the secular fabric of our country and which are intended to disrupt the sovereignty and territorial integrity of India. A perusal of the documents placed before the Tribunal in sealed cover establishes that SIMI activists have been holding secret meetings, inducting new members, raising funds and liaising with like minded organizations like Popular Front of India and Hizb-Ut-Tahrir. Their activities are aimed at radicalizing Muslim youth and motivating them for Jihad. In the secret meetings of the members of SIMI cadres, the participants are exhorted to be ready for Jihad and to sacrifice their lives for their brothers. In one of the secret meetings held in Kerala, the members called upon Muslims to uphold the slogans "Allah is our God"; "Quran is our Constitution"; "Mohammad is our leader"; "Jihad is our way"; and "Shahadat is our desire". Such secret meetings with the known objectives of SIMI are shown to have been held in Maharashtra, Uttar Pradesh, Kerala, Madhya Pradesh, Gujarat, West Bengal and Delhi.

253. A reference at this stage is also invited to the Constitution of the Students Islamic Movement of India (SIMI) wherein Annexure-III is the Oath of Allegiance for 'Ansar'. The said oath is administered to the new members. It, *inter alia*, reads as under:

".....

The aim of my life is reconstruction of human society according to the principles given by Allah and His messenger, thereby achieving pleasure of Allah. I am joining SIMI in order to be able to work for this aim, purely for Allah's pleasure.

I fully agree with the methodology and programme of SIM and will abide by its discipline according to its constitution.

I will invite students and youth towards Islam and will try to organize them.

I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be.

I, .....

My prayer and my sacrifices and my life and death are all for Allah, the lord of universes. No one is His partner.

I have been instructed to do so and I am among those who surrender.

May Allah help me to keep these promises. (Amen)"

254. Any constitution which prescribes such an Oath of Allegiance to its members must be seen as in direct conflict with the democratic sovereign setup of India and should not be allowed to be perpetuated in our secular society.

255. To summarize, the evidence brought on record clearly and unambiguously establishes that despite being banned since 27<sup>th</sup> September, 2001, except for a brief period in between, the SIMI activists are associating, meeting, conspiring, acquiring arms & ammunitions, and indulging in activities which are disruptive in character and capable of threatening the sovereignty and territorial integrity of India. They are in regular touch with their associates and masters based in other countries. Their actions are capable of disrupting peace and communal harmony in the country. Their stated objectives are contrary to the laws of our country. Especially their object of establishing Islamic rule in India can, under no circumstances, be permitted to subsist.

256. From the foregoing discussion, it is evident that SIMI association and its activists are continuing to indulge in unlawful activities within the meaning of Section 2(1)(o) of the Act. The Central Government has sufficient credible material and grounds for taking action under sub-section (1) of Section 3 of the Act for declaring SIMI as an Unlawful Association. I, therefore, hold that there exists "sufficient cause" to confirm the Notification issued under sub-section (1) of Section 3 of the Act, declaring SIMI to be an 'Unlawful Association'.

257. The reference is answered in the affirmative and the ban imposed vide Notification No. S.O.299(E) dated 1<sup>st</sup> February, 2014 declaring the Students Islamic Movement of India as an 'unlawful association' under Section 3(1) of the Act, is confirmed.

258. Before parting with the reference I would like to make the following three suggestions, which the Central Government may consider taking note of for future reference:

**(I) Issuance of notice to the suspected SIMI members/activists:**

259. This Tribunal issued notice for service on the office bearers and members of SIMI on 4<sup>th</sup> March, 2014. The Central Government was directed to effect service of the notice as provided under the Act and the Rules. As has been stated during the course of arguments and examination of witnesses, the Central Government passed on the notices to the concerned State Authorities for effecting the service in terms of the orders of the Tribunal dated 4<sup>th</sup> March, 2014. The concerned State Governments thereafter also filed their affidavits of service before the Registrar of the Tribunal.

260. After the affidavits of service had been filed by the concerned State Governments as also the Central Government, this Tribunal received a number of representations claiming that notices issued to them should not have been issued as they were neither members of SIMI nor were they involved in any of their activities and that no case had ever been registered against them. In fact, during the hearing at Udaipur in Rajasthan, Zahir Mohammad Pathan, Kalim Mohammad Kazi and Mohammad Yasin Ali Khan appeared in person and also filed affidavits stating that they had never been the members of SIMI organization, they had never been involved in any of their activities; and no case had ever been registered against them. They also submitted that the Tribunal may take any view on the issue of ban on SIMI. They submitted that despite the above, notices are served on them whenever a Tribunal is constituted. The matter was enquired into by the Tribunal and pursuant to the said enquiry, Mr.Raghavendra Suhasaa, Superintendent of Police, District Bhilwara, Rajasthan appeared and stated that issuance of notices to these individuals, who claimed to have no connection with SIMI organization or its activities, was on the basis of information received from the State Special Branch in the year 2010. He, however, confirmed that the said three individuals are not involved in any activity related to SIMI and no case is registered against these individuals. Based on the statement, the notices issued to these three persons were discharged.

261. It may be noticed that the State Authorities are issuing the notices to individuals in a very casual manner without any verification to confirm whether the person to whom the notices are being issued are even remotely connected to the organization. Such notices to innocent people uninvolved in any activity of the banned organization not only harm their reputation but also spread fear in the minds of the noticee and his family. The society in general starts looking at the noticee with suspicion. This is never the intent of the notice issued by the Tribunal.

262. Accordingly, it is suggested that henceforth the Central Government should ensure that the concerned State Governments after due verification, update their lists of activists of the banned organization and restrict issue of notices only to those individuals who are members or office bearers of the organization; people who are involved in the activities of the association; or the people against whom cases have been registered with regard to the affairs of the banned organization.

**(II) Cases registered on Suspicion:**

263. During the sitting of the Tribunal at Bhopal, Madhya Pradesh, pursuant to the notices published in the newspapers, Mr. Akhtar Sayeed Siddiqui son of Abdul Kalam Sahab, aged 79 years, resident of Bhopal appeared and stated on oath that people who have been arrested for SIMI activities or who otherwise indulge in unlawful activities, should not be left unpunished. However, those who are innocent, should not be implicated in false cases and should not be kept in custody for long and be released quickly. He further stated that by registering false cases against innocent Muslim youth, the atmosphere in the society is vitiated and the secular image of Muslims in the community is harmed

and the larger community starts looking at Muslims with suspicion as if they are all guilty of crime. He also stated that if at this stage the youth are implicated in false cases, it would be dangerous to the society as a whole in general and their families in particular.

264. Sh. Narendra Modi, the Prime Minister of India, while addressing the Parliament on 24.07.2014, mentioned that cases are pending for trial in different courts of the country against the Political Leaders. Some of them may be just to take political revenge, therefore, the Prime Minister made an appeal to all the concerned that cases against the Political Leaders may be disposed of within one year. He further mentioned that those who are found guilty should be lodged in jails and those who are innocent should sit in the Parliament or respective State Assemblies with pride.

265. In view of the above, I deem it appropriate to note that there may be cases registered against Muslim youth on mere suspicion of their involvement in unlawful activity. The Tribunal feels that all such cases where mere suspicion is the basis of registration of a case, the matter must be investigated very expeditiously to ensure that innocent people, only by reason of suspicion, are not made to suffer incarceration over long periods. Thus, the Central Government may consider constitution of a Special Tribunal to look into such cases and expedite their disposal at the earliest to ensure that only the guilty are punished and the innocent persons, who stands incarcerated only for reasons of suspicion, are released.

**(III). Evidence by the Investigating Officers:**

266. It was noticed during the recording of the evidence tendered by the States that instead of the concerned investigating officers, the senior level police officers deposed about the cases registered in their jurisdiction. The senior supervisory officers are normally not very intricately involved in the process of investigation, hence, they are unable to answer relevant details, even though minor, with respect to the investigation of the case. On the other hand, the concerned investigating officers, who actually investigate the cases on ground are very familiar with each aspect of investigation since the whole process of investigation is routed through their hands and these investigating officers are, therefore, more competent persons to depose in respect of the cases being investigated by them. Accordingly, it is suggested that wherever it is possible for the Government to depose through the concerned investigating officer, it would be appropriate to endeavour to do so.

267. Before parting, I would like to place on record my appreciation for the assistance rendered by Mr. Rajeeve Mehra, Sr. Advocate, initially as the Additional Solicitor General of India and later as a senior advocate. I also place on record my appreciation of the assistance rendered by Ms. Pinki Anand, Additional Solicitor General of India, Mr. Sachin Datta, Mr. Ravindra Agarwal, Mr. Rajesh Ranjan, Mr. Balendu Shekhar and Mr. Aditya Malhotra on behalf of the Central Government. I also place on record my appreciation of the assistance rendered by Mr. Ashok Agrwaal, throughout the conduct of the proceedings of the Tribunal in Delhi as also in the other states.

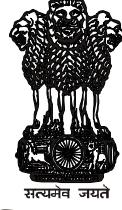
**JUSTICE SURESH KAIT**

**UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL**

**JULY 30, 2014**

[F.No.14017/12/2014-NI-III]

DR. R. K. MITRA Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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PART II—Section 3—Sub-section (ii)

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अधिसूचना

नई दिल्ली, 31 जनवरी, 2019

**का.आ. 564(अ).**—जबकि स्टूडेंट्स इस्लामिक मूवमेंट आफ इंडिया (इसके बाद 'सिमी' के रूप में निर्दिष्ट) ऐसे क्रियाकलापों में संलिप्त रहा है जो देश की सुरक्षा के लिए खतरनाक हैं और जिनमें देश की शांति एवं सांप्रदायिक सौहार्द को भंग करने और धर्मनिरपेक्ष ढांचे को छिन्न-भिन्न करने की शक्ति है;

और जबकि, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार ने अधिसूचना संख्या क्रमशः (i) का. आ. 960 (अ), दिनांक 27 सितंबर, 2001, (ii) का. आ. 1113 (अ), दिनांक 26 सितंबर, 2003, (iii) का. आ. 191 (अ), दिनांक 8 फरवरी, 2006, (iv) का. आ. 276 (अ), दिनांक 7 फरवरी, 2008 (v) का. आ. 260 (अ) दिनांक 5 फरवरी, 2010 (vi) का. आ. 224(अ) दिनांक 3 फरवरी, 2012 तथा (vii) का.आ. 299 (अ) दिनांक 01 फरवरी, 2014 के तहत सिमी को विधिविरुद्ध संगठन घोषित किया;

और जबकि, यह निर्णय करने के प्रयोजनार्थ कि सिमी को एक विधिविरुद्ध संगठन घोषित करने का पर्याप्त कारण है या नहीं, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा-5 के अंतर्गत विधिविरुद्ध क्रियाकलाप (निवारण) न्यायाधिकरण (इसके बाद न्यायाधिकरण के रूप में संदर्भित) का गठन किया गया था तथा इस न्यायाधिकरण ने अधिसूचना संख्या क्रमशः (i) का. आ. 397 (अ) दिनांक 08 अप्रैल, 2002 (ii) का. आ. 499 (अ) दिनांक 16 अप्रैल, 2004 (iii) का. आ. 1302 (अ) दिनांक 11 अगस्त 2006 (iv) का. आ. 1990 (अ) दिनांक 12 अगस्त, 2010 (v) का. आ. 1745(अ) दिनांक 06 अगस्त 2012 तथा (vi) का. आ. 2050 (अ), दिनांक 12 अगस्त, 2014 के तहत प्रकाशित अपने आदेशों के द्वारा की गई इस घोषणा की पुष्टि की है;

और जबकि, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 6 की उप-धारा (1) के अधीन प्रतिबंध की अवधि, 31 जनवरी, 2019 को समाप्त हो जाएगी;

और जबकि, केंद्रीय सरकार की अन्य बातों के साथ-साथ निम्नलिखित आधारों पर यह राय है कि सिमी ऐसे क्रियाकलापों में संलिप्त है जो देश की अखंडता एवं सुरक्षा के लिए खतरनाक है; नामतः-



- (1) अभियुक्त पठान तौसीफ खान उर्फ मो. अतीक, शहंशाह खान उर्फ साना खान, गुलाम सरवर खान तथा उनके अज्ञात सहयोगियों को प्रतिबंधित आतंकवादी संगठन के सदस्य होने के नाते राजद्रोही गतिविधियों, आतंकियों को प्रश्रय देने में उनकी तथाकथित संलिप्तता और आतंक से जुड़ी गतिविधियों में शामिल होने के कारण भारतीय दंड संहिता की धारा 216, 124क, 120ख एवं 34 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13, 16, 18, 19, 20 एवं 38 के तहत सिविल लाइंस पुलिस थाना, गया, बिहार में मामला अपराध सं. 377/2017 पंजीकृत किया गया है;
- (2) अभियुक्त आलमजेब अफरीदी उर्फ आलमजेब खान उर्फ मोहम्मद रफीक उर्फ जावीद उर्फ जैद अफरीदी उर्फ आलमजेब खान उर्फ चिकना उर्फ जावेद को बंगलौर चर्च स्ट्रीट बम विस्फोट के मामले में भारतीय दंड संहिता की धारा 121, 121क, 120ख, 153, 307 एवं 302 और विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3, 4 एवं 5 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 15, 16, 18 एवं 20 के अंतर्गत कब्बन पार्क पुलिस थाना, बंगलौर, कर्नाटक में मामला अपराध सं. 309/2014 पंजीकृत किया गया है। इस मामले की जांच राष्ट्रीय अन्वेषण अभिकरण (NIA) ने अपने हाथ में ले ली और 20.05.2015 को मामले को एनआईए मामला सं. आरसी 01/2015/एनआईए/हैदराबाद के तहत पुनः पंजीकृत किया;
- (3) अभियुक्त माजिद नागोरी तथा अन्य 17 के विरुद्ध भारतीय दंड संहिता की धारा 295, 153ख एवं 34 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के तहत एमपी नगर पुलिस थाना, भोपाल, मध्य प्रदेश में मामला अपराध सं. 424/2014 पंजीकृत किया गया है। अभियुक्त अकील खिल्जी, खालिद अहमद तथा अब्दुल माजिद के न्यायिक हिरासत से फरार होने के बाद पुलिस मुठभेड़ में उनकी मृत्यु हो गई थी। सुनवाई के बाद मुख्य न्यायिक मजिस्ट्रेट, भोपाल की अदालत ने शेष पन्द्रह अभियुक्तों को भारतीय दंड संहिता की धारा 153ख एवं 295ख के अंतर्गत सिद्धदोषी करार दिया है और प्रत्येक दोषी व्यक्ति को तीन वर्ष के सश्रम कारावास की सज़ा और एक हजार रुपए का जुर्माना लगाया है;
- (4) अभियुक्त अबू फैजल और शराफत के विरुद्ध भारतीय दंड संहिता की धारा 294, 353, 506 एवं 34 के तहत गांधी नगर पुलिस थाना, भोपाल, मध्य प्रदेश में मामला अपराध सं. 100/2015 पंजीकृत किया गया है। मुख्य न्यायिक मजिस्ट्रेट, भोपाल की अदालत ने सुनवाई करने के बाद दोनों अभियुक्तों को भारतीय दंड संहिता की धारा 353 के तहत सिद्धदोषी करार दिया है और प्रत्येक को दो वर्ष के सश्रम कारावास की सज़ा तथा पांच सौ रुपए का जुर्माना लगाया है तथा भारतीय दंड संहिता की धारा 506 के अंतर्गत प्रत्येक दोषी व्यक्ति को तीन वर्ष का सश्रम कारावास और पांच सौ रुपए का जुर्माना लगाया गया है;
- (5) अभियुक्त मो. आसिफ शायर के विरुद्ध भारतीय दंड संहिता की धारा 124क के अंतर्गत मोघाट रोड पुलिस थाना, खंडवा, मध्य प्रदेश में मामला अपराध सं. 393/2016 पंजीकृत किया गया है;
- (6) अकील खिलजी एवं 07 अन्य के विरुद्ध भारतीय दंड संहिता की धारा 342, 307, 302, 120ख, 224, 34 एवं 353 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16, 18 एवं 20 के अंतर्गत गांधी नगर पुलिस थाना, भोपाल, मध्य प्रदेश में मामला अपराध सं. 270/2016 पंजीकृत किया गया है। भोपाल में पुलिस मुठभेड़ के दौरान दिनांक 31.10.2016 को सभी अभियुक्तों को मार गिराया गया है;
- (7) अकील खिलजी एवं सात अन्य के विरुद्ध भारतीय दंड संहिता की धारा 307, 147, 148, 149 एवं 332 तथा शस्त्र अधिनियम, 1959 (1959 का 54) की धारा 25 एवं 27 एवं विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10 एवं 13 के अंतर्गत गुंजा पुलिस थाना, भोपाल मध्य प्रदेश में मामला अपराध सं. 355/2016 पंजीकृत किया गया है। दिनांक 31.10.2016 को भोपाल में, पुलिस मुठभेड़ के दौरान सभी अभियुक्तों को मार गिराया गया है;
- (8) एक सिमी कार्यकर्ता को विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत हवाई अड्डा पुलिस थाना, इंदौर, मध्य प्रदेश में पंजीकृत मामला अपराध सं. 479/2001 में अपर मुख्य न्यायिक मजिस्ट्रेट, इंदौर की अदालत द्वारा दो वर्ष के सश्रम कारावास की सज़ा और एक हजार रुपए का जुर्माना लगाया गया;
- (9) एक सिमी कार्यकर्ता को विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत खजराना पुलिस थाना, इंदौर, मध्य प्रदेश में पंजीकृत मामला अपराध सं. 304/2001 में प्रथम श्रेणी के न्यायिक मजिस्ट्रेट की इंदौर स्थित अदालत द्वारा दो वर्ष के साधारण कारावास की सज़ा सुनाई गई;

- (10) एक सिमी कार्यकर्ता को भारतीय दंड संहिता की धारा 153क तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 की उप-धारा (1) के अंतर्गत कोतवाली पुलिस थाना, बुरहानपुर, मध्य प्रदेश में पंजीकृत मामला अपराध सं. 269/2001 में प्रथम श्रेणी अदालत, बुरहानपुर द्वारा दो वर्ष के कारावास की सजा दी गई और पांच सौ रुपए का जुर्माना लगाया गया;
- (11) दो सिमी कार्यकर्ताओं को कोतवाली पुलिस थाना, सिहोर, मध्य प्रदेश में पंजीकृत मामला अपराध सं. 239/2008 में मुख्य न्यायिक मजिस्ट्रेट, सिहोर की अदालत द्वारा भारतीय दंड संहिता की धारा 153क और 153ख के तहत प्रत्येक को एक वर्ष के सश्रम कारावास की सजा तथा पांच हजार रुपए का जुर्माना और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 एवं 13 के अंतर्गत प्रत्येक को दो वर्ष के सश्रम कारावास की सजा और पांच सौ रुपए का जुर्माना लगाया गया। उक्त मामला भारतीय दंड संहिता की धारा 153क तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10 एवं 13 के अंतर्गत पंजीकृत किया गया;
- (12) तीन सिमी कार्यकर्ताओं को, पीतमपुरा पुलिस थाना, धार, मध्य प्रदेश में भारतीय दंड संहिता की धारा 122, 124क एवं 153क तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10 एवं 13 और शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 तथा विस्फोटक अधिनियम, 1884 (1884 का 4) की धारा 3, 4, 5 एवं 6 के तहत पंजीकृत मामला अपराध सं. 120/2008 में चतुर्थ अपर जिला एवं सत्र न्यायाधीश, इंदौर द्वारा प्रत्येक को पांच वर्ष के सश्रम कारावास तथा ग्यारह सिमी कार्यकर्ताओं को आजीवन कारावास की सजा सुनाई गयी;
- (13) एक सिमी कार्यकर्ता को विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10 एवं 13 के अंतर्गत एरोडूम पुलिस स्टेशन, इंदौर, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 181/2008 में प्रथम श्रेणी न्यायिक मजिस्ट्रेट के न्यायालय, इंदौर द्वारा तीन वर्ष के सश्रम कारावास और पाँच हजार रुपए के जुर्माने की सजा दी गई;
- (14) तीन सिमी कार्यकर्ताओं में से प्रत्येक को भारतीय दंड संहिता की धारा 307, 295, 153ए, 124ए, 120बी, 212 एवं 34 और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 18 एवं 20 और शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 के अंतर्गत कोतवाली पुलिस स्टेशन, खंडवा, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 14/2009 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा भारतीय दंड संहिता की धारा 307 एवं 120बी के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। चार अन्य अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि केस में पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (15) एक सिमी कार्यकर्ता को भारतीय दंड संहिता की धारा 302 एवं 120बी के अंतर्गत जीवन भर के कारावास और एक हजार रुपए के जुर्माने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16 की उपधारा (1) के खंड (ए) के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 18 के अंतर्गत दस वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने, शस्त्र अधिनियम, 1959 की धारा 27 के अंतर्गत सात वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने और शस्त्र अधिनियम की धारा 25 की उपधारा 1बी के खंड (ए) के अंतर्गत तीन वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। एक अन्य सिमी कार्यकर्ता को विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 15, 16ए, 18, 20, 38 एवं 39 और शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 के अंतर्गत कोतवाली पुलिस स्टेशन, खंडवा, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 728/2009 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा शस्त्र अधिनियम, 1959 (1959 का 54) की धारा 25 की उपधारा 1बी के खंड (ए) के अंतर्गत तीन वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। चार अन्य अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि केस में पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (16) एक सिमी कार्यकर्ता को भारतीय दंड संहिता की धारा 379 के अंतर्गत तीन वर्ष के सश्रम कारावास और एक हजार रुपए का जुर्माना, भारतीय दंड संहिता की धारा 468 के अंतर्गत सात वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। एक अन्य सिमी कार्यकर्ता को भारतीय दंड संहिता की धारा 379, 468 एवं 411 और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13 एवं 18 के अंतर्गत

इटारसी पुलिस स्टेशन, होशंगाबाद, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 72/2010 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा भारतीय दंड संहिता की धारा 411 के अंतर्गत तीन वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने और भारतीय दंड संहिता की धारा 468 के अंतर्गत सात वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। एक अन्य अभियुक्त के विरुद्ध मामला इसलिए समाप्त कर दिया गया है क्योंकि तेलंगाना पुलिस के साथ पुलिस मुठभेड़ में उसकी मृत्यु हो गई है;

- (17) दो सिमी कार्यकर्ताओं में से प्रत्येक को भारतीय दंड संहिता की धारा 395, 397 एवं 120बी, शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16, 17, 18 एवं 20 के अंतर्गत हनुमान गंज पुलिस स्टेशन, भोपाल, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 431/2010 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा भारतीय दंड संहिता की धारा 395 एवं 397 के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने, भारतीय दंड संहिता की धारा 120बी के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 की उपधारा (1) के खंड (ए) के अंतर्गत दो वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 17 के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। दो अभियुक्तों के विरुद्ध केस न्यायालय में विचारण के लिए लंबित है और चार अन्य अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (18) तीन सिमी कार्यकर्ताओं में से प्रत्येक को भारतीय दंड संहिता की धारा 195, 397 एवं 124, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13(1), 15, 16, 17, 20 एवं 21 और शस्त्र अधिनियम, 1959 (1959 का 54) की धारा 25 एवं 27 के अंतर्गत पिपालिया मंडी पुलिस स्टेशन, मंदसौर, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 149/2010 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा भारतीय दंड संहिता की धारा 395 एवं 397 के अंतर्गत आजीवन कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। चार अन्य अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि केस में पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (19) पाँच सिमी कार्यकर्ताओं में से प्रत्येक को भारतीय दंड संहिता की धारा 153ए, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 18 एवं 20 और शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 के अंतर्गत कोतवाली पुलिस स्टेशन, खंडवा, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 319/2011 में अपर सत्र न्यायाधीश (द्वितीय) के न्यायालय द्वारा शस्त्र अधिनियम, 1959 की धारा 25 की उपधारा (1) के खण्ड (ख) के अंतर्गत तीन वर्ष के कारावास और दो हजार रुपए के जुर्माने की सजा दी गई;
- (20) एक सिमी कार्यकर्ता को भारतीय दंड संहिता की धारा 224, 120बी, 212 एवं 216, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 10, 13, 16, 17, 18, 19, 20 एवं 21 और सार्वजनिक संपत्ति को क्षति की रोकथाम अधिनियम, 1984 (1984 का 3) की धारा 3 के अंतर्गत कोतवाली पुलिस स्टेशन, खंडवा, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 542/2013 में विशेष न्यायाधीश के न्यायालय, राष्ट्रीय अन्वेषण अभिकरण, भोपाल द्वारा भारतीय दंड संहिता की धारा 224 के अंतर्गत दो वर्ष के सश्रम कारावास की सजा दी गई। एक अभियुक्त के विरुद्ध केस न्यायालय में विचारण के लिए लंबित है और चार अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि पुलिस मुठभेड़ में उनकी मृत्यु हो गई है। दो अन्य अभियुक्तों के विरुद्ध केस इसलिए आरंभ नहीं किया गया है क्योंकि केस में उनके फरार होने की अवधि में पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (21) पंद्रह सिमी कार्यकर्ताओं को भारतीय दंड संहिता की धारा 295, 153बी एवं 34 और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत एमपी नगर पुलिस स्टेशन, भोपाल, मध्य प्रदेश में पंजीकृत केस अपराध संख्या 424/2014 में प्रधान न्यायिक मजिस्ट्रेट के न्यायालय, भोपाल द्वारा भारतीय दंड संहिता की धारा 153बी एवं 295बी के अंतर्गत तीन वर्ष के सश्रम कारावास और एक हजार रुपए के जुर्माने की सजा दी गई। तीन अन्य अभियुक्तों के विरुद्ध केस इसलिए समाप्त कर दिया गया है क्योंकि केस में पुलिस मुठभेड़ में उनकी मृत्यु हो गई है;
- (22) श्री स्वामी समर्थ स्लैक सेंटर, बुधवार पैठ, पुणे, महाराष्ट्र के सामने हुए धमाके के मामले में पाँच सिमी कार्यकर्ताओं के विरुद्ध विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16 एवं 18 के साथ पठित विस्फोटक

- अधिनियम, 1884 (1884 का 4) की धारा 3, 4 एवं 5 के साथ पठित भारतीय दंड संहिता की धारा 307, 324, 427 एवं 120बी के अंतर्गत आतंकवाद-रोधी दस्ते, महाराष्ट्र द्वारा केस अपराध संख्या 09/2014 पंजीकृत कर लिया गया है। पाँच अभियुक्तों में से, दो नालगोंडा, तेलंगाना में तेलंगाना पुलिस के साथ पुलिस मुठभेड़ में मार गिराए गए और तीन को भोपाल सेंट्रल जेल से अवैध रूप से भागने के बाद मध्य प्रदेश पुलिस के साथ पुलिस मुठभेड़ में मार गिराया गया।
- (23) आतंकवाद-रोधक दस्ते, मुंबई, महाराष्ट्र द्वारा महाराष्ट्र संगठित अपराध नियंत्रण अधिनियम, 1999 (1999 का 30) की धारा 3(1)(ii), 3(2) एवं 3(4) के साथ पठित विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम की धारा 10, 13, 16, 18 एवं 23 के साथ पठित, शस्त्र अधिनियम, 1959 की धारा 3 एवं 25 के साथ पठित विस्फोटक पदार्थ अधिनियम (1908 का 6) की धारा 4 एवं 5 के साथ पठित विस्फोटक अधिनियम की धारा 5, 6 एवं 9-बी के साथ पठित भारतीय दंड संहिता की धारा 120बी के अंतर्गत पंजीकृत एल. ए. सी. संख्या 03/2006 में महाराष्ट्र संगठित अपराध नियंत्रण विशेष न्यायालय, आर्थर रोड, मुंबई द्वारा दो सिमी कार्यकर्ताओं को आजीवन सश्रम कारावास की सजा दी गई और एक सिमी कार्यकर्ता को चौदह वर्ष के कठोर कारावास की सजा दी गई;
- (24) आतंकवाद-रोधक दस्ते, मुंबई, महाराष्ट्र द्वारा पासपोर्ट अधिनियम, 1967 (1967 का 15) की धारा 12 (1)(सी) के साथ पठित रेलवे अधिनियम, 1989 (1989 का 24) की धारा 151, 152, 153 एवं 154 के साथ पठित सार्वजनिक संपत्ति को क्षति की रोकथाम अधिनियम, 1984 (1984 का 3) की धारा 3 एवं 4 के साथ पठित विस्फोटक पदार्थ अधिनियम की धारा 3, 4, 5 एवं 6 के साथ पठित विस्फोटक अधिनियम, 1884 की धारा 6 एवं 9-बी के साथ पठित भारतीय दंड संहिता की धारा 302, 307, 326, 325, 324, 427, 436, 121ए, 123, 124ए, 120बी, 201 एवं 212 के साथ पठित विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 16, 18, 19, 20 एवं 40 के साथ पठित महाराष्ट्र संगठित अपराध नियंत्रण अधिनियम, 1999 की धारा 3 के उपखंड (1) के खंड (i), धारा 3 के उपखंड (2), धारा 3 के उपखंड (4) एवं धारा 3 के उपखंड (5) के अंतर्गत पंजीकृत मामला अपराध संख्या 05/2006 में महाराष्ट्र संगठित अपराध नियंत्रण विशेष न्यायालय, बृहन मुंबई द्वारा तीन सिमी कार्यकर्ताओं को मृत्युदंड और छह सिमी कार्यकर्ताओं को आजीवन कारावास की सजा सुनाई गई;
- (25) आतंकवाद-रोधक दस्ते, मुंबई, महाराष्ट्र द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 एवं 13 के अंतर्गत दर्ज एल.ए.सी. संख्या 04/2006 में अपर प्रधान मेट्रोपोलिटन मजिस्ट्रेट, सेवरी न्यायालय द्वारा एक सिमी कार्यकर्ता को सात वर्ष के सश्रम कारावास और तीस हजार रुपए के जुर्माने के लिए अपराधी ठहराया गया। इस मामले में कुछ अन्य सिमी कार्यकर्ताओं के विरुद्ध अनुपूरक आरोप पत्र दाखिल किए गए और इसके लिए विचारण लंबित है;
- (26) आतंकवाद-रोधक दस्ते, मुंबई, महाराष्ट्र द्वारा विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 16, 18, 20 एवं 21 के साथ पठित विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3, 4 एवं 5 के साथ पठित भारतीय दंड संहिता की धारा 120बी, 153ए, 302, 307, 326, 325, 324, 427, 467, 468, 471, 474, 109 एवं 34 के अंतर्गत पंजीकृत मामला अपराध संख्या 06/2010 में विशेष सत्र न्यायालय, शिवाजी नगर द्वारा एक सिमी कार्यकर्ता को अपराधी ठहराया गया और उसे मृत्युदंड की सजा दी गई।
- (27) आतंकवाद-रोधक दस्ते, मुंबई, महाराष्ट्र द्वारा विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 17 एवं 18बी के साथ पठित भारतीय दंड संहिता की धारा 120बी, 489बी, 489सी एवं 489ई के अंतर्गत पंजीकृत अपराध मामला संख्या 31/2011 में अपर प्रमुख मेट्रोपोलिटन मेजिस्ट्रेट, मझगाँव, मुंबई द्वारा दो सिमी कार्यकर्ताओं को भारतीय दंड संहिता की धारा 489सी के अंतर्गत अपराधी ठहराया गया और प्रत्येक को छह वर्ष के सश्रम कारावास और दस हजार रुपए के जुर्माने की सजा सुनाई गई और जुर्माना अदा न करने पर 6 महीने के साधारण कारावास की सजा सुनाई गई।
- (28) मैकडोनाल्ड होटल, मुंबई सेंट्रल रेलवे स्टेशन, मोंघीबाई मार्केट विलेपार्ले और कल्याण लोकल ट्रेन नामक स्थानों में तीन बम विस्फोटों का कृत्य करने, जो भारत की एकता, अखंडता, सुरक्षा या संप्रभुता को खतरे में डालने और व्यापक रूप से जनता में आतंक फैलाने के आशय से किसी आतंकवादी कृत्य की तैयारी करने का कृत्य था, के कारण आतंकवाद निवारण कानून, 2002, भारतीय दंड संहिता, विस्फोटक पदार्थ अधिनियम, 1908, विस्फोटक अधिनियम, 1884, सार्वजनिक संपत्ति को क्षति का निवारण अधिनियम, 1984 और रेलवे अधिनियम, 1989 के अंतर्गत अपराधों के लिए डी.सी.बी.सी.आई.डी. यूनिट-6, मुंबई, महाराष्ट्र द्वारा

सी.आर.संख्या 21/2003 और सी.आर.संख्या 59/2003 के रूप में दर्ज आतंकवाद निवारण अधिनियम विशेष मामला संख्या 02/2003 के अंतर्गत ग्रेटर मुंबई, महाराष्ट्र में आतंकवाद निवारण अधिनियम, 2002 (2002 का 2) के अंतर्गत निर्धारित विशेष न्यायाधीश न्यायालय द्वारा दो सिमी कार्यकर्ताओं को कानून की विभिन्न धाराओं में अपराधी ठहराया गया और सश्रम कारावास और/या आजीवन कारावास और/या जुर्मनी की सजा सुनाई गई;

- (29) शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 और विधि विरुद्ध क्रिया कलाप (निवारण) अधिनियम, 1967 की धारा 18 एवं 20 के साथ पठित भारतीय दंड संहिता की धारा 147, 148, 120बी, 121, 121ए, 122, 307, 467, 471 एवं 149 के अंतर्गत एक आतंकवादी की माँ सहित चार कट्टर सिमी आतंकवादियों के विरुद्ध प्लांट साइट पुलिस स्टेशन, राउरकेला, ओडिशा में दिनांक 17.02.2016 का मामला अपराध संख्या 38 दर्ज किया गया है जिनके नाम ये हैं : (1) एस.के.महबूब उर्फ गुड्डू उर्फ आफताब; (2) मोहम्मद अमजद खान उर्फ पप्पू उर्फ दाउद उर्फ उमर उर्फ गोपाल सिंह; (3) ज़ाकिर हुसैन उर्फ सादिक उर्फ विक्री डॉन उर्फ विनय कुमार उर्फ आनंद जोशी उर्फ इम्तियाज़; (4) मोहम्मद सालिक उर्फ सल्लू उर्फ युनूस उर्फ संजय; और (5) नजमा बी. (एस.के. महबूब की माँ), इन्हें कुरैशी मोहल्ला, नाला रोड, राउरकेला, जिला- सुंदरगढ़ से 16/17.02.2016 की रात को गिरफ्तार किया गया। जाँच-पड़ताल के दौरान यह पता चला है कि उपर्युक्त चार आतंकवादी सिमी के सक्रिय सदस्य थे जो प्रतिबंधित संगठन हैं और भोपाल (मध्य प्रदेश) में जेल तोड़ने के बाद 30/31.10.2016 को भोपाल में पुलिस मुठभेड़ में उनकी मृत्यु हो गई;
- (30) चेन्नई सेंट्रल रेलवे स्टेशन में प्लेटफॉर्म नंबर 9 में ट्रेन नंबर 12509 (बंगलौर-गुवाहाटी एक्सप्रेस) में हुए दो आई.ई.डी. धमाकों के मामले में रेलवे अधिनियम, 1989 (पूर्व में चेन्नई रेलवे पुलिस अपराध संख्या 273/2014) की धारा 151 के साथ पठित विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3, 4 एवं 5 के साथ पठित भारतीय दंड संहिता की धारा 326, 307 एवं 302 के अंतर्गत एस.बी.सी.आई.डी. मेट्रो पुलिस, चेन्नई, तमिलनाडु द्वारा मामला अपराध संख्या 02/2014 दर्ज किया गया है। जाँच-पड़ताल के दौरान, सिमी के तीन पूर्व कार्यकर्ताओं की संलिप्तता सिद्ध हुई है। सिमी के ये सभी पूर्व कार्यकर्ता दो अलग मुठभेड़ों में मार गिराए गए हैं;
- (31) सांप्रदायिक असद्भाव उत्पन्न करने के लिए कोयम्बटूर में हिंदू संगठन के नेताओं की हत्या करने के इरादे से साज़िश करने के लिए सिमी के कुछ पूर्व कार्यकर्ताओं सहित दस अभियुक्तों के विरुद्ध डी2 सेलवापुरम पुलिस स्टेशन, कोयम्बटूर, तमिलनाडु द्वारा भारतीय दंड संहिता की धारा 120बी, 153ए एवं 505(1) के अंतर्गत मामला अपराध संख्या 432/2014 दर्ज किया गया है;
- (32) महबूब नगर, तेलंगाना में मोटर साइकिल की चोरी के लिए महबूब नगर-II पुलिस स्टेशन, महबूब नगर, तेलंगाना द्वारा छह सिमी कार्यकर्ताओं के विरुद्ध भारतीय दंड संहिता की धारा 379 के अंतर्गत मामला अपराध संख्या 30/2014 दर्ज किया गया है। इन छह अभियुक्तों में से, तीन की 30.10.2016 को भोपाल में पुलिस मुठभेड़ में मौत हो गई;
- (33) देवारा कोंडा, नालगोंडा, तेलंगाना में मोटरसाइकिल की चोरी के लिए देवारा कोंडा पुलिस स्टेशन, नालगोंडा, तेलंगाना द्वारा छह सिमी कार्यकर्ताओं के विरुद्ध भारतीय दंड संहिता की धारा 379 के अंतर्गत मामला अपराध संख्या 10/2014 दर्ज किया गया है। इन छह अभियुक्तों में से, तीन की 30.10.2016 को भोपाल में पुलिस मुठभेड़ में मौत हो गई;
- (34) स्टेट बैंक ऑफ इंडिया, चोप्पा डंडी, करीम नगर, तेलंगाना से छयालीस लाख रुपए की डकैती के संबंध में चोप्पाडंडी पुलिस स्टेशन, करीमनगर, तेलंगाना द्वारा छह सिमी कार्यकर्ताओं के विरुद्ध भारतीय दंड संहिता की धारा 395, शस्त्र अधिनियम, 1959 की धारा 25 की उपधारा (1) के खंड (क) और खंड (ख) एवं धारा 27, विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10, 13, 17, 18 एवं 20 के अंतर्गत मामला अपराध संख्या 16/2014 दर्ज किया गया है। इन छह अभियुक्तों में से, तीन की 30.10.2016 को भोपाल में पुलिस मुठभेड़ में मौत हो गई;
- (35) सूर्यपिट टी.एन. पुलिस स्टेशन, नालगोंडा, तेलंगाना द्वारा उन दो सिमी कार्यकर्ताओं के विरुद्ध भारतीय दंड संहिता की धारा 302, 307, 394 एवं 34, शस्त्र अधिनियम, 1959 की धारा 25 की उपधारा (1) के अंतर्गत मामला अपराध संख्या 120/2015 दर्ज किया गया है जिन्होंने पुलिस टीम द्वारा 01/02.04.2015 को नालगोंडा जिले में सूर्यपिट हाई-टेक बस स्टॉप में संदिग्ध यात्रियों की तलाशी लेते समय पुलिस टीम पर गोली चलाई और दो पुलिस कर्मचारियों की हत्या कर दी और सर्कल इंस्पेक्टर तथा होमगार्ड को घायल कर दिया।



आरोपियों ने पुलिस टीम से एक 9 एम.एम. कार्बाइन हथियार छीन ली और भाग गए। इन अभियुक्तों की जानकीपुरम, नालगोंडा, तेलंगाना में 04.04.2015 को पुलिस मुठभेड़ में मृत्यु हो गई;

- (36) मोथकुर पुलिस स्टेशन, नालगोंडा, तेलंगाना द्वारा भारतीय दंड संहिता की धारा 302, 307 एवं 34 और शस्त्र अधिनियम, 1959 की धारा 27 के अंतर्गत मामला अपराध संख्या 34/2015 दर्ज किया गया है। मामले के तथ्य यह हैं कि 04.04.2015 को सुबह के समय, पुलिस टीम जानकीपुरम, नालगोंडा जा रही थी, इसी बीच दो आक्रमणकारी विपरीत दिशा से आए, और पुलिस और आक्रमणकारियों के बीच गोलीबारी शुरू हो गई, जिसके परिणाम स्वरूप रामन्नापेट पुलिस स्टेशन के पुलिस इंस्पेक्टर और आत्माकुर पुलिस स्टेशन के सब-इंस्पेक्टर को चोट लगने के अतिरिक्त आक्रमणकारियों और एक पुलिस कांस्टेबल की मृत्यु हो गई। पुलिस ने अपराध स्थल से दो देसी छोटे हथियार और 9 एम.एम. की एक कार्बाइन ज़ब्त कर ली जिसे सूर्या पेट, नालगोंडा में मारे गए पुलिस कर्मियों से चुराया गया था। मृत आक्रमणकारियों की पहचान सिमी काडर के कार्यकर्ताओं के रूप में की गई;
- (37) अरवापल्ली पुलिस स्टेशन, तेलंगाना द्वारा भारतीय दंड संहिता की धारा 384 के अंतर्गत मामला अपराध संख्या 22/2015 दर्ज किया गया है। मामले के तथ्य ये हैं कि जब शिकायतकर्ता अपनी बाइक पर जा रहा था और अरवापल्ली गाँव केंद्र में पहुँचा, जहाँ दो अभियुक्तों ने उसे रोका और उसके पेट और सिर पर बंदूक तान दी और ज़बरदस्ती उसकी बाइक ले ली और वे थिरुमालागिरी की ओर तेज़ गति से भाग गए। दो आक्रमणकारियों की बाद में मृत्यु हो गई और उनकी पहचान सिमी काडर के कार्यकर्ताओं के रूप में की गई;
- (38) अरवापल्ली पुलिस स्टेशन, तेलंगाना द्वारा भारतीय दंड संहिता की धारा 307 और शस्त्र अधिनियम की धारा 25 की उपधारा(1) के खंड (ए) के अंतर्गत मामला अपराध संख्या सं. 23/2015 दर्ज किया गया है। मामले के तथ्य ये हैं कि शिकायतकर्ता ने कहा कि विश्वसनीय सूचना के आधार पर उसने अपने स्टाफ के साथ सीतारामपुरम में श्री राम सागर प्रोजेक्ट नहर के पुल को पार किया जहाँ उन्हें दो व्यक्ति भागते हुए मिले। रुकने के लिए कहने पर, उन्होंने हथियारों से गोलियाँ चलाना शुरू कर दिया और इसके उत्तर में शिकायतकर्ता ने भी अपनी सर्विस पिस्टल से उन पर गोलियाँ चलाई लेकिन अभियुक्त भाग गए। दो आक्रमणकारियों की बाद में मृत्यु हो गई और उनकी पहचान सिमी काडर के कार्यकर्ताओं के रूप में की गई;
- (39) गोपालपुरम पुलिस स्टेशन, हैदराबाद, तेलंगाना द्वारा भारतीय दंड संहिता की धारा 121, 121ए, 153ए एवं 120बी और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 के अंतर्गत मामला अपराध संख्या 338/2014 दर्ज किया गया है। मामले के तथ्य ये हैं कि हैदराबाद पुलिस ने सिकंदराबाद रेलवे स्टेशन पर दो अभियुक्तों (दोनों महाराष्ट्र राज्य के निवासी) को गिरफ्तार कर लिया। वे अलकायदा की भारतीय शाखा की सहायता हेतु हाल ही में बनी 'इलेक्ट्रॉनिक वारफेयर टेक्नोलोजी ग्रुप/सिमी' के सदस्य थे। यह पता चला है कि वे अलकायदा के प्रशिक्षण कार्यक्रम में भाग लेने के लिए अफगानिस्तान जाने हेतु हैदराबाद आए थे।
- (40) केस अपराध संख्या 882/2004 में तीन सिमी सदस्यों को भारतीय दंड संहिता की धारा 148, 324 एवं 332 के तहत दोषी पाया गया था। यह मामला भारतीय दंड संहिता की धारा 147, 148, 307, 332, 224, 427 एवं 149 के तहत सैफाबाद पुलिस स्टेशन, हैदराबाद, तेलंगाना द्वारा दर्ज किया गया था। मामले के तथ्य ये हैं कि 31 अक्टूबर, 2004 को, मौलाना मोहम्मद नसीरुद्दीन पुलिस महानिदेशक कार्यालय में अपराध जांच विभाग नियंत्रण कक्ष, हैदराबाद में उपस्थित हुए और जबकि डा. नरेन्द्र कुमार अमीन, सहायक पुलिस आयुक्त, अपराध जांच विभाग, अहमदाबाद ने कार्यालय छोड़ते समय उनके खिलाफ गैर जमानती गिरफ्तारी वारंट निष्पादित किया। उस समय, आरोपी ने महबूब अली, अध्यक्ष, दरसगाह-ए-जिहाद-ओ-शहादत (डीजेएस) की अगुवाई में पुलिस पर हमला किया, उनको बुरी तरह मारा-पीटा और नसीरुद्दीन को ले गया। सहायक पुलिस आयुक्त, अहमदाबाद ने गोलियाँ चलाई और आरोपी को अपने कब्जे में ले लिया। इस मामले में, सिमी आरोपी सिमी नेताओं को CDs पहुंचाने के लिए जिम्मेवार थे जोकि इसी अपराध के लिए महाकाल पुलिस स्टेशन, उज्जैन, मध्य प्रदेश के केस अपराध संख्या 162/1998 से भी जुड़े हुए थे।
- (41) केस अपराध संख्या 964/2014, बिजनौर (उत्तर प्रदेश) में किराये पर लिए गए एक कमरे में हुए आई.ई.डी. विस्फोट के संबंध में 11 सिमी कार्यकर्ताओं के विरुद्ध कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा भारतीय दंड संहिता की धारा 121ए, 122, 216 एवं 120बी के तहत दर्ज किया गया है। ग्यारह आरोपित व्यक्तियों में से, दो दिनांक 04.04.2015 को तेलंगाना पुलिस के साथ मुठभेड़ में मारे गए और चार को मध्य प्रदेश पुलिस के साथ दिनांक 31.10.2016 को मुठभेड़ में मार गिराया गया;

- (42) केस अपराध संख्या 965/2014, बिजनौर (उत्तर प्रदेश) में किराये पर लिए गए एक कमरे में हुए आई.ई.डी. विस्फोट के संबंध में 11 आरोपियों के विरुद्ध कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13, 18, 23, 21, 38, 39 एवं 40 के तहत दर्ज किया गया है। आगे की जांच के लिए मामले को राष्ट्रीय अन्वेषण अभिकरण (एनआईए) को अंतरित कर दिया गया था। मामले में यह पाया गया कि घटना में एक सिमी मॉडयूल शामिल था। ग्यारह आरोपित व्यक्तियों में से, दो दिनांक 04.04.2015 को तेलंगाना पुलिस के साथ मुठभेड़ में मारे गए और चार को मध्य प्रदेश पुलिस के साथ दिनांक 31.10.2016 को मुठभेड़ में मार गिराया गया;
- (43) केस अपराध संख्या 966/2014, बिजनौर (उत्तर प्रदेश) में किराये पर लिए गए एक कमरे में हुए आई.ई.डी. विस्फोट के संबंध में 11 सिमी कार्यकर्ताओं के विरुद्ध कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा शस्त्र अधिनियम, 1959 की धारा 25 के तहत दर्ज किया गया है। ग्यारह आरोपित व्यक्तियों में से, दो दिनांक 04.04.2015 को तेलंगाना पुलिस के साथ मुठभेड़ में मारे गए और चार को मध्य प्रदेश पुलिस के साथ दिनांक 31.10.2016 को मुठभेड़ में मार गिराया गया;
- (44) केस अपराध संख्या 967/2014, बिजनौर (उत्तर प्रदेश) में किराये पर लिए गए एक कमरे में हुए आई.ई.डी. विस्फोट के संबंध में 11 सिमी कार्यकर्ताओं के विरुद्ध कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा शस्त्र अधिनियम, 1959 की धारा 4/25 के तहत दर्ज किया गया है। ग्यारह आरोपित व्यक्तियों में से, दो दिनांक 04.04.2015 को तेलंगाना पुलिस के साथ मुठभेड़ में मारे गए और चार को मध्य प्रदेश पुलिस के साथ दिनांक 31.10.2016 को मुठभेड़ में मार गिराया गया;
- (45) केस अपराध संख्या 968/2014, बिजनौर (उत्तर प्रदेश) में किराये पर लिए गए एक कमरे में हुए आई.ई.डी. विस्फोट के संबंध में 11 सिमी कार्यकर्ताओं के विरुद्ध कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 के तहत दर्ज किया गया है। ग्यारह आरोपित व्यक्तियों में से, दो दिनांक 04.04.2015 को तेलंगाना पुलिस के साथ मुठभेड़ में मारे गए और चार को मध्य प्रदेश पुलिस के साथ दिनांक 31.10.2016 को मुठभेड़ में मार गिराया गया;
- (46) केस अपराध संख्या 974/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा भारतीय दंड संहिता की धारा 121ए, 122 एवं 120बी के तहत दर्ज किया गया है। बाद में, यह मामला, केस अपराध संख्या 964/2014 के साथ मिला दिया गया था;
- (47) केस अपराध संख्या 975/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 के तहत दर्ज किया गया है। यह मामला विचारण न्यायालय में लंबित है;
- (48) केस अपराध संख्या 976/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13, 18 एवं 23 के तहत दर्ज किया गया है। यह मामला विचारण न्यायालय में लंबित है;
- (49) केस अपराध संख्या 977/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा भारतीय दंड संहिता की धारा 121ए, 122, 216 एवं 120बी के तहत दर्ज किया गया है। बाद में, यह मामला, केस अपराध संख्या 964/2014 के साथ मिला दिया गया था;
- (50) केस अपराध संख्या 978/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 के तहत दर्ज किया गया है। यह मामला विचारण न्यायालय में लंबित है;
- (51) केस अपराध संख्या 979/2014, बिजनौर विस्फोट मामले के संबंध में कोतवाली पुलिस स्टेशन, बिजनौर, उत्तर प्रदेश द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 13, 18 एवं 23 के तहत दर्ज किया गया है। यह मामला विचारण न्यायालय में लंबित है;
- (52) केस अपराध संख्या 50/2014, बिजनौर (उत्तर प्रदेश) में भगौड़े सिमी सदस्यों के कथित छुपने के अड्डे में दिनांक 12.09.2014 को दुर्घटनावश हुए विस्फोट के बाद स्पेशल सेल पुलिस स्टेशन, दिल्ली द्वारा भारतीय दंड संहिता

की धारा 120बी और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 18 एवं 20 के तहत दर्ज किया गया है;

- (53) केस अपराध संख्या आरसी-01/2015/एनआईए-डीएलआई, बिजनौर, उत्तर प्रदेश में आई.ई.डी. विस्फोट के मामले में भारतीय दंड संहिता की धारा 121ए एवं 122, शस्त्र अधिनियम, 1959 की धारा 25, विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम 1967 की धारा 13, 18 एवं 23 के तहत 11 आरोपियों के विरुद्ध दर्ज किया गया है;
- (54) केस अपराध संख्या आरसी-10/2015/एनआईए-डीएलआई, बिजनौर, उत्तर प्रदेश में आई.ई.डी. विस्फोट के मामले में भारतीय दंड संहिता की धारा 120बी, 121ए एवं 122, विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम 1967 की धारा 13, 18 एवं 23 के तहत एक आरोपी के विरुद्ध दर्ज किया गया है।
- (55) मामला अपराध संख्या आरसी-11/2015/एनआईए-डीएलआई, बिजनौर, उत्तर प्रदेश में आई.ई.डी. विस्फोट के मामले में भारतीय दंड संहिता की धारा 120बी, 121ए एवं 122, विस्फोटक पदार्थ अधिनियम, 1908 की धारा 4 एवं 5 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम 1967 की धारा 13, 18 एवं 23 के तहत दो आरोपियों के विरुद्ध दर्ज किया गया है;
- (56) राष्ट्रीय अन्वेषण अभिकरण द्वारा भारतीय दंड संहिता की धारा 120बी एवं 124ए तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 एवं धारा 13 की उप-धारा (i) के खण्ड (ख) के तहत दर्ज केस अपराध सं. आरसी-03/2010/एनआईए-डीएलआई, में स्पेशल एनआईए कोर्ट अर्णाकुलम, केरल द्वारा दो सिमी कार्यकर्ताओं को विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 10 एवं धारा 13 की उप-धारा (i) के खण्ड (ख) के अलावा भारतीय दंड संहिता की धारा 120बी एवं 124ए के तहत दोषसिद्ध ठहराया गया; दो सिमी कार्यकर्ताओं को सात वर्ष का सश्रम कारावास दिया गया तथा उन पर साठ हजार रुपये का जुर्माना लगाया गया और दो सिमी कार्यकर्ताओं को पांच वर्ष का सश्रम कारावास दिया गया तथा उन पर पचपन हजार रुपये का जुर्माना लगाया गया;
- (57) राष्ट्रीय अन्वेषण अभिकरण द्वारा शस्त्र अधिनियम, 1959 की धारा 25 एवं 27 के अलावा भारतीय दंड संहिता की धारा 120बी, 122, 124ए एवं 153ए, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 3, 5, 10 एवं 13 के तहत दर्ज केस अपराध सं. आरसी-04/2010/एनआईए-डीएलआई, में स्पेशल एन.आई.ए. कोर्ट अर्णाकुलम, केरल द्वारा अठारह सिमी कार्यकर्ताओं को दोषसिद्ध ठहराया गया और प्रत्येक आरोपी को जुर्माने के साथ सात वर्षों के सश्रम कारावास की सजा सुनाई गई;
- (58) राष्ट्रीय अन्वेषण अभिकरण द्वारा भारतीय दंड संहिता की धारा 153ए, 324, 307, 427 एवं 452, भारतीय आपराधिक कानून संशोधन अधिनियम, 1908 (1908 का 14) की धारा 17, विस्फोटक पदार्थ अधिनियम, 1908 की धारा 3 एवं 4 तथा विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18, 20 एवं 23 के तहत दर्ज केस अपराध सं. आरसी-07/2013/एनआईए-डीएलआई, आरसी-08/2013/एनआईए-डीएलआई और आरसी-09/2013/एनआईए-डीएलआई, में स्पेशल राष्ट्रीय अन्वेषण अभिकरण कोर्ट, पटना, बिहार द्वारा भारतीय दंड संहिता की धारा 120बी के साथ पठित 153ए के तहत दो सिमी कार्यकर्ताओं को दोषसिद्ध ठहराया गया तथा तीन वर्ष के कारावास की सजा सुनाई गई और विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18, 20 एवं 23 के तहत चालीस हजार रुपये का जुर्माना लगाया गया; भारतीय दंड संहिता की धारा 120बी के साथ पठित धारा 153ए और भारतीय दंड संहिता की धारा 307 के साथ पठित धारा 120बी के तहत भी दो सिमी कार्यकर्ताओं को दोषसिद्ध ठहराया गया और तीन वर्ष तथा दस वर्ष के कारावास के साथ दस हजार रुपये जुर्माने की सजा सुनाई गई; इसके साथ ही उन्हें विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18, 20 एवं 23 के तहत आजीवन कारावास तथा चालीस हजार रुपये जुर्माने का दंड दिया गया; भारतीय दंड संहिता की धारा 120बी के साथ पठित धारा 153ए, भारतीय दंड संहिता की धारा 120बी एवं 307 तथा भारतीय दंड संहिता की धारा 458 के तहत एक सिमी कार्यकर्ता को दोषसिद्ध ठहराया गया और उसे तीन वर्ष, दस वर्ष एवं चौदह वर्ष कारावास तथा बीस हजार रुपये जुर्माने की सजा सुनाई गई, साथ ही उसे विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 की धारा 16, 18, 20 एवं 23 के तहत आजीवन कारावास और चालीस हजार रुपये जुर्माने का दंड दिया गया। इस मामले में एक किशोर आरोपी को भी तीन वर्ष की सजा सुनाई गई।

और जबकि केन्द्रीय सरकार इसके आगे यह मत रखती है कि यदि सिमी की विधिविरुद्ध गतिविधियों को तत्काल नहीं रोका गया और उन पर नियंत्रण नहीं किया गया तो वह -

- (i) अपनी विध्वंसात्मक गतिविधियां जारी रखकर तथा अपने भगौड़े कार्यकर्ताओं को पुनः संगठित कर;
- (ii) साम्प्रदायिक सद्भाव बिगाड़कर लोगों के मस्तिष्क को प्रदूषित करके देश के धर्मनिरपेक्ष ढांचे को क्षति पहुंचाकर;
- (iii) राष्ट्र-द्रोही भावनाएं प्रसारित कर;
- (iv) उग्रवाद का सहयोग करके अलगाववाद को बढ़ावा देकर; तथा
- (v) देश की अखण्डता तथा सुरक्षा के लिए हानिकारक गतिविधियों को अंजाम देकर, इस अवसर का फायदा उठाएगा;

और जबकि केन्द्रीय सरकार का यह भी मत है कि सिमी की गतिविधियों को ध्यान में रखते हुए, सिमी को तत्काल प्रभाव से एक विधिविरुद्ध संगठन घोषित करना आवश्यक है।

अतः, अब केन्द्रीय सरकार विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उप-धारा (1) और (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को "विधिविरुद्ध संगठन" घोषित करती है और निर्देश देती है कि यह अधिसूचना, उक्त अधिनियम की धारा 4 के अंतर्गत जारी किसी भी आदेश के अध्याधीन सरकारी राजपत्र में इसके प्रकाशन की तिथि से पांच वर्ष की अवधि के लिए लागू रहेगी।

[फा. सं. 14017/3/2018-एन.आई.-III]

एस. सी. एल. दास, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 31<sup>st</sup> January, 2019

**S.O. 564(E).**—Whereas the Students Islamic Movement of India (hereinafter referred to as the **SIMI**) has been indulging in activities, which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government declared the SIMI as an unlawful association, *vide*, notification numbers, (i) S.O. 960 (E), dated the 27<sup>th</sup> September, 2001, (ii) S.O. 1113 (E), dated the 26<sup>th</sup> September, 2003, (iii) S.O. 191 (E), dated the 8<sup>th</sup> February, 2006, (iv) S.O. 276(E), dated the 7<sup>th</sup> February, 2008, (v) S.O. 260 (E), dated the 5<sup>th</sup> February, 2010, (vi) S.O. 224 (E), dated the 3<sup>rd</sup> February, 2012 and (vii) S.O. 299(E), dated the 1<sup>st</sup> February, 2014, respectively;

And whereas, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the Tribunal) was constituted under section 5 of the Unlawful Activities (Prevention) Act, 1967 for the purpose of adjudicating whether or not there is sufficient cause for declaring the SIMI as an unlawful association and the Tribunal by its orders published, *vide*, notification numbers, (i) S.O. 397 (E), dated the 8<sup>th</sup> April, 2002, (ii) S.O. 499 (E), dated the 16<sup>th</sup> April, 2004, (iii) S.O. 1302 (E), dated the 11<sup>th</sup> August, 2006, (iv) S.O. 1990 (E), dated the 12<sup>th</sup> August, 2010, (v) S.O. 1745 (E), dated the 6<sup>th</sup> August, 2012 and (vi) S.O. 2050(E), dated the 12<sup>th</sup> August, 2014, respectively, has confirmed the declaration so made;

And whereas, the duration of ban under sub-section (1) of section 6 of the Unlawful Activities (Prevention) Act, 1967 shall cease on the 31<sup>st</sup> day of January, 2019;

And whereas, the Central Government is of the opinion that SIMI is indulging in the activities which are prejudicial to the integrity and security of the country on the basis, *inter alia*, of the following grounds, namely:—

- (1) Case Crime No. 377/2017 has been registered at Civil Lines Police Station, Gaya, Bihar under sections 216, 124A, 120B and 34 of the Indian Penal Code and under sections 13, 16, 18, 19, 20

and 38 of the Unlawful Activities (Prevention) Act, 1967 against the accused Pathan Tauseef Khan *alias* Mohd. Atiq, Shahanshah Khan *alias* Sanna Khan, Gulam Sarvar Khan and their unknown associates for their alleged involvement into seditious activities, harboring terrorist, being the member of proscribed terrorist organisation and getting involved into terror related activities;

- (2) Case Crime No. 309/2014 has been registered at Cubbon Park Police Station, Bengaluru, Karnataka under sections 121, 121A, 120B, 153, 307 and 302 of the Indian Penal Code and sections 3, 4 and 5 of the Explosive Substances Act, 1908 and sections 3, 10, 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against the accused Alamjeb Afridi *alias* Alamjeb Khan *alias* Mohammed Rafiq *alias* Jaweed *alias* Jaid Afridi *alias* Alamzeb Khan *alias* Chikna *alias* Javed in the matter of Bangalore Church Street Blast. This case was taken over by National Investigation Agency and re-registered the case as National Investigation Agency Case No. RC 01/2015/NIA/Hyd. on 20.05.2015;
- (3) Case Crime No. 424/2014 has been registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967 against the accused Majid Nagori and seventeen others. Accused Akil Khilji, Khalid Ahmed and Abdul Majid had shot dead in police encounter after absconding from judicial custody. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted the rest of the fifteen accused under sections 153B and 295B of the Indian Penal Code for three years rigorous imprisonment and fine of rupees one thousand for each accused person;
- (4) Case Crime No. 100/2015 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 294, 353, 506 and 34 of the Indian Penal Code against the accused Abu Faizal and Sharafat. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted both the accused under section 353 of the Indian Penal Code for two years rigorous imprisonment and fine of rupees five hundred each and convicted under section 506 of the Indian Penal Code for three years rigorous imprisonment and fine of rupees five hundred for each accused person;
- (5) Case Crime No. 393/2016 has been registered at Moghat Road Police Station, Khandwa, Madhya Pradesh under section 124A of the Indian Penal Code against the accused Mohd. Aasif Shayar;
- (6) Case Crime No. 270/2016 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 342, 307, 302, 120B, 224, 34 and 353 of the Indian Penal Code and sections 3, 10, 13, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016;
- (7) Case Crime No. 355/2016 has been registered at Gunja Police Station, Bhopal, Madhya Pradesh under sections 307, 147, 148, 149 and 332 of the Indian Penal Code and sections 25 and 27 of the Arms Act, 1959 (54 of 1959) and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016;
- (8) One SIMI activist was sentenced to two years rigorous imprisonment and a fine of rupees one thousand by the Court of Additional Chief Judicial Magistrate, Indore in Case Crime No. 479/2001, registered at Aerodrome Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (9) One SIMI activist was sentenced to two years simple imprisonment by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 304/2001, registered at Khajrana Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (10) One SIMI activist was sentenced to two years imprisonment and a fine of rupees five hundred by the First Class Court, Burhanpur in Case Crime No. 269/2001, registered at Kotwali Police Station, Burhanpur, Madhya Pradesh under section 153A of the Indian Penal Code and sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (11) Two SIMI activists were sentenced to one year rigorous imprisonment and a fine of rupees five hundred each under sections 153A and 153B of the Indian Penal Code and two year rigorous imprisonment and a fine of rupees five hundred each under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Chief Judicial Magistrate, Sihor in Case Crime



- No. 239/2008, registered at Kotwali Police Station, Sihor, Madhya Pradesh under section 153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;
- (12) Three SIMI activists were sentenced to five years rigorous imprisonment each and eleven SIMI activists were sentenced to life imprisonment by Fourth Additional District and Sessions Judge, Indore in Case Crime No. 120/2008, registered at Pithampur Police Station, Dhar, Madhya Pradesh under sections 122, 124A and 153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959 and sections 3, 4, 5 and 6 of the Explosives Act, 1884 (4 of 1884);
- (13) One SIMI activist was sentenced to three years rigorous imprisonment and a fine of rupees five hundred by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 181/2008, registered at Aerodrome Police Station, Indore, Madhya Pradesh under sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;
- (14) Three SIMI activist were sentenced to life imprisonment each and a fine of rupees one thousand each under sections 307 and 120B of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 14/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 307, 295, 153A, 124A, 120B, 212 and 34 of the Indian Penal Code and sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;
- (15) One SIMI activist was sentenced to life imprisonment and fine of rupees one thousand under sections 302 and 120B of the Indian Penal Code, life imprisonment and fine of rupees one thousand under clause (a) of sub-section (1) of section 16 of the Unlawful Activities (Prevention) Act, 1967, ten years rigorous imprisonment and fine of rupees one thousand under section 18 of the Unlawful Activities (Prevention) Act, 1967, seven years rigorous imprisonment and fine of rupees one thousand under section 27 of the Arms Act, 1959, three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959. Another SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959 (54 of 1959) by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 728/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 302, 120B and 34 of the Indian Penal Code, sections 3, 10, 13, 15, 16A, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;
- (16) One SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under section 379 of the Indian Penal Code, seven years rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code. One another SIMI activist was sentenced to three years of rigorous imprisonment and fine of rupees one thousand under section 411 of the Indian Penal Code, seven years of rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 72/2010, registered at Itarsi Police Station, Hoshangabad, Madhya Pradesh under sections 379, 468 and 411 of the Indian Penal Code and sections 3, 10, 13 and 18 of the Unlawful Activities (Prevention) Act, 1967. Case against one another accused has been dropped due to his death in police encounter by Telangana Police;
- (17) Two SIMI activists were sentenced to life imprisonment for each and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal code, life imprisonment for each and fine of rupees one thousand each under section 120B of the Indian Penal Code, two years of rigorous imprisonment and fine of rupees one thousand each under clause (a) of sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967, life imprisonment and fine of rupees one thousand each under section 17 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 431/2010, registered at Hanuman Ganj Police Station, Bhopal, Madhya Pradesh under sections 395, 397 and 120B of the Indian Penal Code, sections 25 and 27 of the Arms Act, 1959, sections 3, 10, 13, 16, 17, 18 and 20

of the Unlawful Activities (Prevention) Act, 1967. Case against two accused is pending trial in the court and against four other accused has been dropped due to their death in police encounter;

- (18) Three SIMI activists were sentenced to life imprisonment and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 149/2010, registered at Pipaliya Mandi Police Station, Mandsaur, Madhya Pradesh under sections 195, 397 and 124 of the Indian Penal Code, sections 3, 10, 13(1), 15, 16, 17, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;
- (19) Five SIMI activists were sentenced to three years of imprisonment and fine of rupees two thousand each under 25-1(B) of the Arms Act, 1959 by the Court of Additional Sessions Judge (Second), Khandwa in Case Crime No. 319/2011, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 153A of the Indian Penal Code, sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959;
- (20) One SIMI activist was sentenced to two years of rigorous imprisonment under section 224 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 542/2013, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 224, 120B, 212 and 216 of the Indian Penal Code, sections 3, 10, 13, 16, 17, 18, 19, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and section 3 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984). Case against one accused is pending trial in the court and against four accused has been dropped due to their death in police encounter. Case against two other accused has not started due to their death in police encounter in their absconding period in the case;
- (21) Fifteen SIMI activists were sentenced to three years of rigorous imprisonment and fine of rupees one thousand each under sections 153B and 295B of the Indian Penal Code by the Court of Chief Judicial Magistrate, Bhopal in Case Crime No. 424/2014, registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. Case against three other accused has been dropped due to their death in police encounter in the case;
- (22) Case Crime No. 09/2014 has been registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 307, 324, 427 and 120B of the Indian Penal Code read with sections 3, 4 and 5 of the Explosives Act, 1884 (4 of 1884) read with sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 against five SIMI activists, in the matter of blast occurred opposite to Shree Swami Samarth Snack Centre, Budhwar Peth, Pune, Maharashtra. Out of five accused, two were shot dead in police encounter with Telangana Police at Nalgonda, Telangana and three were shot dead in Police Encounter with Madhya Pradesh Police, after illegally escaping from the Bhopal Central Jail;
- (23) Two SIMI activists were sentenced to rigorous imprisonment for life and one SIMI activist was sentenced to fourteen years of rigorous imprisonment by the Maharashtra Control of Organised Crime Special Court, Arthur Road, Mumbai in L.A.C. No. 03/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under section 120B of the Indian Penal Code read with sections 5, 6 and 9-B of the Explosives Act, 1884 read with sections 4 and 5 of the Explosive Substances Act, 1908 (6 of 1908) read with sections 3 and 25 of the Arms Act, 1959 read with sections 10, 13, 16, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 read with section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (30 of 1999);
- (24) Three SIMI activists were sentenced to death and six SIMI activists were sentenced to life imprisonment by the Maharashtra Control of Organised Crime Special Court, Brihan Mumbai in Case Crime No. 05/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under clause (i) of sub-section (1) of section 3, sub-section(2) of section (3), sub-section (4) of section 3 and sub-section (5) of section 3 of the Maharashtra Control of Organised Crime Act, 1999 read with sections 10, 13, 16, 18, 19, 20 and 40 of the Unlawful Activities (Prevention) Act, 1967 read with sections 302, 307, 326, 325, 324, 427, 436, 121A, 123, 124A, 120B, 201 and 212 of the Indian

- Penal Code read with sections 6 and 9-B of the Explosives Act, 1884 read with sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 read with sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984) read with sections 151, 152, 153 and 154 of the Railways Act, 1989 (24 of 1989) read with section 12(1)(c) of the Passports Act, 1967 (15 of 1967);
- (25) One SIMI activist was convicted for seven years of rigorous imprisonment and fine of rupees thirty thousand by Additional Chief Metropolitan Magistrate, Sewri Court in L.A.C. No. 04/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967. Supplementary Charge Sheets were filed against some other SIMI activists in this case and the trial is pending for the same;
- (26) One SIMI activist was convicted and sentenced to death by Special Sessions Court, Shivaji Nagar, Pune in Case Crime No. 06/2010, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 120B, 153A, 302, 307, 326, 325, 324, 427, 467, 468, 471, 474, 109 and 34 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with sections 10, 13, 16, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967;
- (27) Two SIMI activists were convicted under section 489C of the Indian Penal Code and sentenced to rigorous imprisonment for six years and to pay fine of rupees ten thousand each and in default of payment of fine to suffer simple imprisonment of six months by the Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai in Case Crime No. 31/2011, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 120B, 489B, 489C and 489E of the Indian Penal Code read with sections 10, 13, 17 and 18B of the Unlawful Activities (Prevention) Act, 1967;
- (28) Ten SIMI activists were convicted and sentenced to rigorous imprisonments and/or life imprisonments and/or fine under various sections of law by the Court of Special Judge designated under the Prevention of Terrorism Act, 2002 (2 of 2002) at Greater Mumbai, Maharashtra under the Prevention of Terrorism Act Special Case No. 02/2003, registered as C.R. No. 21/2003 and C.R. No. 59/2003 by DCB CID Unit-6, Mumbai, Maharashtra for offences under the Prevention of Terrorism Act, 2002, the Indian Penal Code, the Explosive Substances Act, 1908, the Explosives Act, 1884, the Prevention of Damage to Public Property Act, 1984 and the Railways Act, 1989 for having been committed the act of three bomb explosion at places namely Mc Donald Hotel, Mumbai Central Railway Station, Monghibhai Market Vile Parle and in second class general compartment of Kalyan local train by way of conspiracy, the act preparatory to a terrorist act with intent to threaten the unity, integrity, security or sovereignty of India and to strike terror in the public at large;
- (29) Case Crime No. 38 dated 17.02.2016 at Plant Site Police Station, Rourkela, Odisha under sections 147, 148, 120B, 121, 121A, 122, 307, 467, 471 and 149 of the Indian Penal Code read with sections 25 and 27 of the Arms Act, 1959 and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 has been registered against four SIMI hard core terrorists along with mother of one of the terrorist namely (1) Sk. Mehboob *alias* Guddu *alias* Aftab; (2) Md. Amzad Khan *alias* Pappu *alias* Daud *alias* Umar *alias* Gopal Singh; (3) Zakir Husain *alias* Sadiq *alias* Vicky Don *alias* vinay Kumar *alias* Anand Joshi *alias* Imtiaz; (4) Md. Saliq *alias* Sallu *alias* Yunus *alias* Sanjay; and (5) Najma Bee (Mother of Sk. Mehboob) for their arrest on 16/17.02.2016 night from Qureshi Mohalla, Nala Road, Rourkela, District-Sundargarh. During investigation, it is learnt that, the above four terrorists were active members of SIMI which is a banned organisation and were killed in Police encounter in Bhopal on 30/31.10.2016, following Jail break in Bhopal (Madhya Pradesh);
- (30) Case Crime No. 02/2014 has been registered by S.B.C.I.D. Metro Police, Chennai, Tamil Nadu under sections 326, 307 and 302 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with section 151 of the Railways Act, 1989 (Formerly Chennai Railway Police Cr. No. 273/2014) in the matter of two IED blasts, occurred in Train No. 12509 (Bangalore-Guwahati Express) at Platform No. 9 in Chennai Central Railway Station. During the investigation, the involvement of three ex-SIMI activists have been established. All these ex-SIMI cadres have been killed in two separate encounters;
- (31) Case Crime No. 432/2014 has been registered by D2 Selvapuram Police Station, Coimbatore, Tamil Nadu under sections 120B, 153A and 505(1) of the Indian Penal Code against ten accused

persons including some ex-SIMI cadres for hatching a conspiracy with an intention to eliminate Hindu Organisation leaders in Coimbatore in order to create communal disharmony;

- (32) Case Crime No. 30/2014 has been registered by Mehboobnagar-II Town Police Station, Mahabubnagar, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Mahaboobnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;
- (33) Case Crime No. 10/2014 has been registered by Devarakonda Police Station, Nalgonda, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Devarakonda, Nalgonda, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;
- (34) Case Crime No. 16/2014 has been registered by Choppadandi Police Station, Karimnagar, Telangana under sections 395 of the Indian Penal Code, clause (a) and clause (b) of sub-section (1) of section 25 and section 27 of the Arms Act, 1959, sections 10, 13, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against six SIMI activists for robbery of rupees forty six lakhs from State Bank of India, Choppadandi, Karimnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;
- (35) Case Crime No. 120/2015 has been registered by Suryapet TN Police Station, Nalgonda, Telangana under sections 302, 307, 394 and 34 of the Indian Penal Code, sub-section (1) of section 25 of the Arms Act, 1959 against two SIMI activists for opening fire on police team, killing two police personnel and injuring Circle Inspector and Home Guard, while the police team conducted frisking on suspicious passengers in Suryapet Hi-tech bus stop at Nalgonda district on 01/02.04.2015. The accused grabbed a 9 MM Carbine weapon from police team and fled away. These accused died in Police encounter on 04.04.2015 at Janakipuram, Nalgonda, Telangana;
- (36) Case Crime No. 34/2015 has been registered by Mothkur Police Station, Nalgonda, Telangana under sections 302, 307 and 34 of the Indian Penal Code and section 27 of the Arms Act, 1959. The facts of the case are that, in the morning hours on 04.04.2015, Police team was moving to Janakipuram, Nalgonda district. In the meantime, two assailants came from opposite direction and an exchange of fire took place between the police and the assailants, resulting in death of assailants and a Police Constable, besides injuring an Inspector of Police of Ramannapet Police Station and a Sub-Inspector of Police of Atmakur Police Station. Police seized two country made short weapons and one 9 MM carbine from the scene of offence which was stolen from the slain policemen at Suryapet, Nalgonda. The dead assailants were identified as activists of SIMI cadre;
- (37) Case Crime No. 22/2015 has been registered by Arvapalli Police Station, Telangana under section 384 of the Indian Penal Code. The facts of the case are that, while the complainant was proceeding on his bike and reached Arvapalli village centre, where the two accused persons stopped him and kept gun on his abdomen and head and forcibly took his bike and fled away with high speed towards Thirumalagiri. The two assailants died later and were identified as activists of SIMI cadre;
- (38) Case Crime No. 23/2015 has been registered by Arvapalli Police Station, Telangana under section 307 of the Indian Penal Code and clause (A) of sub-section (1) of section 25 of the Arms Act, 1959. The facts of the case are that, the complainant stated that on credible information he along with his staff crossed bridge of Sri Ram Sagar Project canal at Seetharampuram where they found two persons escaping. On being asked to stop, they started firing with weapons and in return the complainant also fired against them with his service pistol but the accused escaped. The two assailants died later and were identified as activists of SIMI cadre;
- (39) Case Crime No. 338/2014 has been registered by Gopalpuram Police Station, Hyderabad, Telangana under sections 121, 121A, 153A and 120B of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. The facts of the case are that, the Hyderabad Police arrested two accused (both resident of Maharashtra State) at Secunderabad Railway Station. They were the members of the newly created 'Electronic War Fare Technology Group/SIMI' to help the Indian branch of Al-Qaeda. It is learnt that they came to Hyderabad to go to Afghanistan to participate in Al-Qaeda training programme;



- (40) Three SIMI members were convicted under sections 148, 324 and 332 of the Indian Penal Code in Case Crime No. 882/2004, registered by Saifabad Police Station, Hyderabad, Telangana under sections 147, 148, 307, 332, 224, 427 and 149 of the Indian Penal Code. The facts of the case are that, on 31.10.2004, Moulana Md. Naseeruddin attended Crime Investigation Department Control Room in the Director General of Police Office, Hyderabad and while leaving office Dr. Narendra Kumar Amin, Assistant Commissioner of Police, Crime Investigation Department, Ahmedabad executed non-bailable arrest warrant on him. At that time, accused led by Mahabub Ali, President, Darsghah-e-Jihad-o-Shahadat (DJS) attacked on Police, beat them indiscriminately and took away Naseeruddin. The Assistant Commissioner of Police, Ahmedabad opened fire and took over possession of the accused. The SIMI accused in this case were responsible for supplying of CDs to SIMI leaders who were also connected in Case Crime No. 462/1998 of Mahakal Police Station, Ujjain, Madhya Pradesh for the same;
- (41) Case Crime No. 964/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;
- (42) Case Crime No. 965/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18, 23, 21, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 against eleven accused for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). The case was transferred to National Investigation Agency for further investigation. It was found in the case that, a SIMI module was involved in the incident. Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;
- (43) Case Crime No. 966/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;
- (44) Case Crime No. 967/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 4/25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;
- (45) Case Crime No. 968/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;
- (46) Case Crime No. 974/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014;
- (47) Case Crime No. 975/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court;
- (48) Case Crime No. 976/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court;
- (49) Case Crime No. 977/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014;



- (50) Case Crime No. 978/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court;
- (51) Case Crime No. 979/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court;
- (52) Case Crime No. 50/2014 has been registered by Special Cell Police Station, Delhi under section 120B of the Indian Penal Code and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 after the accidental blast in Bijnor (Uttar Pradesh) on 12.09.2014 in the hideout of reported absconding members of SIMI;
- (53) Case Crime No. RC-01/2015/NIA-DLI has been registered by National Investigation Agency under sections 121A and 122 of the Indian Penal Code, section 25 of the Arms Act, 1959, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against eleven accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;
- (54) Case Crime No. RC-10/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against one accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;
- (55) Case Crime No. RC-11/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against two accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;
- (56) Two SIMI activists were convicted under sections 120B and 124A of the Indian Penal Code besides section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were sentenced to seven years rigorous imprisonment and fine of rupees sixty thousand and two SIMI activists were sentenced to five years rigorous imprisonment and fine of rupees fifty five thousand by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-03/2010/NIA-DLI, registered by National Investigation Agency under sections 120B and 124A of the Indian Penal Code and section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967;
- (57) Eighteen SIMI activists convicted and sentenced to seven years rigorous imprisonment with fine for each accused by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-04/2010/NIA-DLI, registered by National Investigation Agency under sections 120B, 122, 124A and 153A of the Indian Penal Code, sections 3, 5, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 besides sections 25 and 27 of the Arms Act, 1959;
- (58) Two SIMI activists were convicted and sentenced to three years imprisonment under section 153A read with section 120B of the Indian Penal Code and life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were also convicted and sentenced to three years and ten years imprisonment with a fine of rupees ten thousand under section 153A read with section 120B of the Indian Penal Code and section 120B read with section 307 of the Indian Penal Code respectively, along with life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; one SIMI activist was convicted and sentenced to three years, ten years and fourteen years of imprisonment and fine of rupees twenty thousand under section 153A read with section 120B of the Indian Penal Code, sections 120B and 307 of the Indian Penal Code and section 458 of the Indian Penal Code respectively, along with life imprisonment and fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 by the Special National Investigation Agency Court, Patna, Bihar in Case Crime No. RC-07/2013/NIA-DLI, RC-08/2013/NIA-DLI and RC-09/2013/NIA-DLI, registered by National Investigation Agency under sections 153A, 324, 307, 427 and 452 of the Indian Penal Code, section 17 of the Indian Criminal Law Amendment Act, 1908 (14 of 1908), sections 3 and 4 of the

Explosive Substances Act, 1908 and sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967. One Juvenile accused was also convicted for three years in the case;

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to –

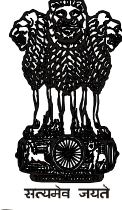
- (i) continue its subversive activities and re-organise its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) as an “unlawful association” and directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette.

[F. No. 14017/3/2018-NI-III]

S. C. L. DAS, Jt. Secy.



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 27 अगस्त, 2019

**का. आ. 3083(अ).**—जबकि, केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 31 जनवरी, 2019 की अधिसूचना संख्या का.आ. 564(अ) (जिसे इसके बाद उक्त अधिसूचना कहा गया है) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधिविरुद्ध संगम घोषित किया है;

और, जबकि, केंद्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 21 फरवरी, 2019 की अधिसूचना संख्या का.आ. 931(अ) के तहत विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसके बाद उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय की न्यायाधीश माननीय न्यायमूर्ति सुश्री मुक्ता गुप्ता थीं;

और, जबकि केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधिविरुद्ध संगम घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 21 फरवरी, 2019 को उक्त अधिकरण को उक्त अधिसूचना संदर्भित की थी;

और, जबकि उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए दिनांक 29 जुलाई, 2019 को एक आदेश दिया था;

अतः अब, केंद्रीय सरकार एतद्वारा उक्त अधिनियम की धारा 4 की उप-धारा(4) के अनुसरण में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात्:-

(अधिकरण का आदेश अंग्रेजी भाग में छपा है )

[फा. सं. 14017/29/2019-एन.आई.-III]

एस. सी. एल. दास, संयुक्त सचिव

## MINISTRY OF HOME AFFAIRS

### NOTIFICATION

New Delhi, the 27th August, 2019

**S.O. 3083 (E).**—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (herein after referred to as said Act), declared the Students Islamic Movement of India (SIMI) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 564 (E), dated the 31<sup>st</sup> January, 2019 (herein after referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Hon'ble Ms. Justice Mukta Gupta, Judge of the High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 931 (E), dated 21<sup>st</sup> February, 2019;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 21<sup>st</sup> February, 2019 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Students Islamic Movement of India (SIMI) as unlawful association;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 29<sup>th</sup> July, 2019, confirmed the declaration made in the said notification;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :-

## BEFORE THE UNLAWFUL ACTIVITIES

### (PREVENTION) TRIBUNAL

**Date of Decision: 29<sup>th</sup> July, 2019**

#### **In the matter of:**

Gazette Notification dated 31<sup>st</sup> January, 2019 declaring Students Islamic Movement of India as unlawful association.

#### **And in the matter of:**

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967.

#### **CORAM:**

#### **HON'BLE MS. JUSTICE MUKTA GUPTA**

Present: Ms. Pinky Anand, Additional Solicitor General with

Mr. Sachin Datta, Senior Advocate and Special Counsel, Mr. Rajesh Ranjan, Mr. Balendu Shekhar, Mr. Jay Prakash Singh, Mr. Hemant Arya, Ms. Saudamini Sharma, Ms. Gauri Goburdhun & Ms. Pallavi Chopra, Advocates for the Union of India.

Mr. Yogesh Kanna (AOR), Standing Counsel for the State of Tamil Nadu.

Mr. Aniruddha P Mayee with Mr. Chirag Jain, Special Counsel for State of Maharashtra.

Mr. K. Surender, Advocate for State of Telengana.

Mr. Mohrram Ali, Advocate for Mr. Sheikh Sarfaraz Public Hearing Witness.

Mr. Arjun Ambalapatta, Public Prosecutor, NIA.

Mr. Sadashiva Murthy, Advocate for State of Karnataka.

Mr. Ashok Aggarwal with Ms. Sridevi Panikkar and Ms. Devyani Bhatt, Advocates for Mr. Humam Ahmed Siddiqui.

Mr. Anil Kumar Mishra, with Mr. Ganesh Khanna, Advocates for Mr. Sayyad Mohd. Margoob Kafil.

Mr. Aarif Ali Khan with Mr. Mujahhid Ahmed, Mohd. Rizwan Ahmed and Mr. Sajjad Ahmed Wani, Advocates for Mr. Riyaz Ahmed and Mr. Nafis.

Mr. V.S. Rana, Deputy Secretary, Mr. Manoj Kumar Singh, Technical Officer (Monitoring) and Mr. Hiranmay Biswas, Research Officer for Ministry of Home Affairs.

**In attendance Mr. Lorren Bamniyal, Registrar (SIMI)**

**In Re:** Students Islamic Movement of India.

**ORDER**

I. The Central Government had published Notification no. S.O. 564 (E) dated 31<sup>st</sup> January, 2019 in exercise of powers conferred under Section 3(1) of the Unlawful Activities Prevention Act, 1967 (hereinafter referred to as 'UAPA') wherein it declared that the Students Islamic Movement of India (hereinafter referred to as 'SIMI') had been indulging in activities which were prejudicial to the security of the country.

II. Notification dated 31<sup>st</sup> January, 2019 refers to grounds (1) to (58) justifying why the Central Government believes that SIMI is indulging in the aforesaid activities. The relevant extract of the notification is reproduced as under:

*And whereas, the Central Government is of the opinion that SIMI is indulging in the activities which are prejudicial to the integrity and security of the country on the basis, inter alia, of the following grounds, namely:—*

*(1) Case Crime No. 377/2017 has been registered at Civil Lines Police Station, Gaya, Bihar under sections 216, 124A, 120B and 34 of the Indian Penal Code and under sections 13, 16, 18, 19, 20 and 38 of the Unlawful Activities (Prevention) Act, 1967 against the accused Pathan Tauseef Khan alias Mohd. Atiq, Shahanshah Khan alias Sanna Khan, Gulam Sarvar Khan and their unknown associates for their alleged involvement into seditious activities, harboring terrorist, being the member of proscribed terrorist organisation and getting involved into terror related activities;*

*(2) Case Crime No. 309/2014 has been registered at Cubbon Park Police Station, Bengaluru, Karnataka under sections 121, 121A, 120B, 153, 307 and 302 of the Indian Penal Code and sections 3, 4 and 5 of the Explosive Substances Act, 1908 and sections 3, 10, 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against the accused Alamjeb Afridi alias Alamjeb Khan alias Mohammed Rafiq alias Jaweed alias Jaid Afridi alias Alamzeb Khan alias Chikna alias Javed in the matter of Bangalore Church Street Blast. This case was taken over by National Investigation Agency and re-registered the case as National Investigation Agency Case No. RC 01/2015/NIA/Hyd. on 20.05.2015;*

*(3) Case Crime No. 424/2014 has been registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967 against the accused Majid Nagori and seventeen others. Accused Akil Khilji, Khalid Ahmed and Abdul*



*Majid had shot dead in police encounter after absconding from judicial custody. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted the rest of the fifteen accused under sections 153B and 295B of the Indian Penal Code for three years rigorous imprisonment and fine of rupees one thousand for each accused person;*

*(4) Case Crime No. 100/2015 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 294, 353, 506 and 34 of the Indian Penal Code against the accused Abu Faizal and Sharafat. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted both the accused under section 353 of the Indian Penal Code for two years rigorous imprisonment and fine of rupees five hundred each and convicted under section 506 of the Indian Penal Code for three years rigorous imprisonment and fine of rupees five hundred for each accused person;*

*(5) Case Crime No. 393/2016 has been registered at Moghat Road Police Station, Khandwa, Madhya Pradesh under section 124A of the Indian Penal Code against the accused Mohd. Aasif Shayar;*

*(6) Case Crime No. 270/2016 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 342, 307, 302, 120B, 224, 34 and 353 of the Indian Penal Code and sections 3, 10, 13, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016;*

*(7) Case Crime No. 355/2016 has been registered at Gunja Police Station, Bhopal, Madhya Pradesh under sections 307, 147, 148, 149 and 332 of the Indian Penal Code and sections 25 and 27 of the Arms Act, 1959 (54 of 1959) and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016;*

*(8) One SIMI activist was sentenced to two years rigorous imprisonment and a fine of rupees one thousand by the Court of Additional Chief Judicial Magistrate, Indore in Case Crime No. 479/2001, registered at Aerodrome Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;*

*(9) One SIMI activist was sentenced to two years simple imprisonment by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 304/2001, registered at Khajrana Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;*

*(10) One SIMI activist was sentenced to two years imprisonment and a fine of rupees five hundred by the First Class Court, Burhanpur in Case Crime No. 269/2001, registered at Kotwali Police Station, Burhanpur, Madhya Pradesh under section 153A of the Indian Penal Code and sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967;*

*(11) Two SIMI activists were sentenced to one year rigorous imprisonment and a fine of rupees five hundred each under sections 153A and 153B of the Indian Penal Code and two year rigorous imprisonment and a fine of rupees five hundred each under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Chief Judicial Magistrate, Sihor in Case Crime No. 239/2008, registered at Kotwali Police Station, Sihor, Madhya Pradesh under section 153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;*

*(12) Three SIMI activists were sentenced to five years rigorous imprisonment each and eleven SIMI activists were sentenced to life imprisonment by Fourth Additional District and Sessions Judge, Indore in Case Crime No. 120/2008, registered at Pithampur Police Station, Dhar, Madhya Pradesh under sections 122, 124A and*

153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959 and sections 3, 4, 5 and 6 of the Explosives Act, 1884 (4 of 1884);

(13) One SIMI activist was sentenced to three years rigorous imprisonment and a fine of rupees five hundred by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 181/2008, registered at Aerodrome Police Station, Indore, Madhya Pradesh under sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;

(14) Three SIMI activist were sentenced to life imprisonment each and a fine of rupees one thousand each under sections 307 and 120B of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 14/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 307, 295, 153A, 124A, 120B, 212 and 34 of the Indian Penal Code and sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;

(15) One SIMI activist was sentenced to life imprisonment and fine of rupees one thousand under sections 302 and 120B of the Indian Penal Code, life imprisonment and fine of rupees one thousand under clause (a) of sub-section (1) of section 16 of the Unlawful Activities (Prevention) Act, 1967, ten years rigorous imprisonment and fine of rupees one thousand under section 18 of the Unlawful Activities (Prevention) Act, 1967, seven years rigorous imprisonment and fine of rupees one thousand under section 27 of the Arms Act, 1959, three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959. Another SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959 (54 of 1959) by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 728/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 302, 120B and 34 of the Indian Penal Code, sections 3, 10, 13, 15, 16A, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;

(16) One SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under section 379 of the Indian Penal Code, seven years rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code. One another SIMI activist was sentenced to three years of rigorous imprisonment and fine of rupees one thousand under section 411 of the Indian Penal Code, seven years of rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 72/2010, registered at Itarsi Police Station, Hoshangabad, Madhya Pradesh under sections 379, 468 and 411 of the Indian Penal Code and sections 3, 10, 13 and 18 of the Unlawful Activities (Prevention) Act, 1967. Case against one another accused has been dropped due to his death in police encounter by Telangana Police;

(17) Two SIMI activists were sentenced to life imprisonment for each and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal code, life imprisonment for each and fine of rupees one thousand each under section 120B of the Indian Penal Code, two years of rigorous imprisonment and fine of rupees one thousand each under clause (a) of sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967, life imprisonment and fine of rupees one thousand each under section 17 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 431/2010, registered at Hanuman Ganj Police Station, Bhopal, Madhya Pradesh

under sections 395, 397 and 120B of the Indian Penal Code, sections 25 and 27 of the Arms Act, 1959, sections 3, 10, 13, 16, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967. Case against two accused is pending trial in the court and against four other accused has been dropped due to their death in police encounter;

(18) Three SIMI activists were sentenced to life imprisonment and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 149/2010, registered at Pipaliya Mandi Police Station, Mandsaur, Madhya Pradesh under sections 195, 397 and 124 of the Indian Penal Code, sections 3, 10, 13(1), 15, 16, 17, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case;

(19) Five SIMI activists were sentenced to three years of imprisonment and fine of rupees two thousand each under 25-1(B) of the Arms Act, 1959 by the Court of Additional Sessions Judge (Second), Khandwa in Case Crime No. 319/2011, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 153A of the Indian Penal Code, sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959;

(20) One SIMI activist was sentenced to two years of rigorous imprisonment under section 224 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 542/2013, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 224, 120B, 212 and 216 of the Indian Penal Code, sections 3, 10, 13, 16, 17, 18, 19, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and section 3 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984). Case against one accused is pending trial in the court and against four accused has been dropped due to their death in police encounter. Case against two other accused has not started due to their death in police encounter in their absconding period in the case;

(21) Fifteen SIMI activists were sentenced to three years of rigorous imprisonment and fine of rupees one thousand each under sections 153B and 295B of the Indian Penal Code by the Court of Chief Judicial Magistrate, Bhopal in Case Crime No. 424/2014, registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. Case against three other accused has been dropped due to their death in police encounter in the case;

(22) Case Crime No. 09/2014 has been registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 307, 324, 427 and 120B of the Indian Penal Code read with sections 3, 4 and 5 of the Explosives Act, 1884 (4 of 1884) read with sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 against five SIMI activists, in the matter of blast occurred opposite to Shree Swami Samarth Snack Centre, Budhwar Peth, Pune, Maharashtra. Out of five accused, two were shot dead in police encounter with Telangana Police at Nalgonda, Telangana and three were shot dead in Police Encounter with Madhya Pradesh Police, after illegally escaping from the Bhopal Central Jail;

(23) Two SIMI activists were sentenced to rigorous imprisonment for life and one SIMI activist was sentenced to fourteen years of rigorous imprisonment by the Maharashtra Control of Organised Crime Special Court, Arthur Road, Mumbai in L.A.C. No. 03/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under section 120B of the Indian Penal Code read with sections 5, 6 and 9-B of the Explosives Act, 1884 read with sections 4 and 5 of the Explosive Substances Act, 1908 (6 of 1908) read with sections 3 and 25 of the Arms Act, 1959 read with sections 10, 13, 16, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 read with section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (30 of 1999);

(24) Three SIMI activists were sentenced to death and six SIMI activists were sentenced to life imprisonment by the Maharashtra Control of Organised Crime Special Court, Brihan Mumbai in Case Crime No. 05/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under clause (i) of sub-section (1) of section 3, sub-section(2) of section (3), sub-section (4) of section 3 and sub-section (5) of section 3 of the Maharashtra Control of Organised Crime Act, 1999 read with sections 10, 13, 16, 18, 19, 20 and 40 of the Unlawful Activities (Prevention) Act, 1967 read with sections 302, 307, 326, 325, 324, 427, 436, 121A, 123, 124A, 120B, 201 and 212 of the Indian Penal Code read with sections 6 and 9-B of the Explosives Act, 1884 read with sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 read with sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984) read with sections 151, 152, 153 and 154 of the Railways Act, 1989 (24 of 1989) read with section 12(1)(c) of the Passports Act, 1967 (15 of 1967);

(25) One SIMI activist was convicted for seven years of rigorous imprisonment and fine of rupees thirty thousand by Additional Chief Metropolitan Magistrate, Sewri Court in L.A.C. No. 04/2006, registered by Anti-Terrorism Squad, Mumbai, Maharashtra under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967. Supplementary Charge Sheets were filed against some other SIMI activists in this case and the trial is pending for the same;

(26) One SIMI activist was convicted and sentenced to death by Special Sessions Court, Shivaji Nagar, Pune in Case Crime No. 06/2010, registered by Anti-Terrorism Squad, Mumbai, Maharashtra under sections 120B, 153A, 302, 307, 326, 325, 324, 427, 467, 468, 471, 474, 109 and 34 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with sections 10, 13, 16, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967;

(27) Two SIMI activists were convicted under section 489C of the Indian Penal Code and sentenced to rigorous imprisonment for six years and to pay fine of rupees ten thousand each and in default of payment of fine to suffer simple imprisonment of six months by the Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai in Case Crime No. 31/2011, registered by Anti-Terrorism Squad, Mumbai, Maharashtra under sections 120B, 489B, 489C and 489E of the Indian Penal Code read with sections 10, 13, 17 and 18B of the Unlawful Activities (Prevention) Act, 1967;

(28) Ten SIMI activists were convicted and sentenced to rigorous imprisonments and/or life imprisonments and/or fine under various sections of law by the Court of Special Judge designated under the Prevention of Terrorism Act, 2002 (2 of 2002) at Greater Mumbai, Maharashtra under the Prevention of Terrorism Act Special Case No. 02/2003, registered as C.R. No. 21/2003 and C.R. No. 59/2003 by DCB CID Unit-6, Mumbai, Maharashtra for offences under the Prevention of Terrorism Act, 2002, the Indian Penal Code, the Explosive Substances Act, 1908, the Explosives Act, 1884, the Prevention of Damage to Public Property Act, 1984 and the Railways Act, 1989 for having been committed the act of three bomb explosion at places namely Mc Donald Hotel, Mumbai Central Railway Station, Monghibhai Market Vile Parle and in second class general compartment of Kalyan local train tendered conspiracy, the act preparatory to a terrorist act with intent to threaten the unity, integrity, security or sovereignty of India and to strike terror in the public at large;

(29) Case Crime No. 38 dated 17.02.2016 at Plant Site Police Station, Rourkela, Odisha under sections 147, 148, 120B, 121, 121A, 122, 307, 467, 471 and 149 of the Indian Penal Code read with sections 25 and 27 of the Arms Act, 1959 and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 has been registered against four SIMI hard core terrorists along with mother of one of the terrorist namely (1) Sk. Mehboob alias Guddu alias Aftab; (2) Md. Amjad Khan alias Pappu



*alias Daud alias Umar alias Gopal Singh; (3) Zakir Husain alias Sadiq alias Vicky Don alias Vinay Kumar alias Anand Joshi alias Imtiaz; (4) Md. Saliq alias Sallu alias Yunus alias Sanjay; and (5) Najma Bee (Mother of Sk. Mehboob) for their arrest on 16/17.02.2016 night from Qureshi Mohalla, Nala Road, Rourkela, District-Sundargarh. During investigation, it is learnt that, the above four terrorists were active members of SIMI which is a banned organisation and were killed in Police encounter in Bhopal on 30/31.10.2016, following Jail break in Bhopal (Madhya Pradesh);*

*(30) Case Crime No. 02/2014 has been registered by S.B.C.I.D. Metro Police, Chennai, Tamil Nadu under sections 326, 307 and 302 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with section 151 of the Railways Act, 1989 (Formerly Chennai Railway Police Cr. No. 273/2014) in the matter of two IED blasts, occurred in Train No. 12509 (Bangalore-Guwahati Express) at Platform No. 9 in Chennai Central Railway Station. During the investigation, the involvement of three ex-SIMI activists have been established. All these ex-SIMI cadres have been killed in two separate encounters;*

*(31) Case Crime No. 432/2014 has been registered by D2 Selvapuram Police Station, Coimbatore, Tamil Nadu under sections 120B, 153A and 505(1) of the Indian Penal Code against ten accused persons including some ex-SIMI cadres for hatching a conspiracy with an intention to eliminate Hindu Organisation leaders in Coimbatore in order to create communal disharmony;*

*(32) Case Crime No. 30/2014 has been registered by Mehboobnagar-II Town Police Station, Mahabubnagar, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Mahaboobnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;*

*(33) Case Crime No. 10/2014 has been registered by Devarakonda Police Station, Nalgonda, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Devarakonda, Nalgonda, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;*

*(34) Case Crime No. 16/2014 has been registered by Choppadandi Police Station, Karimnagar, Telangana under sections 395 of the Indian Penal Code, clause (a) and clause (b) of sub-section (1) of section 25 and section 27 of the Arms Act, 1959, sections 10, 13, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against six SIMI activists for robbery of rupees forty six lakhs from State Bank of India, Choppadandi, Karimnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016;*

*(35) Case Crime No. 120/2015 has been registered by Suryapet TN Police Station, Nalgonda, Telangana under sections 302, 307, 394 and 34 of the Indian Penal Code, sub-section (1) of section 25 of the Arms Act, 1959 against two SIMI activists for opening fire on police team, killing two police personnel and injuring Circle Inspector and Home Guard, while the police team conducted frisking on suspicious passengers in Suryapet Hi-tech bus stop at Nalgonda district on 01/02.04.2015. The accused grabbed a 9 MM Carbine weapon from police team and fled away. These accused died in Police encounter on 04.04.2015 at Janakipuram, Nalgonda, Telangana;*

*(36) Case Crime No. 34/2015 has been registered by Mothkur Police Station, Nalgonda, Telangana under sections 302, 307 and 34 of the Indian Penal Code and section 27 of the Arms Act, 1959. The facts of the case are that, in the morning hours on 04.04.2015, Police team was moving to Janakipuram, Nalgonda district. In the meantime, two assailants came from opposite direction and an exchange of fire took place between the police and the assailants, resulting in death of assailants and a Police Constable, besides injuring an Inspector of Police of Ramannapet Police*



*Station and a Sub-Inspector of Police of Atmakur Police Station. Police seized two country made short weapons and one 9 MM carbine from the scene of offence which was stolen from the slain policemen at Suryapet, Nalgonda. The dead assailants were identified as activists of SIMI cadre;*

*(37) Case Crime No. 22/2015 has been registered by Arvapalli Police Station, Telangana under section 384 of the Indian Penal Code. The facts of the case are that, while the complainant was proceeding on his bike and reached Arvapalli village centre, where the two accused persons stopped him and kept gun on his abdomen and head and forcibly took his bike and fled away with high speed towards Thirumalagiri. The two assailants died later and were identified as activists of SIMI cadre;*

*(38) Case Crime No. 23/2015 has been registered by Arvapalli Police Station, Telangana under section 307 of the Indian Penal Code and clause (A) of sub-section (1) of section 25 of the Arms Act, 1959. The facts of the case are that, the complainant stated that on credible information he along with his staff crossed bridge of Sri Ram Sagar Project canal at Seetharampuram where they found two persons escaping. On being asked to stop, they started firing with weapons and in return the complainant also fired against them with his service pistol but the accused escaped. The two assailants died later and were identified as activists of SIMI cadre;*

*(39) Case Crime No. 338/2014 has been registered by Gopalpuram Police Station, Hyderabad, Telangana under sections 121, 121A, 153A and 120B of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. The facts of the case are that, the Hyderabad Police arrested two accused (both resident of Maharashtra State) at Secunderabad Railway Station. They were the members of the newly created 'Electronic War Fare Technology Group/SIMI' to help the Indian branch of Al-Qaeda. It is learnt that they came to Hyderabad to go to Afghanistan to participate in Al-Qaeda training programme;*

*(40) Three SIMI members were convicted under sections 148, 324 and 332 of the Indian Penal Code in Case Crime No. 882/2004, registered by Saifabad Police Station, Hyderabad, Telangana under sections 147, 148, 307, 332, 224, 427 and 149 of the Indian Penal Code. The facts of the case are that, on 31.10.2004, Moulana Md. Naseeruddin attended Crime Investigation Department Control Room in the Director General of Police Office, Hyderabad and while leaving office Dr. Narendra Kumar Amin, Assistant Commissioner of Police, Crime Investigation Department, Ahmedabad executed non-bailable arrest warrant on him. At that time, accused led by Mahabub Ali, President, Darsgah-e-Jihad-o-Shahadat (DJS) attacked on Police, beat them indiscriminately and took away Naseeruddin. The Assistant Commissioner of Police, Ahmedabad opened fire and took over possession of the accused. The SIMI accused in this case were responsible for supplying of CDs to SIMI leaders who were also connected in Case Crime No. 462/1998 of Mahakal Police Station, Ujjain, Madhya Pradesh for the same;*

*(41) Case Crime No. 964/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;*

*(42) Case Crime No. 965/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18, 23, 21, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 against eleven accused for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). The case was transferred to National Investigation Agency for further investigation. It was found in the case that, a SIMI module was involved in the incident. Out of the eleven*

*accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;*

*(43) Case Crime No. 966/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;*

*(44) Case Crime No. 967/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 4/25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;*

*(45) Case Crime No. 968/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016;*

*(46) Case Crime No. 974/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014;*

*(47) Case Crime No. 975/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court;*

*(48) Case Crime No. 976/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court;*

*(49) Case Crime No. 977/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014;*

*(50) Case Crime No. 978/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court;*

*(51) Case Crime No. 979/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court;*

*(52) Case Crime No. 50/2014 has been registered by Special Cell Police Station, Delhi under section 120B of the Indian Penal Code and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 after the accidental blast in Bijnor (Uttar Pradesh) on 12.09.2014 in the hideout of reported absconding members of SIMI;*

*(53) Case Crime No. RC-01/2015/NIA-DLI has been registered by National Investigation Agency under sections 121A and 122 of the Indian Penal Code, section 25 of the Arms Act, 1959, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against*

*eleven accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;*

*(54) Case Crime No. RC-10/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against one accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;*

*(55) Case Crime No. RC-11/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against two accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh;*

*(56) Two SIMI activists were convicted under sections 120B and 124A of the Indian Penal Code besides section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were sentenced to seven years rigorous imprisonment and fine of rupees sixty thousand and two SIMI activists were sentenced to five years rigorous imprisonment and fine of rupees fifty five thousand by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-03/2010/NIA-DLI, registered by National Investigation Agency under sections 120B and 124A of the Indian Penal Code and section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967;*

*(57) Eighteen SIMI activists convicted and sentenced to seven years rigorous imprisonment with fine for each accused by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-04/2010/NIA-DLI, registered by National Investigation Agency under sections 120B, 122, 124A and 153A of the Indian Penal Code, sections 3, 5, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 besides sections 25 and 27 of the Arms Act, 1959;*

*(58) Two SIMI activists were convicted and sentenced to three years imprisonment under section 153A read with section 120B of the Indian Penal Code and life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were also convicted and sentenced to three years and ten years imprisonment with a fine of rupees ten thousand under section 153A read with section 120B of the Indian Penal Code and section 120B read with section 307 of the Indian Penal Code respectively, along with life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; one SIMI activist was convicted and sentenced to three years, ten years and fourteen years of imprisonment and fine of rupees twenty thousand under section 153A read with section 120B of the Indian Penal Code, sections 120B and 307 of the Indian Penal Code and section 458 of the Indian Penal Code respectively, along with life imprisonment and fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 by the Special National Investigation Agency Court, Patna, Bihar in Case Crime No. RC-07/2013/NIA-DLI, RC-08/2013/NIA-DLI and RC-09/2013/NIA-DLI, registered by National Investigation Agency under sections 153A, 324, 307, 427 and 452 of the Indian Penal Code, section 17 of the Indian Criminal Law Amendment Act, 1908 (14 of 1908), sections 3 and 4 of the Explosive Substances Act, 1908 and sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967. One Juvenile accused was also convicted for three years in the case;*

*And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to –*

(i) continue its subversive activities and re-organise its activists who are still absconding;

(ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;

(iii) propagate anti-national sentiments;

(iv) escalate secessionism by supporting militancy; and

(v) undertake activities which are prejudicial to the integrity and security of the country;

And whereas, the Central Government is also of the opinion that having regard to the activities of the

SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect;

III. This order hereinafter thus answers the reference made to this Tribunal constituted vide Notification no. S.O. 931 (E) dated 21<sup>st</sup> February, 2019 under Section 5(1) read with Section 4(1) of the UAPA made by Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring 'SIMI' as an unlawful association.

#### IV. BACKGROUND NOTE

- 4.1. The Students Islamic Movement of India (SIMI) came into existence on 25.4.1977 in Aligarh Muslim University, Aligarh, Uttar Pradesh as a front organization of youth and students, having faith in Jamaat-e-Islami-Hind (JEIH). The organization declared itself independent in 1993 through a resolution. In 1993, JEIH formed Students' Islamic Organization (SIO) as its students' wing. At world level, the organization is said to be affiliated to 'World Association of Muslim Youth (WAMY)'.
- 4.2. OBJECTIVES: The stated objectives of the organization (SIMI) are :-
- i) Governing of human life on the basis of Quran;
  - ii) Propagation of Islam;
  - iii) "Jehaad" (religious war) for the cause of Islam;
  - iv) Destruction of Nationalism and establishment of Islamic Rule or Caliphate
- 4.3. SIMI aims to utilize students/youth in propagation of Islam and obtain support for Jehaad. The organization also emphasizes on the formation of "Shariat" based Islamic rule through "Islamic Inqalab". The organization does not believe in the nation state, as well as in the Constitution, or the secular order; it regards idol worship as a sin and its holy duty to end it.
- 4.4. The financial position of SIMI is said to be sound. Its resources are through donation, membership fee and financial assistance provided from time to time by supporters from Gulf countries. SIMI has contacts in Pakistan, Afghanistan, Saudi Arabia, Bangladesh and Nepal. Being a group of students and youth, SIMI is easily influenced by hard-core Muslim terrorist organizations operating from within the country and abroad. Fundamentalist/terrorist outfits like the Pakistan based Hizb-ul-Mujahideen and Lashkar-e-Toiba have successfully penetrated into the SIMI Cadres to achieve their goals.
- 4.5. SIMI has been active in Andhra Pradesh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and National Capital Territory of Delhi. However, the presence of SIMI activities has also been noticed in the States of Assam, Bihar, Jharkhand and Uttarakhand.
- 4.6. SIMI is known to have launched a country-wide campaign since November 1996 to mobilize support for the so-called Caliphate (Rule of Islam) for the Muslim community. SIMI is against Indian nationalism and has the aim to replace it with the International Islamic Order.



4.7. **UNLAWFUL ACTIVITIES OF SIMI BEFORE IMPOSITION OF BAN IN 2001:** The activities and statements of Students Islamic Movement of India (SIMI) are prejudicial to the maintenance of communal harmony; hurt the religious sentiments of other communities; incite religious fervor and violence and question the territorial integrity of the country. It has been observed that:-

‘(a) Support to militancy in Kashmir and Punjab

SIMI has advocated self-determination in Kashmir and was in close touch with Kashmir militant outfits including pro-Pak Hizb-ul-Mujahideen (HUM) and Jammu & Kashmir Liberation Front. The leadership of SIMI also extended full support to extremists and terrorists in Punjab and Jammu & Kashmir.

(b) Militant & disruptive activities

SIMI was involved in various militant/terrorist activities in the country, especially in Maharashtra, Uttar Pradesh, Kerala, Tamil Nadu and NCT Delhi.’

4.8. **FIRST BAN**

In the year 2001, keeping in view the gravity of the situation and deep conspiracy planned by the organization, the Union Government decided to ban SIMI under the provisions of the Unlawful Activities (Prevention) Act, 1967. Accordingly, Notification No. S.O. 960 (E) dated 27th September, 2001 declaring SIMI as an unlawful association was issued. The detailed grounds for imposition of ban are indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted, consisting of Justice S.K. Agarwal, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal upheld the ban and stated in his order that ‘it is clear that members, office-bearers and activists of SIMI Association have been indulging in unlawful activities. There is sufficient material, justification and grounds for the Central Government for taking action under sub-section (1) of section 3 of the Act for declaring SIMI as an unlawful association’. The order of Tribunal was published in the Gazette of India vide Notification No. S.O. 397 (E) dated 8th April, 2002.

4.9. **SECOND BAN**

The ban was re-imposed on SIMI in 2003, keeping in view that the organization continued to indulge in the activities for which the ban was imposed earlier. Accordingly, Notification No. S.O.1113 (E) dated 26th September, 2003 declaring SIMI as an unlawful association was issued. The detailed grounds for imposition of ban were indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted, consisting of Justice R.C. Chopra, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal confirmed the ban notification dated 26th September, 2003 with a view that the Tribunal is satisfied that the activities of SIMI, its members, activists, sympathizers are disruptive in nature. The SIMI members/activists are in close contact with militant outfits and support demand of secession of Kashmir. They support extremism and militancy in Jammu & Kashmir and as such, question the territorial integrity and sovereignty of India. They work for Islamization of world and advocate Islamic rule in India as well as other countries. They use derogatory language against Hindu Gods and deities and exhort Muslims for Jihad. The SIMI activists have been publishing objectionable posters with a view to create hatred between Hindu and Muslims. The order of Tribunal was published in the Gazette of India notification No S.O.499 (E) dated 16th April, 2004.

4.10. **THIRD BAN**

The ban was re-imposed on SIMI in February, 2006 keeping in view that the organization continued to indulge in the activities for which the ban was imposed earlier. Accordingly, Notification No. S.O.191 (E) dated 8th February, 2006 declaring SIMI as an unlawful association was issued. The detailed grounds for imposition of ban were indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted consisting of Justice B.N. Chaturvedi, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal confirmed the ban notification dated 8th February, 2006 with a view that the respondent-organization is indulging in activities which are detrimental and prejudicial to national-interest and have the potential of posing a threat to the integrity and sovereignty of the nation and also to communal harmony. The order of Tribunal was published in the Gazette of India notification No. S.O. 1302 (E) dated 11th August, 2006.



**4.11. FOURTH BAN**

Since the SIMI activists continued its activities for which it was banned earlier in September, 2001, in September, 2003 and again in February, 2006, the Government imposed a fresh ban in February, 2008 vide Notification No. S.O. 276 (E) dated 7th February, 2008 published in the Gazette of India. The Unlawful Activities (Prevention) Tribunal consisting of Ms. Justice Gita Mittal of Delhi High Court did not confirm the ban on technical grounds. Against the order of the Tribunal dated 5th August, 2008, the Government of India filed SLP (C) 19845 of 2008 before the Hon'ble Supreme Court seeking stay on the order of the Tribunal. The Hon'ble Supreme Court granted stay until further orders and referred the matter to be heard by a larger bench. The ban on SIMI continued. Now, this matter is tagged with C.A. No. 9208 of 2003 titled SIMI Vs. Union of India and was last listed on 7th November, 2017 before the three judges bench headed by Hon'ble Chief Justice of India.

**4.12. FIFTH BAN**

The ban was re-imposed on SIMI keeping in view that the organization continued to indulge in the activities for which the ban was imposed earlier. Accordingly, Notification No. S.O. 260 (E) dated 5th February, 2010 declaring SIMI as an unlawful association was issued. The detailed grounds for imposition of ban were indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted consisting of Justice Sanjiv Khanna, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal concluded that there is sufficient cause for declaring Students Islamic Movement of India (SIMI) as an unlawful association and an order is passed under Section 4(3) confirming the declaration made in the Notification of the Ministry of Home Affairs S.O. No. 260(E) dated 5th February, 2010 read with the Notification S.O. No. 544(E) dated 5th March, 2010, issued under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967. The order of Tribunal was published in the Gazette of India notification No.S.O.1990 (E) dated 12th August, 2010.

**4.13. SIXTH BAN**

The ban was imposed on SIMI keeping in view that the organization continued to indulge in the activities for which the ban was imposed earlier. Accordingly, Notification No. S.O. 224 (E) dated 3rd February, 2012 declaring SIMI as an unlawful association was issued. The detailed grounds for imposition of ban were indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted consisting of Justice V.K. Shali, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal confirmed the Notification dated 3rd February, 2012 and held in his order that in view of the evidence brought on record and the aforesaid discussion, the only conclusion possible is that SIMI and its cadres have continued to indulge in activities which are detrimental and prejudicial to the national interest and have the potential of posing a threat to the national integrity and sovereignty of the nation. SIMI cadres have continued to indulge in such anti-national activities by forming other front organization, like Indian Mujahidin, Wahadath-e-Islami, etc. It has continued to recruit and enroll fresh members in their cadres. The evidence brought on record and the cases registered after the report of the last Tribunal overwhelmingly prove that the organization is continuing to work surreptitiously, posing a threat and challenge to the sovereignty of the Indian nation. This is also established through the testimony of witnesses examined in Kerala, where it has been brought on record that the sympathizers/activities of this banned organization have supported the so called Jihad of Muslims of Kashmir against the alleged forced occupation of Kashmir where two operatives from Kerala got killed, even when they fully know that majority of Muslims of Kashmir are peace loving and have democratically elected their own representatives to rule them. Further, these persons have scant respect for innocent women lives and know the fact that the State of Jammu and Kashmir is an integral part of India.

4.14. For the foregoing reasons, the Tribunal, in pursuance to the statutory reference made to the Tribunal under Section 4 of the Act, hold that the Central Government has been able to establish that there is 'sufficient cause' for declaring SIMI as an unlawful association. The order of Tribunal was published in the Gazette of India notification No. S.O. 1745 (E) dated 6th August, 2012.

**4.15. SEVENTH BAN**

The ban was again imposed on SIMI in February, 2014, keeping in view that the organization continued to indulge in the activities for which the ban was imposed earlier. Accordingly, Notification No. S.O. 299 (E) dated 1st February, 2014 declaring SIMI as an unlawful association was issued. The

detailed grounds for imposition of ban were indicated therein. The Unlawful Activities (Prevention) Tribunal was constituted consisting of Justice Suresh Kait, Judge of Delhi High Court to adjudicate the ban notification. The Tribunal confirmed the Notification dated 1st February, 2014 and held in his order that the evidence brought on record clearly and unambiguously establishes that despite being banned since 27th September, 2001, except for a brief period in between, the SIMI activists are associating, meeting, conspiring, acquiring arms and ammunitions, and indulging in activities which are disruptive in character and capable of threatening the sovereignty and territorial integrity of India. They are in regular touch with their associates and masters based in other countries. Their actions are capable of disrupting peace and communal harmony in the country. Their stated objectives are contrary to the laws of our country. Especially their object of establishing Islamic rule in India can, under no circumstances, be permitted to subsist. The Tribunal further stated that it is evident that SIMI association and its activists are continuing to indulge in unlawful activities within the meaning of Section 2(1)(o) of the Act. The Central Government has sufficient credible material and grounds for taking action under sub-section (1) of Section 3 of the Act for declaring SIMI as an Unlawful Association. The Tribunal, therefore, hold that there exists "sufficient cause" to confirm the Notification issued under sub-section (1) of Section 3 of the Act, declaring SIMI to be an 'Unlawful Association'. The order of Tribunal was published in the Gazette of India notification No. S.O. 2050 (E) dated 12th August, 2014.

4.16. **EIGHTH / PRESENT BAN**

Defying the conditions of ban on 1st February, 2014, stipulated under the Unlawful Activities (Prevention) Act, 1967, ex-SIMI activists continued their activities including holding secret meetings and programmes under the guise of Dars etc. in various parts of the country. They have been holding meetings including secret meetings, making strategies to induct new members, discussing and raising funds and liaising with like-minded organizations. The activities of SIMI/its members as well as its sympathizers were noticed in the State of Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, West Bengal and NCT of Delhi. In Assam, the aftermath of incident of explosion at Khagragarh, Burdwan, West Bengal on 2nd October, 2014, investigations revealed presence of some Jamaat-ul-Mujahidin Bangladesh (JMB) Operatives involved in the incident, who had links in Barpeta Districts of Assam. In this connection, a case has been registered and during investigation of the case, 10 handmade bombs were recovered on being shown and led by arrested accused Nurjamal Haque. Now the case is pending for arrest of 7 accused persons who have been absconding since 2014. Altogether, a total of 56 JMB persons have been arrested in different Police Stations in Assam. There is every possibility of seizing the opportunity of using these JMB operatives of the State by inactive SIMI modules with a view to reinvigorating itself for spreading its ideology. In Jammu & Kashmir, no such organization has been found existing neither any activity by the said organization has been reported so far in the State of J&K. However, following the incident of Jail breaking by eight members of banned outfit SIMI in Bhopal in year 2016 and their subsequent killing on 31st October, 2016, one Samad Inqalabi of Ganistan Sumbal, District-Bandipora (Chairman Islami Tanzeem-e-Azadi) on 4th November, 2016 carried out a post Friday procession amid pro-freedom slogans and antinational slogans in order to exploit the sentiments of local Muslims. After last ban on 1st February, 2014 a large number of new cases have been registered against members of SIMI as well as convictions have been pronounced in many cases in various parts of the country. Many cases have also been registered by the National Investigation Agency (NIA) and convictions have also pronounced in many cases registered by them. A list of cases registered by the State Governments/UT Administrations/National Investigation Agency (NIA) against SIMI activists/members after the last ban imposed on 1st February, 2014 is enclosed as Annexure-XIV (The same is annexed as Annexure-I to this report). List of cases in which, judgment have been delivered and ended with conviction of accused SIMI activists/members on or after the ban imposed on 1st February, 2014 is enclosed as Annexure-XV (The same is annexed as Annexure-II to this report). Another list of cases registered by the State Governments/UT Administrations/National Investigation Agency against SIMI activists before the last ban imposed on 1st February, 2014 was also enclosed as Annexure-XVI.

4.17. The number of persons arrested, number of cases registered, number of persons absconding, number of persons convicted/acquitted, number of cases pending trial, number of cases under investigation etc. may vary from actual numbers in each category. The exact figures in each category will be

known from the affidavits when filed by various State Governments before Unlawful Activities (Prevention) Tribunal in the matter.

- 4.18. Since the SIMI activists continued its activities for which it was banned earlier in September, 2001; September, 2003; February, 2006; February, 2008; February, 2010; February, 2012; and February, 2014; the Government imposed a fresh ban on SIMI in January, 2019 vide Notification No. S.O. 564 (E) dated 31st January, 2019 published in the Gazette of India, Extraordinary. The Unlawful Activities (Prevention) Tribunal has been constituted vide Notification No. S.O. 931(E) dated 21st February, 2019.

**V. SUMMARY OF EVIDENCE BY STATES/UNION TERRITORY & UNION OF INDIA.**

- 5.1. In total 50 witnesses were examined by the Tribunal from the States/ Union Territories and Govt. of India. Two public witnesses also appeared before the Tribunal, one each at the proceedings held at Aurangabad and Jabalpur.

TAMIL NADU

- 5.2. Statements of four witnesses namely K. Gowthaman (PW-1), N.Ravikumar (PW-2), A. Ravi (PW-3) and S. Aravind (PW-4) were recorded from the State of Tamil Nadu wherein they deposed about two FIRs.
- 5.3. FIR No. 273/2014 was transferred from Chennai Central Railway Station to Special Investigation Division and re-registered as Crime No.2/2014 for offences punishable under Sections 326/307/302 IPC. K. Gowthaman (PW-1) tendered his affidavit and stated that on 1<sup>st</sup> May, 2014 at about 7:20 A.M., twin blasts occurred in the Bangalore-Guwahati Kaziranga Express in Coach No. S4 & S5 at Chennai Central Railway Station causing injuries to 15 passengers. During the course of investigation, the information about the involvements of SIMI activists namely Dr. Abu Faizal, Aijajudeen, Mohd. Aslam, Sheik Mehboob, Zakir Hussain, Amjad Khan and Mohammed Saliq in the blast of Bangalore-Guwahati Kaziranga Express at Chennai Central Railway Station came to light when news was published in the daily newspapers about U.P. Bijnor blast. The phone numbers, IMEI numbers of the phones and the phone book that were seized from the scene of crime of Bijnor blast in Crime no. 964/2014 and Crime No. 968/2014 were obtained from the Investigation Officer of Uttar Pradesh Police in Bijnor District, Kotwali City Police Station. The four IMEI numbers and two mobile numbers along with seven mobile numbers found in the phone book were compared with the Cell-Tower Dump collected at the scene of crime and the entire route of the train in which the twin-blast took place at Chennai Central Railway Station. Based on the analysis, mobile no.7847980513 travelled to Jolarpet on 26<sup>th</sup> April, 2014 at 2:25 A.M. and the same number's tower location was at Hosur, Bangalore Road at 3:15 P.M. The mobile was switched on again on 17<sup>th</sup> August, 2014 at 5:45 P.M. at Mehboob Nagar, Andhra Pradesh and roamed in Andhra Pradesh, Delhi, Gujarat, Maharashtra, Tamil Nadu and Uttar Pradesh. In the phone book of this number another mobile no. 7847981192 was stored in the name of Sriji and it was a Reliance, Karnataka number activated in the name of Karegoudara Mahadevamma of Dharwad. The tower location of this number was in KV Kuppam, Vellore District on 6<sup>th</sup> March, 2013 at 3:04 A.M. It matched the train time of Bangalore-Guwahati Kaziranga Express. On 3<sup>rd</sup> April, 2014 and 1<sup>st</sup> May, 2014, the tower location was Lakmanahalli, Karnataka and the number was being used by Aijajudeen @ Arvind. The above mobile locations confirmed that Aijajudeen and his team moved en-route the abovementioned train and made recce prior to the occurrence in setting and planting bomb in Bangalore-Guwahati Kaziranga Express.
- 5.4. During the course of investigation, photographs of the abovementioned persons were shown to three passenger witnesses who identified Aijajudeen and Zakir Hussain as the persons who travelled in the same Bangalore-Guwahati Kaziranga Express train on 1<sup>st</sup> May, 2014.
- 5.5. A special team of Special Investigation Division Chennai visited Dharwad, Karnataka and located the place where the abovementioned persons were staying. It was revealed that Sheikh Mehboob, Aijajudeen and Zakir Hussain were residing in a rented accommodation at Dharwad under bogus names depicting themselves as textile merchants. Photographs of these persons was shown to the house owner and the neighbors who identified them as the persons living in the rented accommodation.

- 5.6. He further stated that during the course of investigation it was revealed from Telangana Police that on the intervening night of 1<sup>st</sup>/2<sup>nd</sup> April, 2015, the Inspector of Police who was organizing vehicle checking at Suryapet Bus Stand along with his staff got suspicion over two male persons and when the Inspector was conducting enquiry about their details, all of a sudden the suspects open fired due to which one police constable succumbed to his injuries on the spot. After this incident, the Telangana Police started search operations all over the Nalgonda District to arrest the culprits. In the morning on 4<sup>th</sup> April, 2015 attackers were sighted by the police party in the limit of Janakipuram Village of Mothkur Mandal in Nalgonda District. Soon after seeing the police party, the culprits fired at the police as a result of which one more police constable died on the spot and other police officers sustained injuries. In self-defense the police party also opened fire and as a result the two-armed assailants died including Aijajudeen who was later revealed to be also involved in Chennai train blast. On 17<sup>th</sup> February, 2016, the two other persons Zakir Hussain and Sheik Mehboob were arrested along with Amjad and Mohammed Saliq by the Counter Intelligence Team, Telangana and Odisha Police in a joint operation at Plant Site Police Station in Rourkela, Orissa and a case was registered. He further stated that the confessions of the abovementioned persons confirmed the planting of the bombs on the train due to which 14 passengers sustained injuries and one of them succumbed to the injuries.
- 5.7. All the above-mentioned persons were working under the leadership of Dr. Abu Faizal (Head of the Indore unit of SIMI). They attended Darsh-e-Quran Programs as well as training camps conducted by SIMI. They all met the SIMI leaders frequently from the year 2000 and were very active.
- 5.8. N. Ravikumar (PW-2), tendered his affidavit and stated that during the course of investigation in FIR No.432/2014, registered under Sections 120B/153A/505(2) IPC, it was revealed that one Abdul Rahman @ Umari, former President of SIMI was presently heading the organization *Wahadath-e-Islaam* and carrying out meetings of the same at his residence 131-A, Kallamedu, Selvapuram, Coimbatore city with one Khaja Mohideen and eight other persons to eliminate certain leaders of Hindu Organization. He deposed about one incident dated 18<sup>th</sup> June, 2014 wherein a representative of Hindu Organization namely Tr. Suresh Kumar was murdered at Chennai. It was revealed during investigation that Khaja Mohideen who was working with Abdul Rahman Umari was behind the same and was accordingly arrested. During the course of investigation multiple other persons who attended the meeting held at the residence of Abdul Rehman were arrested. It was revealed that Abdul Rehman was the State President of SIMI Organization, and after it was banned, he had floated an organization named *Wahadath-e-Islaam* along with the SIMI sympathizers.
- 5.9. A. Ravi (PW-3), tendered his affidavit and stated that further investigation in the above noted FIR was being conducted by him and the trial was at the stage of arguments on framing of charge.
- 5.10. S. Aravind (PW-4) deposed as the Nodal Officer for the State of Tamil Nadu. He stated that earlier in 2001, SIMI was banned under the UAPA by the Central Government and preventive measures were taken at the outset by arresting 21 functionaries/activists of the banned Islamic Outfit SIMI including its Zonal President Syed Abdul Rahman Umari to pre-empt their possible designs to continue with their activities even after the banning of the outfit. He deposed that SIMI and its activists continue to indulge in unlawful activities in a clandestine manner despite the imposition of ban. He further deposed that SIMI activists/cadres are regrouping themselves in the State of Tamil Nadu under the banner of *Wahadat-e-Islaami Hind* (WeIH) to expand their militant outreach among Muslim youth under the guise of spreading Islamic ideology. SIMI activists under the guise of WeIH continue to hold meetings, classes, symposium, seminars etc. to spread their anti-national ideology.

#### MAHARASHTRA

- 5.11. Statements of four witnesses namely Ravindrasingh Santoshsingh Pardesi (PW-5), Ganesh Shinde (PW-6), Nisar Tamboli (PW-7) and Bhanupratap Shankarrao Barge (PW-8) were recorded from the State of Maharashtra.
- 5.12. Ravindrasingh Santoshsingh Pardeshi (PW-7) tendered his affidavit and deposed about five crime cases bearing Crime No.5/2006, Crime No.3/2006, LAC No.4/2006, Crime No.6/2010 and Crime No.31/2011 registered prior to 2014 and about one crime that took place in 2014 bearing Crime No. 09/2014.



- 5.13. Crime No. 5/2006 was registered at ATS Police Station, Mumbai under Sections 3(1)(i)/3(2)/3(3)/3(4)/3(5) MCOCA read with Sections 10/13/16 /17/18/19/20 UAPA and Sections 302/307/326/325/324/427/436/121A/ 122/123/124A/201/212/120B IPC and Sections 6/9B Explosives Act and Sections 3/4/5/6 Explosives Substances Act read with Section 3/4 of the Prevention of Damage to Public Property Act read with Sections 151/152/153/154 Railways Act and Section 12(1)(c) of the Passports Act with respect to seven different bomb blasts that took place in local trains on Western Railway Line, Mumbai on 11<sup>th</sup> July, 2006. Crime No.5/2006 was marked as Special Case No.21/2006 commonly known as 7/2011 Mumbai Railway Serial Bomb Blast. Out of a total of 15 accused persons, 12 persons were arrested and put to trial. 10 out of the 12 accused persons namely Tanvir Ahmed Mohd. Ibrahim Ansari, Mohd. Faisal Aatur Rehman Sheikh, Ehetesham Qutubuddin Siddique, Sheikh Mohd. Ali Alam Sheikh, Mohd. Sajid Margub Ansari, Abdul Wahid Din Mohd. Sheikh, Muzzammil Aatur Rehman Sheikh, Suhail Mehmood Shaikh, Zameer Ahmed Latifur Rehman Sheikh, Asif Khan Bashir Khan @ Junaid @ Abdullah in this case were convicted for being members of SIMI vide judgement of the Special Judge dated 30<sup>th</sup> November, 2015.
- 5.14. LAC case ATS Crime No. 3/2006 was registered at Verul Aurangabad Road where one Tata Sumo car was seized containing AK-47 rifles, 2000 live cartridges, 40 magazines and 30 kg RDX. During the course of investigation, 22 accused persons were arrested and their confessional statements were recorded wherein they admitted that they were members of the banned organization SIMI. 7 out of the 12 accused persons namely Mohd. Amer Shakil Ahmed Sheikh, Bilal Ahmed Abdul Razaq @ Bilal, Sayyed Aakif Sayyad Zafiruddin, Afroz Khan Shahid Khan Pathan, Faizal Aatur Rehman Sheikh, Mohd. Aslam, Sayyed Jabiuddin @ Zabiuddin @ Jabi Sayyed Zakiuddin Ansari @ Zabi @ Zabi Ansari @ Dawood @ Abu Jundal @ Abu Ekarama @ Aasif @ Riyasat Ali were convicted for being members of the banned organization SIMI vide judgment of the Special Judge dated 28<sup>th</sup> July, 2019.
- 5.15. LAC No.4/2006 was registered at ATS Police Station with respect to one person Ehetesham Qutubuddin Siddique who was carrying on the activities of SIMI. On a raid being conducted at his residence material and literature regarding SIMI in the form of micro cassette tape recorder, chart showing names of office bearers of SIMI at the Central and State level, diaries of attendance were seized. Ehetesham Qutubuddin Siddique was convicted by a judgment of the Special Court dated 21<sup>st</sup> October, 2016 for being a member of the banned organization SIMI. He further deposed that co-accused Abdus Suban Usman Qureshi @ Tauqir @ Zakir @ Kasim was arrested on 9<sup>th</sup> July, 2018 and a supplementary chargesheet in LAC No.4/2006 showing his association with the banned organization SIMI has been filed before the learned Special Judge. Ehetesham Qureshi disclosed the name of Abdus Subhan Qureshi as one of the office-bearers of SIMI. He disclosed about one meeting conducted by Abdus Subhan Qureshi at Ujjain with others where they part-took in illegal and anti-national activities.
- 5.16. Crime No. 6/2010 was registered on 13<sup>th</sup> February, 2010 when a powerful bomb blast took place at German Bakery Koregaon Park in which 17 people died and 56 people were injured. One of the accused persons namely Mirza Himayat Inayat Beg @ Ahmed Beg Inayat Mirza @ Yusuf was convicted for offences punishable under Sections 10/13/16/18/20 UAPA and was held to be a member for the banned organization SIMI. The accused person filed an appeal against the judgment of the Trial Court whereby he was acquitted. During the course of investigation, another accused person namely Yasin Bhatkal was arrested in the present case and is presently under trial. The State has filed a Special Leave Petition bearing SLP (Crl.) No.5289-5290/2016 against the order of the High Court which is pending before the Supreme Court of India.
- 5.17. Crime No.31/2011, was registered on 22<sup>nd</sup> August, 2011 when a secret information was received that one person namely Haroon Rashid was residing at Amber Guest House, Dadar (West), Mumbai and was in possession of counterfeit Indian currency notes in huge quantity for circulation in the market. A raid was carried out and counterfeit currency amongst other articles was seized. During the course of investigation, it was revealed that Haroon was an active member of SIMI. He further disclosed the names of two other persons namely Asrar Ahmed Abdul Hamid Tailor @ Sagari and Azhar Ul Islam Mohd. Ibrahim Siddiqui @ Munna. It was further revealed that Asrar arranged a meeting of Haroon at the office of SIMI at Phitwala Compound, Kurla, Mumbai and thereafter another meeting was arranged with Riyaz Bhatkal who was supposed to make arrangements for his travel to Pakistan for militant training. The Special Court acquitted Haroon Rashid for the offences punishable under



Sections 10/11/13/18 UAPA. State has filed an appeal against the acquittal which is pending before the Bombay High Court vide Criminal Appeal No.592/2019.

- 5.18. Crime No.09/2014 was registered on 10<sup>th</sup> July, 2014 when a low intensity blast took place opposite Shri Swami Snack Centre, Budhwar Peth, Pune where one stolen Hero Honda motorcycle was used in the blast. During the course of investigation CCTV footage from the vicinity were obtained and relevant data of mobile phones was analyzed. Five accused persons namely Mohamad Aijajudeen @ Ajaj @ Rahul @ Arvind, Mehboob Ismile Shaikh @ Gaddu @ Kisan, Zakir Hussain @ Badrukl Hussain @ Vicky Don @ Sadiq @ Vinay Kumar @ Anand, Amjad Khan Ramjan Khan @ Pappu @ Daud and Aslam Mohammad Aslam Khan @ Soheb @ Bilal @ Santosh were found to be involved in the case. During the course of investigation, they were all found to be active members of SIMI. He further deposed that all the accused persons involved in the offence died out of which three died in Madhya Pradesh and two in Telangana.
- 5.19. Ganesh Shinde (PW-6), tendered his affidavit and deposed about cases registered prior to 2014 which are still pending trial and about one POTA case No. 2/2003 in which Saqib Abdul Hamid Nachan and other co-accused persons were convicted for offences inter alia punishable under Section 4 POTA.
- 5.20. Nisar Tamboli (PW-7), tendered his affidavit and deposed about cases registered prior to 2014 bearing Crime No.3050/2001, Crime No.3012/2003, Crime No.3182/2006, Crime No.3065/2009, Crime No.3036/2008, Crime No.II-3047/2001 and Crime No.I-131/2012 wherein material pertaining to SIMI was recovered and are pending trial.
- 5.21. Bhanupratap Shankarrao Barge (PW-12), tendered his affidavit and deposed about the investigation carried out after a low intensity blast occurred on 10<sup>th</sup> July, 2014 at about 2:05 P.M. in the premises of Faraskhana Police Station, Near Shree Swami Snack Centre, Budhwar Peth, Pune which led to injuries to five persons including a police official for which Crime No.173/2014 was registered for offences punishable under Sections 120B/307/324/427 IPC read with Sections 3/4/5 Indian Explosives Act read with Sections 16/18 Unlawful Activities Prevention Act at Vishrambaug Police Station, Pune. Investigation in Crime No.173/2014 was transferred to ATS Maharashtra and the case was re-numbered as Crime No.9/2014. One black coloured Hero Honda Splendor motorcycle that was used in the blast was stolen from the court premises of Satara. The Improvised Explosive Device (IED) was planted in the dickey of the motorcycle. The FSL detected Ammonium, Potassium Nitrate, Chlorate, Chloride, Sulphate ions and traces of residual petroleum hydrocarbon oil. During the course of investigation, CCTV footages, IDs and other relevant data about the mobile towers were obtained. On analysis of the CCTV footage, two suspects were seen and recognised as the same persons who had boarded a Pune Kolhapur bus at Swargate Bus Stand, Pune. One person namely, Ajay Vijay Thorat who had travelled along with the suspects in the bus from Pune to Kolhapur was traced and images from the CCTV footage were shown to him wherein he recognised Aijajudeen as one of the persons who was travelling in the bus. Aijajudeen was also found to be the same accused who was wanted in the Khandwa Jail break case of 2013. Details of the Khandwa Jail break and Bijnor Blast case were obtained from Kotwali Police Station, Khandwa and Bijnor wherein it was revealed that same suspects were involved in both the cases.
- 5.22. During the course of investigation, information was received about the suspects hideout in Dharwad, Karnataka. They were revealed to be staying in a rental house owned by one Mr. Shivraj Kulkarni. Five accused persons namely Mohamad Aijajudeen @ Ajaj @ Rahul @ Arvind, Mehboob Ismile Shaikh @ Guddu @ Kisan, Zakir Hussain @ Badrukl Hussain @ Vicky Don @ Sadiq @ Vinaykumar @ Anand, Amjad Khan Ramjan Khan @ Pappu @ Daud and Aslam Mohammad Aslam Khan @ Soheb @ Bilal @ Santosh were found to be involved in the case.
- 5.23. Two of the accused persons namely Mohamad Aijajudeen @ Ajaj @ Rahul @ Arvind and Aslam Mohammad Aslam Khan @ Soheb @ Bilal @ Santosh were killed in a cross-fire on 4<sup>th</sup> April, 2015 in Telangana. Three of the accused persons namely Mehboob Ismile Shaikh @ Gaddu @ Kisan, Zakir Hussain @ Badrukl Hussain @ Vicky Don @ Sadiq @ Vinay Kumar @ Anand, Amjad Khan Ramjan Khan @ Pappu @ Daud were killed during a cross fire on 31<sup>st</sup> October, 2016 in Madhya Pradesh when they tried to escape from jail. Since all the accused persons were killed, the proceedings were declared abated by the Sessions Court.

TELENGANA

- 5.24. Statements of eight witnesses were recorded from the State of Telangana. D. Hari Kumar Yadav (PW-8) deposed about two crimes bearing Crime Revision No.338/2014 and Crime No. 882/2004. A. Laxminarayana (PW-9), M. Nageshwara Rao (PW-10) and J. Ravinder (PW-13) deposed about a series of crimes for which four crimes bearing Crime No. 34/2015, 120/2015, 23/2015 and 22/2015 were registered. T. Usharani (PW-14), J. Venkateswarlu (PW-15) and G.Venkat Narayana (PW-16) deposed about a bank dacoity and robbery of motorcycles used in the bank dacoity. Rajesh Kumar (PW-11) deposed as the Nodal Officer for the State of Telangana.
- 5.25. D. Hari Kumar Yadav (PW-8), Assistant Commissioner of Police, Special Investigation Team, Hyderabad City tendered his affidavit and deposed about two Crimes bearing Crime Revision No.338/2014 and Crime No. 882/2004.
- 5.26. Crime Revision No. 338/2014 was registered for the offences punishable under Sections 120B/121A/153 (A) IPC, Section 66 Information Technology Act and Section 10 UAPA. On 22<sup>nd</sup> October, 2014 two persons Shah Mudassir @ Mudassir Talha and Shoaib Ahmed Khan @ Tareek were arrested by SHO Gopalpuram. During search police seized one pen drive and three compact discs which contained Jehadi literature. In their confessional statements the accused persons confessed that they were members of SIMI. They admitted that they were planning to go to Afghanistan in order to undergo militant training under Al-Qaida. In order to communicate with Al-Qaida, they created Facebook profiles and chatted with the Jihadists Abu Said Zahid Al Hindi, Mir Showkath, Sameer Khan and Mothasim Billah. Mothasim Billah who was a resident of Hyderabad became close to them and promised to provide them financial help. The accused persons visited Hyderabad on 2<sup>nd</sup>/3<sup>rd</sup> September, 2014 where they met with Mothasim Billah who asked them to bring the explosives formula with them on their next visit to Hyderabad on 10<sup>th</sup> October, 2014. They also helped Mothasim Billah in preparing a cover for the book '*Jihad Kya Hai*'. On 21<sup>st</sup> October, 2014 they departed from Nanded, Maharashtra and reached Secundarabad Railway Station on 22<sup>nd</sup> October, 2014 where they were apprehended by the SHO PS Gopalpuram. On the search of Mudassir, four sets of explosives formula, one pen drive containing '*Jihad Kya Hai*' title page, two mobile phones and net cash of ₹2,420/- was seized. On the search of Shoaib Ahmed Khan, two mobile phones, passport and three HP CDs containing militant training and speech of Zahed Al Hindi wherein he wanted to merge Afghanistan to Hyderabad by waging war downloaded from '*Al Isabha*' website, cash and 12 sheets of literature of SIMI group regarding Jihad was seized. On 28<sup>th</sup> October, 2014 the case was transferred to SIT.
- 5.27. During the course of investigation, one mail account namely [photoshine43@gmail.com](mailto:photoshine43@gmail.com) belonging to Shah Mudassir was opened where an email was sent to Mothasim Billah on 14<sup>th</sup> September, 2014 containing three pages relating to cover page of '*Jihad Kya Hai*'. On 3<sup>rd</sup> November, 2014, two hard disks were seized from Jammu and Kashmir computers where Mudassir used to browse the internet and one more hard disk was seized from Sumayya Arts. One hard disk was also seized from DD Jaiswal construction company, two laptops were seized from AR Khan & Sons and two mobile phones make Karbon and Micro Max were seized at the instance of Shoaib Ahmed.
- 5.28. One photograph of Safdar Nagori (leader of SIMI), was recovered from the mobile of Shoaib Malik. The investigation further disclosed a larger criminal conspiracy of Shah Mudassir and Shoaib Malik in connivance with Mothasim Billah, Kamran Sha, Zahid Al Hind @ Sultan @ Sameer Khan in support of Al Qaeda, Jaish-e-Mohammad and ISIS proscribed terrorist organizations. Safdar Nagori and Shoaib Malik self-radicalized and gave their alliance to proscribed terrorist organizations during their online activities of discussions, sharing views and thereby supporting terrorist activities of Jihadi and Al Qaeda. It was revealed that they wanted to wage war against the government of India. By causing explosions they wanted to create panic among different communities and promote the enmity between different classes, thus they became members of Al Qaeda and Jaish-e-Mohammad.
- 5.29. Shah Mudassir in his confessional statement stated that during his childhood he worked in Shaheen Force and then joined SIMI in 2007. Since SIMI was banned in the year 2001, he joined Association of Indian Minorities (AIMS) which was a frontal organization of SIMI. He finally joined Jamat-e-Islami Hind in the year 2011.

- 5.30. A. Laxminarayana (PW-9), M. Nageshwara Rao (PW-10) and J Ravinder (PW-13) deposed about the escape and final encounter of two persons namely Mohd. Aijajudeen and Mohd. Aslam who were members of SIMI. On the intervening night of 1<sup>st</sup> - 2<sup>nd</sup> April, 2015, two persons namely Mohd. Aijajudeen and Mohd. Aslam opened fire on the Suryapet Police who were conducting vehicle checks at Suryapet bus stop resulting in the death of one home guard and one police constable. Two police constables were severely injured. The two persons snatched away one 9mm carbine from the police and escaped. While fleeing they also opened fire on a car resulting in injuries to the driver of the car. The case was registered as Crime No.120/2015 for offences punishable under Sections 302/394/34 IPC and Section 25(1) Arms Act.
- 5.31. On 4<sup>th</sup> April, 2015 in the early hours on receiving credible information, the complainant M.R. Gangaram, Circle Inspector of Police, Thungathurthy along with staff members while proceeding in a private vehicle towards Thungathurthy, at about 6:00 A.M., found two persons near SRSP canal bridge. When they observed the police party, they tried to escape and on police warning them to stop, they opened fire on the police party. In self-defense the Circle Inspector of Police also fired with his service pistol, but the two persons escaped. The case was registered as Crime No.23/2015 under Section 307 IPC and Sections 25(1)(A) and 27 Arms Act.
- 5.32. Subsequently, on 4<sup>th</sup> April, 2015 itself, in the morning hours on a tip off, another police team moved towards Jankipuram Nalgonda District. Meanwhile, Mohd. Aslam and Mohd. Aijajudeen confronted the police team at about 8:00 A.M. and an exchange of fire took place between the police party on one side and Mohd. Aslam and Mohd. Aijajudeen on the other side. As a result, Siddaih, Sub Inspector of Police died due to bullet injuries while two other police officers received injuries. Mohd. Aslam and Mohd. Aijajudeen also died due to the exchange of fire. The case was registered as Crime No.34/2015 under Sections 302/307/34 IPC and Section 27 Arms Act. The case was later transferred to PS Addagudur where it was re-registered as Crime No.28/2017 under Sections 302/307/34 IPC and Section 27 Arms Act. The case was referred to as 'Action Abatted' on 20<sup>th</sup> November, 2018 and final report was filed before the Court.
- 5.33. On 4<sup>th</sup> April, 2015, a case was registered bearing Crime No. 22/2015 for the offences punishable under Sections 384 IPC and Section 25(1)(A) Arms Act on the complaint of one Bingi Lingamallu who came to PS Arvapally at about 6:30 A.M. and informed that he was proceeding on his motor bike bearing number AP-20-AL-7066 near Arvapally Village Centre when two accused persons stopped him at the point of gun and forcibly took away his bike and went towards Thirumalagiri town. The motorcycle was used by the accused persons while committing Crime No. 34/2015. The complainant also identified the two accused persons who died in the cross-fire as the ones who snatched away his motorcycle.
- 5.34. T. Usharani (PW-14), J. Venkateswarlu (PW-15) and G.Venkat Narayana (PW-16) deposed about the robbery of motorcycles that were later used in a bank dacoity.
- 5.35. On 9<sup>th</sup> January, 2014 at about 4:00 P.M., case bearing Crime No.10/2014 was registered under Section 379 IPC on the complaint of Narshima Raju who stated that on 9<sup>th</sup> January, 2014 at about 10:00 A.M., he parked his Hero Honda Splendor Plus motorcycle bearing No. AP-24-L-5116 in front of Hi-Tech Lab at Chenetha Complex, Devarakonda and went into the lab. When he returned after 15 minutes, he found his motorcycle missing.
- 5.36. On 5<sup>th</sup> February, 2014 at about 5:00 P.M. case bearing Crime No.30/2014 was registered under Section 379 IPC on the complaint of Musabin Sayyed wherein he stated that on 8<sup>th</sup> January, 2014 at 4:30 P.M., he parked his motorcycle Hero Honda Passion bike bearing No. AP-11-AA-0270 with Chasis No. 06H09C14095, Engine No. 06H08M48535 at Government Hospital, Mahabubnagar and went inside the hospital. When he returned, he found his vehicle missing.
- 5.37. During investigation it was revealed that both these motorcycles were used in the commission of a bank robbery at State Bank of India, Choppadandi District.
- 5.38. On 1<sup>st</sup> February, 2014, at about 9:00 A.M., some unknown offenders entered State Bank of India, Choppadandi Branch, Karimnagar District where they confined and threatened the bank staff at the point of fire arms and took away net cash of ₹46,00,000/-. The movements of the accused persons were recorded in CCTV cameras installed at the bank. The CCTV footage recorded in the cameras were verified from which photographs of the offenders were developed. Posters and pamphlets with

the clear photos of the offenders were sent to various intelligence agencies all over the country. During the course of investigation, an information was received from Mohd. Sarvar, Incharge of Parking Stand, that two motorcycles were lying parked by five persons in the parking stand since 1st February, 2014 and nobody had come to collect the same. The Investigating Officer of Crime No.16/2014 PS Choppadandi, Karimnagar District visited the said parking lot and showed photographs of the accused captured by the CCTV cameras installed inside the State Bank of India, to the witness Mohd. Sarvar, Incharge of parking stand who identified five accused by the photographs to be the same persons who had parked the two motorcycles on 1st February, 2014 in the parking stand and thereafter did not return to claim the same. After eight months, on 12<sup>th</sup> September, 2014 a news article was published in all important newspapers wherein it was mentioned that while some persons were preparing bombs at Bijnor, Uttar Pradesh those bombs exploded and some cash pertaining to Choppadandi Bank robbery was recovered. The investigating officer visited District Jail Bijnor and met the arrested persons in the Bijnor Blast Case. Statements of five accused persons namely Husna, Rahiz Ahmad, Abdulla, Nadeem and Mohd. Furkan were recorded. They stated that on 16<sup>th</sup> May, 2014 three persons namely Amjad @ Umar, Aslam @ Imtiyaz and Younus took the 2<sup>nd</sup> floor of their building. At the first instance they stated that they were working as private marketing executives but subsequently disclosed that they were terrorists of Jamathe-al-Muzahidin group and three of their associates namely Mehboob @ Guddu, Aijajudeen, and Zakir Hussain @ Vicky Don were staying in a separate room situated at Jatna area. On 12<sup>th</sup> September, 2014 a bomb accidentally exploded due to which Mehboob @ Guddu sustained burns. The matter was leaked to police teams who were searching for them. The injured person along with his associates requested the house owners to help them escape in return of which they gave them ₹2,00,000/- approximately which they had robbed from Choppadandi Bank. When the photographs of the SBI Bank, Choppadandi robbers was shown to them, they identified them as Amjad @ Umar, Zakir Hussain, Aslam @ Imtiyaz, Guddu @ Sheik Mehaboob and Aijajudeen.

- 5.39. When the Bijnor Blast Case was transferred to NIA, they issued a poster of the accused persons. The said poster was compared with the CCTV footage collected from the bank and the accused persons in both cases were found to be the same.
- 5.40. Aijajudeen and Aslam died in the cross-fire in the jurisdiction of PS Mothkur, State of Telengana. The remaining accused persons were arrested in CR No. 38/2016 registered on 17th February, 2016 at Plant Site, District Rourkela, State of Orissa wherein the accused confessed that they had committed the robbery at SBI Bank, Choppadandi. The accused persons were lodged in Central Jail, Bhopal from where they escaped and died in a cross fire in Madhya Pradesh.
- 5.41. Rajesh Kumar (PW-11), Nodal Officer briefly deposed about all the above-mentioned cases registered in the State of Telangana against activists of SIMI. He stated that even after the ban in 2014, activists and sympathizers of SIMI have committed various crimes including killing and injuring of police officers, dacoities and robberies in order to get finances which were used for terrorist activities in the State of Telangana and other parts of India too. In order to avoid the rigors of the ban imposed on SIMI, the activists of SIMI are also operating under various other organizations like TSSI and *Wahadath-e-Islami*. The investigations have also further revealed that they have tried to collaborate with various international organizations namely *Al-Qaida*, *Jaish-e-Mohammed* and ISIS. The investigations have further revealed that they also have allegiance with Abu Faizal who was also an officer bearer of the Indore Unit of SIMI. He further stated that SIMI targets Muslim students and youth to spread its ideology.

#### CHHATISGARH

- 5.42. Statement of one witness namely Abhishek Maheshwari (PW-17) from the State of Chhattisgarh was recorded wherein he deposed about Crime No.740/2013 registered for offences punishable under Sections 3/7/10/11/13/15/16/18 UAPA, Sections 121/124A/153A IPC, Sections 25/27 Arms Act and Sections 3 and 4 Explosives Act. The crime was registered when a secret information was received with regard to suspicious activist of SIMI namely Umair Siddiqui. He was apprehended from Raipur and it was revealed that he was giving shelter to various SIMI activists at his residence in Raipur. On the basis of the confessional statement of Umair Siddiqui, the police recovered live cartridges of 315 bore, one iron sword, membership forms of SIMI, ammonium nitrate, laptop, layout of planning of Bodhgaya bomb blast, biography of Osama Bin Laden, diagram and material list of making bombs



and many other objectionable items. Umair Siddiqui in his confessional statement stated that in the year 1997, one person namely Mohd. Asfaque who was a member of SIMI came to him along with Khalid Naim, the Zonal President of Madhya Pradesh Zone of SIMI. On their persuasion he participated in the Aligarh conference of SIMI and thereafter became its member. In the year 2007, SIMI was divided into two groups, one group was led by Sahid Badar Fallah while the second was led by Safdar Nagori. He met Abu Faizal in May, 2007 along with whom he conducted many programs related to SIMI.

- 5.43. Chargesheet against 16 accused persons was filed in Crime No.740/2013 on 19<sup>th</sup> April, 2014. The first supplementary chargesheet was filed on 21<sup>st</sup> June, 2015 after the 17<sup>th</sup> accused was arrested. The 18<sup>th</sup> person apprehended was a juvenile and report qua him was filed on 16<sup>th</sup> August, 2018. The investigation is still pending as the remaining accused persons are absconding.
- 5.44. During the course of investigation, it was revealed that Umair Siddiqui along with Azharuddin Qureshi and other accused persons arranged the logistic, planning, hideout, raising of funds and procuring explosives and chemical used in the preparation of IEDs. Umair Siddiqui and Azharuddin Qureshi besides other accused have been found guilty by NIA court in Bodhgaya Bomb Blast.

#### MADHYA PRADESH

- 5.45. Statements of seven witnesses were recorded from the State of Madhya Pradesh. Brajesh Bhargava (PW-19), Jitendra Singh Patel (PW-20), Chain Singh Raghuvanshi (PW-18), and Gladwin Carr (PW-21) deposed as investigating Officers of Crime No.424/2014, 100/2015, 355/2016 and 270/2016 respectively. Nischal Jhariya (PW-22) deposed as the Nodal Officer for the State of Madhya Pradesh for the abovementioned four crimes. Vijay Singh Dewada (PW-23) deposed about Crime No.393/2016 and Prakash Parihar (PW-24) deposed about 22 cases registered prior to 2014 in which judgments have been delivered.
- 5.46. Nischal Jhariya (PW-22) being the Nodal Officer for the State of Madhya Pradesh deposed about four crimes bearing Crime No. 424/2014, 100/2015, 355/2016 and 270/2016.
- 5.47. Crime No.424/2014 was registered for the offences punishable under Sections 295A, 153B and 34 IPC. On 17<sup>th</sup> May, 2014 when 18 prisoners namely Abdul Majid, Abdul Faisal, Sajid, Irfan Nagauri, Umer, Sadik, Mohd. Adil, Khalid Ahmad, Abdul Wahid, Javed Nagauri, Abdul Aziz, Juber, Ikrar Ahmed, Mohd. Habib, Mohd. Sazid, Akil Khilzi, Rakib and Abdullah Altaf were taken to Court for hearing before the Chief Judicial Magistrate and Additional Sessions Court at Bhopal, after the hearing was over and while they were being taken back to jail at the time of entering in jail van, they started raising slogans such as “Taliban Zindabad” “Pakistan Zindabad” “Allah-uh-Akbar” etc. for which this case was registered. During the course of investigation, it was found out that these 18 accused persons were also involved in other cases and have been convicted for offences punishable under the UAPA for being members of SIMI. The Investigating Officer, Brajesh Bhargav (PW-19) also tendered his additional affidavit in evidence with copy of the judgment in Crime No.431/2010 dated 31<sup>st</sup> March, 2018, whereby Abu Faizal and Mohd. Ikrar Sheikh were convicted for offence punishable under Section 10 UAPA and were held to be members of the banned organization SIMI.
- 5.48. Crime No. 100/2015 was registered for offences punishable under Sections 353/506/34 IPC. On 8th May, 2015, a letter addressed to the Thana Incharge Gandhi Nagar was received with an application for recording of evidence through video conferencing of two SIMI members Abu Faizal and Sharafat from Jail. When they were taken for video conferencing, they tried to push the staff and run away. When they were stopped, they physically attacked the police officers on duty and started screaming “Jaisa maine Khandwa police walo ko mara hai, waise hi tum sabhi ko marwa denge”. During the course of investigation, the Jail Superintendent of Central Jail Bhopal informed that Abu Faizal was imprisoned on several counts such as murder, dacoity and cases under various provisions of Arms Act, Explosives Act and UAPA. A letter from the State Government was also received during the course of investigation informing the police officers that Abu Faizal, Sharafat and other SIMI activists had to be produced before the Court via video conferencing as they were of high risk to the society.
- 5.49. Crime no. 270/2016 was registered for the offences punishable under Sections 342/307/302/120B/224/34/353 IPC and Sections 3/10/13/16/18 and 20 UAPA. On 31<sup>st</sup> October, 2016 at about 4:00 P.M., an information was received that eight accused persons of SIMI who were lodged



in Bhopal Central Jail, had escaped after jail break, killing HC Rama Shankar Yadav and confining guard Chandan Singh inside.

- 5.50. Pursuant to this information, various check-posts were created. At 9:30 A.M. on the subsequent day information was received that the eight accused who had escaped from Central Jail, Bhopal, had been spotted at Khejada Naala near Malikheda Kot Pathar by local villagers. Three teams which had been constituted for search and arrest of these accused, reached the spot and upon sighting the eight accused, the police party asked them to surrender. When an attempt was made to apprehend them, they injured three officers of the police party by weapons like knives and daggers resulting in injuries to HC Shri Narayan Singh, Constable Mayad Singh and Constable Dinesh Khatri. When the accused persons were asked again to surrender, first they resorted to stone pelting and thereafter started firing. The police team also counter-fired and in the cross-firing, all eight accused who were the activists of SIMI, were killed. From the possession of the eight activists of SIMI, fire arms, cartridges, knives etc. were recovered. The aforesaid case was registered as Crime No.355/2016 for the offences punishable under Sections 307/147/148/149/332 IPC and Sections 25 and 27 Arms Act.
- 5.51. Statement of Abu Faizal was recorded as a witness to the said incident who stated that the information regarding the proposed jail break and the manner in which it was to be done was revealed to him by one person namely Khalid who had escaped from the jail. His statement further confirmed that the accused persons who escaped from the jail were his friends and also members of the banned organization SIMI. All the accused persons namely Sheikh Mujeeb, Akeel Khilji, Zakir Hussain, Khalid, Mohd. Amjad, Sheikh Mehboob, Majid and Mohd. Saliq @ Yunus died in a cross-fire in Crime No.355/2016 for which a closure report was filed.
- 5.52. Vijay Singh Dewada (PW-23) tendered his affidavit and deposed about Crime No.393/2016 registered for offences punishable under Section 124A IPC. On 30<sup>th</sup> October, 2016, an information was received about one person Asid who was carrying and installing black flag on which some objectionable words in Urdu along with ISIS were written. On reaching the spot, when the police party called out his name, he left the flag and fled from there. During the course of investigation, it was found that the accused person was a SIMI activist who was previously involved in Crime No.256/2006 registered for the offences punishable under Sections 3/10 UAPA.
- 5.53. Prakash Parihar (PW-24) tendered his affidavit and deposed about cases registered prior to 2014 in which judgments have been delivered by the Trial Court.
- 5.54. In Crime No. 181/2008, the learned Trial Court on 29th July, 2015, convicted the accused namely Rafik for offences punishable under Sections 3/10/13 UAPA and awarded sentence of rigorous imprisonment for a period of two years besides imposing fine.
- 5.55. In Crime No. 239/2008, the learned Trial Court on 11<sup>th</sup> June, 2015 convicted the accused persons namely Abdul Karim Ansari and Mohd. Rafiq for offences punishable under Sections 3/10/13 UAPA and have been awarded sentence of rigorous imprisonment for a period of two years besides fine.
- 5.56. In Crime No. 14/2009, seven accused were sent for trial, however, since four of them namely Akeel Khilji, Zakir, Amjad and Mehboob @ Guddu died in encounters, thus proceedings qua them were abated and Abdulla @ Altaaf, Abdul Rakeeb & Abu Faizal were convicted for offences punishable under Sections 307/120B IPC and awarded life imprisonment vide the judgment dated 29th August, 2017.
- 5.57. In Crime No. 319/2011, the learned Trial Court on 30th September, 2015 convicted the accused Babbu, Abdulla, Khaleel, Wajid and Abdul Rakeeb for offence punishable under Section 25 of the Arms Act and awarded sentence of rigorous imprisonment for a period of three years. The accused were acquitted for offences punishable under Sections 124A/153A/153B and 295A IPC as also for offence punishable under Sections 10/13/18 and 20 of UAPA.
- 5.58. In Crime No.728/2009 two accused persons namely Sheikh Mehboob and Zakir Hussain could not be arrested as they were absconding. Hence only two accused persons namely Abu Faizal @ Irshad @ Akram @ Doctor @ Izhar @ Anwar @ Faem @ Farhaan @ Ajay and Mehtab Ahmed were sent for trial. The Trial Court on 30<sup>th</sup> October, 2015 convicted Abu Faizal for offences punishable under Sections 302/302A and 120B IPC and Sections 16(1)(a) and Section 18 of the UAPA and Sections 25

- and 27 Arms Act for which he was awarded imprisonment of life till his natural death and Mehtab Ahmed for offences punishable under Section 25 Arms Act.
- 5.59. Crime No. 542/2013 was registered on 1st October, 2013 when Abu Faizal, Amjad, Aijajudeen, Zakir, Guddu @ Mehboob, Aslam and Abid Mirza absconded after the jail break from district Jail, Khandwa. Mirza Ahmed Beig was arrested and committed for trial. He was convicted vide judgment dated 30th November, 2015 for offences punishable under Section 224 IPC. Later, Abu Faizal was also arrested, committed for trial and convicted for offences punishable under Section 224 IPC vide the judgment dated 29th October, 2018. The remaining accused persons died in two encounters thus proceedings qua them abated.
- 5.60. In Crime No.72/2010 the Trial Court vide the judgment dated 10th October, 2017 convicted accused Abu Faizal for offences punishable under Sections 379 and 468 IPC and awarded him sentence of rigorous imprisonment for a period of seven years on the second count and Sharafat Ali for offences punishable under Sections 411 and 468 IPC and also sentenced him to undergo rigorous imprisonment for seven years. Mohd. Aslam died in cross-fire and thus proceedings qua him were abated.
- 5.61. In Crime No.431/2010 charge sheet was filed against 8 accused persons namely Abu Faizal, Mohd. Iqrar Sheikh, Mohd. Aslam, Zakir@Sadiq, Mohd. Aijajudeen, Sheikh Mujeeb Ahmed @ Naved @ Akram @ Moulvi @ Nitin, Sharad Singh and Shailender Kumar Mehto wherein accused Sharad Singh and Shailender Singh absconded and thus could not be tried. The Trial Court vide judgment dated 31<sup>st</sup> March, 2018 convicted Abu Faizal and Mohd. Iqrar for offences punishable under Section 120B read with Sections 395, 397 IPC besides Sections 10(1)(a) and 17 UAPA and awarded sentence for imprisonment for life. Proceedings qua Mohd. Aslam, Zakir, Mohd. Aijajudeen and Sheikh Mujeeb Ahmed were abated as they died in cross-fires.
- 5.62. In Crime No.149/2010, the Trial Court vide judgment dated 21<sup>st</sup> June, 2018 convicted Abu Faizal for the offences punishable under Sections 395/397 IPC. Since Zakir, Aslam, Sheikh Mujeeb and Mohd. Aijajudeen died in a cross-fire, proceedings qua them abated.
- 5.63. In Crime No.35/2011 charge sheet was filed against three accused namely Zakir @ Sadiq, Mohd. Farhat @ Khalid and Nizamuddin @ Nizam. The Trial Court vide judgment dated 15<sup>th</sup> March, 2019 convicted Mohd. Farhat @ Khalid for the offences punishable under Sections 302/307 and Section 16(1)(a) of the UAPA and awarded imprisonment for life along with fine. Mohd. Nizamuddin @ Nizam was acquitted thus the State of Madhya Pradesh filed an appeal before the High Court challenging the order of acquittal. Zakir @ Sadiq died during the trial in cross-fire thus proceedings qua him abated.
- 5.64. In Crime No. 224/2011 the Trial Court vide the judgment dated 28th September, 2018 convicted Mohd. Farhat for the offence punishable under Section 307 IPC and awarded sentence of rigorous imprisonment for 10 years and fine and for offence punishable under Section 25 of the Arms Act, he has been awarded sentence of imprisonment for a period of three years. Nizamuddin was acquitted and accused Zakir Hussain died during the trial in cross-fire hence proceedings qua him abated.
- 5.65. In Crime No. 706/2006 the Trial Court vide the judgment dated 27th December, 2008, convicted nine accused persons namely Sarfaraz, Ameenuddin, Khursheed Ahmed, Wasimuddin, Javed Akhtar, Jameel Ahmed, Sarfaraz Ahmed, Vashfaq Hussain and Parvez Akhtar for the offences punishable under Section 295A and two remaining accused Mohd. Ali and Shakeel were convicted for the said offences vide a separate judgment dated 5th April, 2019.
- 5.66. In Crime No. 120/2008, the Trial Court vide judgment dated 27th February, 2017 convicted seven accused persons namely Safdar Nagori, Amil Parvez, Kamruddin, Kamran, Shivli, Ahmed Baig and Hafiz Hussain for the offences punishable under Section 122/124A/153A IPC and Sections 10(a)(ii)/13(1)(a)(b)/13(2) UAPA and Section 25(1b)(a) Arms Act. Additionally, Safdar Nagori, Amil Parvez and Kamruddin were convicted for the offences punishable under Sections 4 & 5 of the Explosives Act.
- 5.67. In Crime No. 269/2001 the Trial Court vide the judgment dated 23rd July, 2015, convicted Sarfaraz for the offences punishable under Sections 3 & 13 of UAPA.
- 5.68. In Crime No. 01/2014 the Trial Court vide the judgment dated 28th February, 2019, convicted five accused persons namely Abdul Aziz, Javed, Abdul Wahid, Jubair and Mohd. Adil for the offences

punishable under Sections 16B and 18 of UAPA and Sections 4 and 5 of the Explosives Substance Act and awarded punishment for life imprisonment. The State has filed an appeal against the acquittal of the five other accused persons which is pending consideration.

#### KERALA

- 5.69. Statements of three witnesses were recorded from the State of Kerala. S. Sreejith (PW-25) deposed about six cases as the Nodal officer of the State. Binu T.S. (PW-26) deposed about Crime No.448/2010 and A. Premjith (PW-27) deposed about Crime No.533/2013 and Crime No.697/2013.
- 5.70. Binu T.S. (PW-26) tendered his affidavit deposed about Crime No. 448/2010 registered on 17th August, 2010 for the offences punishable under Sections 124A/153A/153B(1)(c) read with Section 34 IPC. The FIR was registered pursuant to a raid conducted at 'Nanma Books' Court Road, Kozhikode from where large number of books, CDs, VCDs, ID cards and one hard-disc containing indiscriminating contents were seized. The above noted books, CDs, VCDs and hard-disc contained material questioning the secular values of India, inciting hatred against other religions and carrying potential of creating communal disharmony. During the search and seizure, the books named "SIMI Nirodhanam Nerum Nunayum", "Asavarnark Nallathu Islam", "Islamum Deseeyathayum", CD containing soft copy of "Asavarnark Nallathu Islam", VCD having description of "Encounter killing and State Terrorism by Prof. Sayyid Abdul Rahman Geelani, Kashmir", 15 VCDs having description of "Ettumuttal Kolapathakangalum Bharanakooda Bheekarathayum" which means Encounters and Murders and State Terrorism, 18 CDs having description "Madaniyum Thudarum Muslim Vettayum", Shahid Saddam Hussain Nagar, Perumbavoor, 1 Hard disc, some visiting cards, copy of application for registration of Islamic Student Association appealing to District Registrar Kozhikode, copy of ID card of one Mahin, a plastic board having description "Simi Nirodhanam Ullum Puravum-Seminar" were seized. During the course of investigation, confessional statement of Abdu Rahiman was recorded wherein he stated that co-accused Rasik was an activist of SIMI. After the completion of investigation charge sheet was filed against P.K. Abdu Rahman, Shanawaaz, Mahin, Rasik A and K.T. Hanif on 28<sup>th</sup> October, 2018.
- 5.71. A. Premjith (PW-27) tendered his affidavit deposed about Crime No.533/2013 and Crime No.697/2013.
- 5.72. Crime No. 533/2013 was registered for the offences punishable under Section 153A/153B/34 IPC. On 4<sup>th</sup> September, 2013, information was received about selling and distribution of a book namely 'Dahvathum Jihadum' at Thirurangadi Book Stall, Kozhikode. The said book is a Malayalam translation of the book 'Jahiliath ke Khilaf Jung' written by Abdul Aleem Islahi and translated by Usman Kadungoth. A search was conducted at Thirurangadi Book Stall on 5<sup>th</sup> September, 2013 from where 19 copies of the book were seized and at Nanma Books on 7<sup>th</sup> September, 2013 from where 4 copies of the book were seized. The book contained many sentences and ideas to promote enmity and hatred between different religions and questioning the secular values of India as a nation. The confession statement of Abdu Rahiman revealed that he was an active member of SIMI and was involved in its activities. As the investigation in the FIR was complete a proforma report was submitted for sanction of the prosecution on 12th February, 2019.
- 5.73. Crime No.697/2013 was registered for the offences punishable under Section 153A/153B/34 IPC. On 28<sup>th</sup> September, 2013 a book titled "Vazhiyadayalangal" was purchased and it was found that it was allegedly invoking enmity among the people and caused to destruct the communal harmony and integrity of the nation. It was being sold at Vachanam Book Stall, Kozhikode. It was found that "Vazhiyadayalangal" was the Malayalam translation of the book named "Milestone" written by one Sayeed Syed Khuthab and translated by Mr. Hafsa who got the book published from Nanma books. During the investigation it was found that P.K. Abdu Rahiman was an accused in Crime No.533/2013 too where he had made a confessional statement accepting his connection with SIMI. After completion of investigation, proforma charge sheet was prepared and sent for sanction of the prosecution.
- 5.74. S. Sreejith (PW-25) tendered his affidavit and deposed about the three abovementioned cases as the Nodal Officer of the State. In addition, he also deposed about three other cases for the State of Kerala that had been transferred to NIA.

- 5.75. Crime No. 257/2008 was registered for the offences punishable under Sections 122/124A/153A/120B IPC and Sections 10/13 UAPA and Sections 25/27 Arms Act wherein it was noted that the activists of SIMI had assembled at an isolated place at Tangal Para near Kolahalamed, Wagamon and were conducting physical training and arms training of its members. They even marked signs on the rocks promoting enmity between different groups and trying to break the integrity of the nation. Investigation in this case was transferred to NIA vide communication dated 22nd February, 2010 and the FIR was re-registered as RC-04/2010/NIA/DLI. Ankit Kumar Garg (PW-28) tendered his affidavit and deposed that during the course of investigation it was revealed that a secret training camp was being organized by members of SIMI at Thangalpara, Wagamon and the training camp was attended by various SIMI activists from various States across the country. During the camp participants were engaged in physical training, arms training, firing practice, manufacture of petrol bombs, motor bike racing and rope climbing. Statement of one accused person namely Manjar Alam was recorded under Section 164 Cr.P.C. wherein he confessed that he was a member of SIMI and gave various details about the training camp. On completion of investigation chargesheet was filed on 13<sup>th</sup> January, 2011 against 37 accused persons. The learned Special Court (NIA) vide judgment dated 14<sup>th</sup> May, 2018 convicted Saduli, Hafeez Hussain, Safdar Nagori, Shibily P, Mohammed Ansar P A, Abdul Sathar, Aamil Parwaz, Mohammed Sami, Mohd Asif, Nadeem Sayeed, Mufti Abdul Bashar, Danish @ Safi, Manzar Imam, Alam Jeb Afridi, Dr. Asadulla H A, Mohammed Abu Faisal Khan @ Shamsheer, Kamaruddin Nagori, Shakeel Ahammed and Dr. Mirza Ahamed Baig for the offences punishable under Sections 120 B/122/124A and 153 IPC, Sections 10/13/18/20 and 38 of the UAPA, Section 4 of Explosives Substances Act and Sections 25 and 27 of Arms Act.
- 5.76. Crime No. 159/2006 was registered for offences punishable under Section 120B read with Section 124A IPC and Sections 10/13 of UAPA. Five ex-SIMI activists were found taking classes on the subject of the part played by the Muslims in the independence struggle. They were found distributing pamphlets and books containing the principles and views of the banned organization SIMI amongst the participants. They also propagated the activities of SIMI in Kashmir and their activities against the Government in Kashmir. Investigation in this case was transferred to NIA and case was registered as RC-03/2010/NIA/DLI on 21<sup>st</sup> January, 2010. Chargesheet was filed on 24<sup>th</sup> April, 2014 against 17 accused persons. Learned Special Court (NIA) vide judgment dated 25<sup>th</sup> November, 2015 convicted five accused persons namely P.A.Shaduly @ Haris, Abdul; Rasik, Ansar @ Ansar Nadvi, Nizamudeen @ Nizumon and Shammi @ Shamma for offences punishable under Sections 120-B IPC read with Section 124-A IPC and Sections 10(a) (ii) and 13(1)(b) of the UAPA. The High Court of Kerala reversed the judgment of the Special Court and acquitted the accused persons. Hence, NIA is in the process of filing a Special Leave Petition in the Supreme Court.
- 5.77. Crime No.356/2008 was registered for the offences punishable under Sections 120B/121/121A/124A IPC and Section 3 read with Sections 13(2)/16/18/38 and 39 of UAPA. During the investigation of this case it was revealed that four persons residing in Distt. Kannur were taken by the activists of SIMI to Kashmir for being given the teachings and trained in the activities of SIMI. Investigation in this case was transferred to NIA.

#### BIHAR

- 5.78. Statements of two witnesses were recorded from the State of Bihar. Kundan Kumar Singh (PW-32) deposed about Crime No. 377/2017 which was later renumbered as Crime No.1/2017 on transfer. Rajesh Kumar (PW-33) deposed as the Nodal officer of the State.
- 5.79. Crime No.377/2017 was registered for the offences punishable under Sections 216/124A/120B/34 IPC and under Sections 13/16/18/19/20/38 UAPA. On 13<sup>th</sup> September, 2017, on an information received, two persons namely Pathan Tausif Khan and Sanna Khan @ Shahansha were apprehended and arrested by a raiding party. During search and seizure, when the accused persons were asked about the material recovered, they stated that in the devices seized there was a sketch of training module, code word for the use of arms and ammunition and date related to messages sent to members of their own organization. In furtherance of their Jehadi mission they used different cyber cafes situated at different areas of the town for sending messages and to strengthen their organization. On recovery of voter ID card of Pathan Tausif Khan, information was received from Gujarat police revealing that he was an active member of the banned organization SIMI and was an absconder in the Ahmedabad Serial Bomb Blast case. He had taken shelter in the house of an ex-member of SIMI Gulam Sarvar Khan in



- Gaya. He was teaching at Mumtaz High School under the fake identity of Atik Khan. During the time he was a teacher he became close to Sanna Khan @ Shahansha who was influenced by his thought and ideas and thus started to work for SIMI. During the period that he was a teacher he used to send messages through e-mail to the activists of SIMI and used the same for propagating Islam. They were active in Gaya Town and its nearby areas to collect funds for Islamic Jehadi movement that they spent at Ranchi, Patna, Mumbai, Delhi and other places in order to strengthen the organization. The case was then transferred to ATS Bihar and was re-numbered as Crime No.1/2017 on 26<sup>th</sup> September, 2017. In one of the hand-written documents name of the CBI Spl. Judge Palodia who had convicted Safdar Nagori and 10 other SIMI activists, name of the Government Advocate Bimal Kumar Mishra, were mentioned. Besides Jehadi literature, train and bus tickets, hand-written terror plans, code used for the same and a mobile phone with a SIM-Card were recovered. In the Jehadi literature, photocopy of the book written by Hazrat Mohmood Moullana Masud Azhar titled Darso-A-Jehad, Khilafat Ka Tamam Masayakka Waheed Hal, Khilafat Ki Wapasiki Wasaraten, Khilafat Or Barre Zaheer, and five photo copies of another Jehadi literature namely Fahrista-e-Avabav in spiral binding were recovered. Additionally, different type of code words, Nabha jail break strategy – failure and success, Naxalite jail break strategy, information relating to Sabarmati jail and name of some SIMI terrorist who had been killed in Police encounter were recovered.
- 5.80. Pathan Tausif Khan in his confessional statement stated that he had joined the banned organization SIMI while he was residing at Ahmedabad when he got acquainted with members of SIMI namely Alam Zeb Afridi, Mujib Sheikh, Qayamuddin Kapria and Md. Zahid. They used to meet and talk about making the organization stronger. He further stated that he was arranging weapons and wanted to form a new organization by adding like-minded people for which he has made a training program which included physical and arms training. He further stated that organizations like IM and SIMI are working hard for the betterment of Muslims, but these organizations are being banned by the government.
- 5.81. Gulam Sarvar Khan in his confessional statement stated that he was a member of SIMI and harbored Pathan Tausif Khan since December, 2008 in his house. He further stated that members of SIMI used to retire at the age of 30 after which they used to join Jamaat-e-Islami. In the year 1982, due to the activation of SIO, the distance between SIMI and Jamaat-e-Islami Hind organization increased, then a new organization Wahadath-e-Islami-Hind was established by retired members of SIMI, whose head office was made in Saharanpur. The pen drive, SIM-card and the memory card recovered were sent to FSL and as per the report of FSL, 722 document files were retrieved out of which 45 items containing books published from Lahore and Pathankot (Pakistan) written by Syed A'la Maududi, who was the founder of Jamaat-e-Islami, Indian Army, Kargil War, India-Pakistan War of 1965, plan syllabus, book and material relating to linking him to Al-Qaida, SIMI and ISIS were recovered. The video files which included songs, slogans, lectures of banned organization such as ISIS, Al-Qaida, JEM, LET were also recovered.
- 5.82. During the course of investigation, statement of one witness Anurag Basu was recorded under Section 164 Cr.P.C. wherein he stated that he was the owner of a cybercafé. On 13<sup>th</sup> September, 2017 in the afternoon two persons came to his shop and asked for the computer for their use, but did not provide any proof of identification. He had seen photos of Al-Qaeda terrorists on the Internet issued by the Delhi Police. He identified one of the persons as the one in the photograph. While using the computer, one of the persons wanted to attach a file of Chand on Facebook.
- 5.83. Statement of another witness Pramod Kumar Srivastav was recorded wherein he stated that Gulam Sarvar Khan had been a full member (Ansar) of banned organization SIMI and was still engaged in providing support to this banned organization. Statement of Md. Aftab Alam Khan was recorded under Section 161 Cr.P.C. wherein he informed that under the fake name Atik Khan he was giving tuitions to the students of Class-IX of Shatabadi School.
- 5.84. Statement of Sahanabaj Khan younger brother of Gulam Sarvar Khan was also recorded under Section 161 Cr.P.C., who stated that after the partition of the property in the family, he was running the school where Pathan Tausif Khan was teaching in the fake name Atik Khan. He got to know about him and that he was involved in terrorist activity in Gujarat on 15<sup>th</sup> September, 2017.
- 5.85. Rajesh Kumar (PW-33) deposed as the Nodal Officer for the State of Bihar. In addition to Crime No.377/2017 he deposed about five more FIRs.



- 5.86. On 7th July, 2013, in early morning hours a series of bomb explosion took place in the campus of Mahabodhi Temple at different places and also at Terger Monastery, 80ft. statue of Lord Buddha, under a bus bearing registration number UP-65-BT-8455 stationed at Sujhata Bypass road resulting in injuries to several persons and damage to property connected with highest religious seat of Buddhism situated at Bodhgaya. Three live bombs (Cylinder IEDs) were recovered from 80 ft. statue of Lord Buddha, Terger Monastery and Baiju Bigha Rampur Mor, Bodhgaya, Bihar. Three FIRs bearing no. 162/2013, 163/2013 and 164/2013 were registered pursuant to the blast. The cases were transferred to NIA on 9<sup>th</sup> July, 2013 and were re-registered as RC-07, 08 and 09/2013/NIA/DLI. Ankit Kumar Garg (PW-28) tendered his affidavit deposed that during the course of investigation confessional statements of Umair Siddiqui and Azharuddin Qureshi were recorded under Section 164 Cr.P.C. wherein they confessed that they were members of SIMI and gave details about the planning of the Bomb Blasts. Three protected witnesses were examined during the course of trial who confirmed the association of the accused persons with SIMI. Witness X-10 stated that he attended the Darsh programme organized in the year 2008 and that in the said programme, Tabrez, Majid, Muzammil Uzair, Haider etc. used to come and say that Muslim Communities across the world are being tortured and they are not getting their rights so they should take revenge of it. Witness X-12 stated that while offering Namaz at Rehmat Colony, he came in contact with Tabis Nayaj and Ujair Ahmad whereafter he started attending programmes of Darsh-e-Quran. Haider used to attend the said programme every time and never missed the same. Later he was informed by Haider that Darsh-e-Quran is the programme of SIMI whereafter the witness stopped attending the said programme despite reminders by Haider two-three times. Witness X-18 stated that his meeting was arranged with one Umair Siddiqui, who used to conduct Darsh programme at his house where he was also introduced to one Abdullah. During the meeting of Darsh, discussion on Quran and Jihad used to take place. It used to be discussed that Muslim community across the world are being beaten and killed and they should take revenge of Gujarat riots where Muslims have been killed.
- 5.87. In the charge sheet (Ex.PW-28/4) filed by NIA based on the investigation carried out in RC No. 07, 08 and 09 of 2013 as also initial breakthroughs revealed in the investigation of RC 06/2012 after the arrest of Indian Mujahideen (IM) operative Ahmed Siddiqui @ Yasin Bhaktal by the NIA in August, 2013 (after one and half months of Bodhgaya blasts), it was found that Yasin Bhaktal used to chat with IM Chief Riyaz Bhaktal (reportedly to be present in Pakistan) on internet, in which they also disclosed about targeting Bodhgaya. They wanted to take revenge against the alleged atrocities by Buddhist on Rohingya Muslims in Myanmar. In one of the chat sessions, Riyaz Bhaktal told Yasin about some operatives of SIMI including a person namely "Beauty" (later identified as Black Beauty @ Haider @ Abdullah of Ranchi) who may be involved in the Bodhgaya serial blasts. The chat also referred to one SIMI operative Manzar Imam, who had been arrested by then. The relevant chat conversation between Yasin Bhaktal and Riyaz Bhaktal related to Bodhgaya were placed on record with the charge-sheet.
- 5.88. By the judgment dated 25<sup>th</sup> May, 2018, learned Special Judge convicted accused Umair Siddiqui, Azharuddin Qureshi, Imtiyaz Ansari @ Alam, Haider Ali @ Abdullah @ Salim and Mujibullah Ansari for various offences and noted that the accused persons were members of SIMI and in that capacity conducted several programmes and were also part of the planning of the bomb blast at Both Gaya.
- 5.89. On 27<sup>th</sup> October, 2013, a bomb blast took place inside the public convenience area at platform No. 10 of Patna Railway Junction, Bihar. In the said incident serious injuries were received by one of the accused as well, namely, Tarique, who succumbed to the injuries, however, injured Imtiyaz Ansari was arrested and interrogated. FIR No. 361/2013 was registered at PS Patna, GRP with respect to this incident. During the investigation Imtiyaz Ansari revealed that their co-accused were attending the Hunkar rally at Gandhi Maidan, Patna and on the same day a series of bomb blasts took place at Gandhi Maidan Patna leading to the death of six persons and injuries to 89 persons. In this regard FIR No. 451/2013 was registered at PS Gandhi Maidan, Patna on 27<sup>th</sup> October, 2013. The FIRs were transferred to NIA for further investigation on 31<sup>st</sup> October, 2013. Later, on the basis of information provided by accused Imtiyaz Ansari recovery of IEDs and other incriminating material was made. One more case was registered as FIR No.985/2013 on 4th November, 2013 at PS Hindipiri Police Station, Ranchi for various offences under the IPC, Explosives Substances Act, Unlawful Activities (Prevention) Act and Criminal Law Amendment

Act. Anurag Kumar (PW-31) tendered his affidavit and stated that NIA re-registered these cases as RC-10, 11, 12/2013/NIA/DLI on 1<sup>st</sup> November, 2013. Additionally, Ankit Kumar Garg (PW-28) Nodal Officer for NIA also deposed about the Patna blast case.

- 5.90. During the course of investigation Umair Siddiqui and Azharuddin Qureshi were examined. Umair Siddiqui in his statement under Section 164 Cr.P.C. stated that his father was a member of Jamat-E-Islami. During his school life he was associated with SIO, a student organization of Jamat-E-Islami. He further stated that in the year 2007 SIMI was divided into two groups out of which one was headed by Sahid Badr Falah and the other by Safdar Nagori. He joined the Safdar Nagori group along with the SIMI cadres of Madhya Pradesh. Umair Siddiqui and Azharuddin Qureshi disclosed how they along with their associates planned blasts at Patna where a rally was supposed to take place. On completion of investigation a common charge sheet was filed on 24<sup>th</sup> April, 2014 in RC No.10 and 11/2013/NIA/DLI against accused person Imtiyaz Ansari for the offences punishable under sections 302/324/326/307/121/121A/120B/34 IPC and Sections 3/4/5 of Explosive Substances Act, Sections 16/18 and 20 of UAPA and Sections 151/153 of Railways Act and Section 17 of the Criminal Law Amendment Act. In the chargesheet it was noted that the members of the banned terrorist outfit i.e. IM and SIMI were the key planners of the bomb blast which was carried out on 27th October, 2013.
- 5.91. Subsequently, a supplementary chargesheet was filed on 22<sup>nd</sup> August, 2014 against Haidar Ali, Numan Ansari, 'T' (a minor), Mujibullah Ansari (A-4), Umair Siddiqui (A-5), Azharuddin Qureshi (A-6), Ahmed Hussain (A-7), Fakhruddin (A-8) Md. Firoz Aslam (A-9) and Md. Ifteqaar Alam (A-10) for the offences punishable under sections 120B IPC r/w 302/324/326/307/121/121A/34/468/471 and 201 IPC, Sections 3/4/5 of the Explosive Substances Act, sections 16/18/18A/18B/19/20/21/23/38 and 40 UAPA wherein involvement of various other persons in the attacks was found out.
- 5.92. During the course of trial three witnesses deposed about the association of the accused persons with SIMI. Ratan Mishtri stated that Umair Siddiqui in his presence disclosed that he was the main man of SIMI in Raipur. He further disclosed that he had kept certain articles relating to SIMI in his house. On search of the house, police seized about 25-26 items including sword, ammunition, books in Urdu language, receipt of donation, certificate related to SIMI, some currency notes/paise. The protected witness deposed that he had attended a programme that was organized near his house by Haider who was an activist of SIMI. Faizan Latif deposed that Azharuddin was his senior in the same school. Azharuddin took him to the house of Umair Siddiqui where taqreer was organized. 14-15 persons were present apart from Umair Siddiqui, Azharuddin Qureshi, Haider and Abdullah. In the taqreer, a discussion/appeal was being made to collect fund for SIMI organization. It was also discussed how to get new boys associated with SIMI organization. Haider, Abdullah and Umair Siddiqui educated them about making bombs.

#### GUJARAT

- 5.93. Statements of three witnesses were recorded from the State of Gujarat. Bhagirathsinh V Gohil (PW-34), Rajendrasinh R Sarvaiya (PW-35) and Himanshu Solanki (PW-36) deposed about crimes registered prior to 2014 in which investigation is still going on.
- 5.94. Bhagirathsinh V Gohil (PW-34) tendered his affidavit and deposed about 35 FIRs. 20 FIRs were registered in 2008 for offences punishable under Sections 307/120B/153(A)(1)(b)/121(A)/124(A)/201/188/465/ 467/471 IPC and under Sections 4/5 Explosive Substances Act, Sections 10/13/15/16/18/20/23/38/39/40 Unlawful Activities (Prevention) Act and under Sections 65/66 Information Technology Act, pursuant to bomb blasts carried out in various areas of Ahmedabad which resulted in the death of 56 persons and grievous injuries to 240 persons. During investigation of the cases it was found that activists of SIMI had organized a training camp where firing, river crossing, swimming and rock climbing were taught.
- 5.95. On the same day bomb blasts took place at Surat City too. Rajendarsinh R Sarvaiya (PW-35) deposed about 15 cases that were registered pursuant to plantation of 29 live bombs found from different locations in Surat from 27<sup>th</sup> July, 2008 to 9<sup>th</sup> August, 2008.

- 5.96. The investigation in the 20 cases registered in Ahmedabad and 15 cases registered in Surat were then clubbed together and a common trial is ongoing. 12 accused persons in the above bomb blast are still at large and yet to be arrested, thus investigation is still pending qua them.
- 5.97. During the course of investigation, confessional statements of accused persons were recorded in which they confessed to be members of SIMI. 6 accused persons were arrested after the ban in 2014 and their confessional statements were also recorded subsequently in which they have stated that activities of SIMI are still continuing.
- 5.98. Himanshu Solanki (PW-36) Nodal Officer tendered his affidavit and deposed about the Ahmedabad and Surat Bomb Blast case registered in 2008 in which trial is still pending. He further deposed about six more cases registered prior to 2014.

#### KARNATAKA

- 5.99. Statements of three witnesses were recorded from the State of Karnataka. D.M. Prashanth Babu (PW-38) deposed about Crime No. 35/2016 and Mohammed Sajjad Khan (PW-39) deposed about Crime No.276/2014 and Crime No.473/2015. Rajendra Prasad (PW-40) deposed as the Nodal officer of the State. Additionally, Pratibha Ambedkar (PW-29) deposed about the Church Street Blast case on behalf of the NIA.
- 5.100. Mohammed Sajjad Khan (PW-39) tendered his affidavit and deposed about Crime No. 276/2014 and Crime No.473/2015 which were registered for the offences punishable under Section 436 IPC on two written complaints given by S. Wajid Babu regarding two fire incidents at the Israeli Visa Centre on 2<sup>nd</sup> August, 2014 and 29<sup>th</sup> November, 2015. During the course of investigation statements of witnesses were recorded but accused persons remained unidentified. Subsequently, Alam Zeb Afridi was arrested by NIA and he made the disclosure in respect of his role in FIR No. 276/2014. Supplementary statements of Deepak Kumar Singh and Devraj Gupta were recorded who identified Alam Zeb Afridi as the same person, who had set on fire Israeli Visa Centre office. Alam Zeb Afridi in his confessional statement admitted his involvement in the serial bomb blast at Ahmedabad and Surat City in the year 2008 followed by the Church Street blast at Bengaluru and the two above noted FIRs. He also mentioned about his association with SIMI and stated that he got attracted to terrorist activities after watching the social media and the war which started between Israel and Palestine.
- 5.101. Rajendra Prasad (PW-40), Nodal Officer tendered his affidavit and deposed about the abovementioned cases. He further stated that in the serial blasts that took place in 2008 chargesheet has been filed and the case is pending trial.
- 5.102. He further deposed about Crime No. 309/2014 registered for the offences punishable under Sections 121A/120B/121/153/307/302 IPC and Sections 3/4/5 of Explosives Substances Act and sections 3/10/16 and 18 of UAPA which was later transferred to NIA and re-registered as RC-01/2015/NIA-HYD. Pratibha Ambedkar (PW-29) on behalf of NIA tendered her affidavit deposed that the abovementioned case was transferred to NIA on 18<sup>th</sup> May, 2015 with respect to IED explosion near Coconut Grove Hotel at Church Street in Bangalore. After the NIA took over the investigation, CCTV data collected during the preliminary investigation was analyzed and video footage of the suspect was identified and uploaded on Youtube for identification. In order to carry out the investigation in the present case NIA officials were present in Bangalore and by the joint team Alam Zeb Afridi was arrested. D.M. Prashant Babu (PW-38) tendered his affidavit and deposed about Crime No. 35/2016 which was registered for the offences punishable under Sections 341/353/333/307/34 IPC. On 23<sup>rd</sup> January, 2016 the local police who was working with the NIA officials received an input stating that a terror suspect namely Alam Zeb Afridi @ Rafiq @ Javed was moving in Vinayak Nagar, Dodda Nagamangala Road and Hosa Road areas of Bengaluru. On receiving this information, the police team reached the area around 12:00 noon. At around 4.00 P.M. they spotted the suspect and identified him as Alam Zeb Afridi and started following him. On realizing that he was being followed, Alam Zeb Afridi turned around and hit his bike on the police team and fell down. On being apprehended he attacked the police team and the lady who was accompanying him on the bike took out a knife from her bag and handed it over to him. Alam Zeb Afridi attacked one police officer in his abdomen with the knife and tried to flee from

the spot. The portrait of the suspect matched the photograph of the accused in Wagamon Camp conspiracy case that was posted by the NIA on its website.

- 5.103. During the course of investigation, confessional statement of Alam Zeb Afridi was recorded wherein he stated that while he was studying in Gujarat he was attracted by the writings and advertisements of terrorism through the internet and media. Being inspired by the posts on the internet, he expressed his interest to participate in terrorist groups. Thereafter, he was trained to manufacture explosives and fire arms. In 2008, he participated in a series of bomb blasts that occurred in Gujarat after which he absconded and moved to Hyderabad. In 2010 he moved from Hyderabad to Bangalore. While in Bangalore he was active on social media about terrorism and discussed his ideas with terrorists in other countries. He was an active member of the banned organization SIMI and collected various advertisements and papers on terrorism. He further confessed to have been involved in activities of terrorism in the State of Kerala. A search was conducted at the residence of Alam Zeb Afridi wherein incriminating material including pamphlet/handbills in the name of “STOP ISREAL-SAVE PALASTINE”, warning against ISIS, Ramzan Mubarak, Stainless steel knife about 1 ft., Digital Clamp meter, Atlas of Quranplaces, Nations’, Landmarks, Aluminium Neutron capacitor, Air Pressure checker, knife type wooden key chain written as Jihad on one side and urdu word on another side, bottle containing some liquid, Banners containing ‘Boycott Israel’, ‘Join Hand with Jamiat Ulma-I-Karnataka’, ‘Protest against Israel Terrorism’, ‘Save Lives to stop Zionism-Boycott Israel’, ‘Think before your purchase-Pray for Gaza’, ‘Israel is Terrorist state’, ‘Boycott Israeli products’, ‘Israel is Terrorist country’ etc. were recovered. On completion of investigation, a chargesheet was filed for offences punishable under Sections 341/353/333/307/34 IPC. During the course of investigation, Alam Zeb Afridi confessed that he was living in Bangalore under a fake identity of Rafiq.
- 5.104. Accused Alam Zeb Afridi was found to be involved in both the cases registered at Halasur Police Station regarding firing at Israeli Visa Centre, Cubbon Park bomb blast and at Wagamon Camp case, Kerala. In the Wagamon Camp case Alam Zeb Afridi has already been convicted for offences punishable under Sections 10 and 38 of the UAPA.
- 5.105. Additionally, Ankit Kumar Garg (PW-28) Nodal Officer for NIA also deposed about the Bangalore Church Street Blast case.

#### UTTAR PRADESH

- 5.106. Statements of two witnesses were recorded from the State of Uttar Pradesh. Akash Kumar (PW-42) deposed about Crime No. 9/2019 and Asim Arun (PW-43) deposed as the Nodal Officer for the State of Uttar Pradesh.
- 5.107. Crime No.9/2019 was registered for the offences punishable under Sections 420/467/468/471 IPC and Section 8 Notaries Act when one person namely Mohd. Faiz who was also under trial in FIR No.186/2001 for offences punishable under Sections 153/153A/153B/505 IPC and Sections 3A/10/13 UAPA was arrested on 27<sup>th</sup> January, 2019 at the immigration counter at the Varanasi Airport in furtherance of a lookout circular that was issued against him. During the course of investigation, it was revealed that Mohd.Faiz had travelled abroad to promote the ideas and objectives of SIMI and raise funds for the organization.
- 5.108. Asim Arun (PW-43) tendered his affidavit and deposed about 20 cases registered prior to 2014 which are pending trial. He further deposed about three FIRs bearing no. 590/2014, 597/2014 and 598/2014 pertaining to the Bijnor Blast. Investigation in these cases was transferred to NIA and were re-registered as RC-01/2015/NIA/DLI, RC-10/2015/NIA/DLI, RC-11/2015/NIA/DLI. Sudhanshu Singh (PW-30) tendered his affidavit and deposed on behalf of the NIA in regard to these cases.
- 5.109. On 12<sup>th</sup> September, 2014, one bomb blast took place in the house of one Leelo Devi at Jattan Mohalla, Bijnor. During the course of investigation, it was revealed that six persons were residing in the house of Leelo Devi on rent on the day of the incident after which they absconded. After analysis of CCTV footages, six persons were identified as Mohd. Amjad, Sheikh Mehboob, Zakir Hussain, Mohd. Aslam, Mohd. Aijajudeen @ Aijajudeen and Yunus @ Mohd. Saliq. Among the accused persons Mohd. Amjad, Zakir, Sheikh Mehboob, Mohd. Aslam and Mohd. Aijajudeen were found to have escaped from Khandwa Jail in Madhya Pradesh.



- 5.110. Husna, Nadeem, Furkan, Raees and Abdulla were arrested for providing logistical support and shelter to the accused persons in their house. From their house detonators and cash amounting to ₹7,74,600/- were recovered. During the course of investigation, it was found that after escaping from Khandwa jail Aijajudeen, Aslam, Zakir and Mehboob had committed bank robbery. The money recovered from the house of Husna was found to be the one looted from SBI bank, Choppadandi Branch, Karim Nagar, Telengana. It was further revealed that Aijajudeen and Aslam died at Nalgonda District in Telengana in an encounter on 4<sup>th</sup> April, 2015. The remaining accused persons Zakir, Amjad, Mehboob and Saliq were arrested on 17<sup>th</sup> February, 2016 by Rourkela Police in Orissa. During the interrogation, Zakir, Amjad, Mehboob and Saliq revealed about their association with SIMI. Mehboob in his interrogation stated that he was in contact with senior leaders of SIMI including Safdar Nagori and Abu Faisal. He had attended various camps organized by SIMI including the Wagamon camp and was involved in Khandwa Jail break and the Bijnor Blast.
- 5.111. On 31<sup>st</sup> October, 2016 Zakir, Amjad, Mehboob and Saliq along with four other SIMI activists killed a Head Constable and escaped from Central Jail Bhopal. Shortly after their escape, all of them died in an encounter in Bhopal. The same has been discussed in detail in the testimony of Nischal Jhariya (PW-22).
- 5.112. During the course of investigation statements of witnesses were recorded establishing the association of the accused persons with SIMI. Ms. Rinki deposed about the stay of Aslam, Mehboob, Saliq, Aijajudeen and Zakir in the house of Leelo Devi when blast took place on 12<sup>th</sup> September, 2014. Statements of family members of Aslam, Mehboob, Amjad and Zakir were also recorded wherein they stated that the accused persons were members of the banned organization SIMI.
- 5.113. During the course of investigation, a laptop and CPU was seized from the scene of crime and sent for FSL. Words like JIHAD, ISIS and SIMI were found in the seized articles as per the FSL report.

#### ODISHA

- 5.114. Statement of one witness namely Tapan Kumar Mohanty (PW-46) was recorded from the State of Odisha. He tendered the affidavit and deposed about Crime No. 2/2016 registered for offence punishable under Sections 147/148/120-B/121/121-A/122/307/467/471/149 IPC read with Sections 27 of the Arms Act and Sections 18/20 of the UAPA. On 17<sup>th</sup> February, 2016 at 12.05 am, information was received at P.S. Plant Site Rourkela about 4 young boys, who were staying with a lady at the house of one person namely Mohd. Usman on rent for the last few months. These persons were suspected of possessing fire arms and ammunitions that were being used for unlawful activities. Pursuant to this information, a raid was conducted at the house of Mohd. Usman from where, four young boys namely Shaikh Mehboob, Zakir Hussain, Mohd. Saliq and Amjad Khan along with one lady namely Nazma Bee were apprehended. Three of them were equipped with small fire arms. Apart from that, live ammunitions and incriminating articles such as cash, mobile phones, laptops, memory cards, dongles, SIMI's literature and fake PAN Cards were recovered.
- 5.115. Mohd. Amjad Khan in his disclosure statement stated that in the year 2004, Mehboob, Saliq and Feroz took him to Akhil Khilji's house where he was delivering a speech on the revival of SIMI. In 2005, Mehboob informed him about the Darsh programme and its affiliation with SIMI. He was also informed that since SIMI was a banned organization, they could not conduct programmes openly. During their weekly meetings, Mehboob and Saliq used to discuss about holy war Aayat in Quran. In the year 2006, he was introduced to Ekrar Sheikh and Abu Faizal who informed him about working in SIMI. He along with Abu Faizal conducted various illegal activities like open firing on R.S.S. volunteers, committing bank robbery and theft of motor cycles etc. He was arrested in 2009 and was eventually lodged in Khandwa Jail. While he was in Khandwa Jail, he along with his fellow SIMI members, Abu Faizal, Aijaz, Aslam, Zakir Hussain, Mehboob and Akhil Khilji made a plan to escape from jail. On 1<sup>st</sup> October, 2013, they escaped from Khandwa jail. Immediately on their escape, a police patrolling team tried to nab them but they attacked the police personnel and snatched away two weapons and two motor cycles and escaped from there. After their escape, they stayed at various places in Maharashtra and Karnataka. He further confessed about the planning and execution of the bank robbery conducted at State Bank of India at Choppadandi, Telangana. After the execution of the bank robbery, they moved around in various



areas of U.P. and Uttarakhand. While they were residing at Bijnor, an accidental blast took place, during the preparation of bombs. After the Bijnor blast, they were residing near Zeenatul Masjid, Rourkela from where they were apprehended on 17<sup>th</sup> February, 2016. Disclosure statements of Zakir Hussain, Sheikh Mehboob and Mohammad Saliq were also recorded wherein they also confessed their role in the bank robbery at Choppadandi and the Bijnor blast. During the course of investigation, illegal arms and ammunitions along with literature relating to SIMI and books, cash and one car were seized from their possession. All four accused persons namely Shaikh Mehboob, Zakir Hussain, Mohd. Saliq and Amjad Khan were shot dead during exchange of fire with the police after escaping from Central Jail, Bhopal.

#### RAJASTHAN

- 5.116. Statements of three witnesses were recorded from the State of Rajasthan. Anant Kumar (PW-47) deposed about FIR No.3/2014, Shiv Bhagwan Godara (PW-48) deposed about FIR No.112/2014 and FIR No.113/2014. Alok Vashishta (PW-49) deposed as the Nodal Officer of the State.
- 5.117. FIR No.3/2014 was registered for the offences punishable under Sections 16/17/18/18A/18B/19/20/23 UAPA and under Sections 121/121-A/122/465/468/471/120B IPC and Sections 4/5/6 Explosives Substances Act when one person namely Zia-ur-Rehman @ Waqas who belonged to the banned terrorist organization IM was arrested and in the custody of Delhi Police in FIR No. 54/2011 revealed during interrogation, that a module of IM was also active in Rajasthan under the leadership of Maruf @ Ibrahim and Mohd. Wakar. Pursuant to the said information a raid was conducted at the residence of Maruf @ Ibrahim in Jaipur. During the raid, several incriminating materials including laptop, mobile phone, pen drive, books and documents were seized and Maruf @ Ibrahim was arrested. During interrogation, Maruf @ Ibrahim stated that one of his associates namely Wakar Azhar was also a resident of Jaipur. Thereafter, a raid was conducted at the house of Wakar Azhar in Jaipur from where Wakar Azhar and Mohd. Niyajuddin were arrested and several incriminating materials were seized from Wakar Azhar's room.
- 5.118. During the course of investigation, one person namely Ashraf Ali was also arrested in Jodhpur for which FIR No.113/2014 was registered. He was also arrested in the present FIR and he was found to have been associated with the banned organization SIMI. Investigation from Ashraf Ali inter alia revealed that he was associated with members and activists of SIMI and IM. It was further revealed that he was attending programs of Ahle-A-Hadees since 1996 and was looking after the work of Indian Union Muslim League. He was associated with Abdul hamid Khilji, Naseer Gauri, Tariq Gauri, Prof. Abdul Hai, Siddiq Ramaji, Azam, Suhail, Javed Modi, Javed Qureshi, Suwaleym Imran Mahawat and Imran Behlim who were active members of SIMI. In the year 2008, Azam and Suhail were arrested for being members of SIMI and the situation in Jodhpur at that time was very tense. It was also revealed that they were involved in various Jihadi campaigns and activities of Indian Mujahideen which had come up as a front organization of SIMI.
- 5.119. On the basis of the disclosure statement of Maruf @ Ibrahim, two raids were conducted in Jodhpur. On 23<sup>rd</sup> March, 2014 a raid was conducted at the house of Sakib Ansari and several incriminating materials and huge quantities of ingredients of bomb and explosives were recovered from his house. Pursuant to this raid FIR No.112/2014 was registered for the offences punishable under Sections 18/19/20 UAPA read with Section 4/5 Explosive Substances Act and Section 120B IPC. A second raid was carried out at the house of Liyakat Ali from where 34.880 kg gun powder was recovered amongst various other incriminating materials pursuant to which FIR No.113/2014 was registered for offences punishable under Sections 3, 4 and 5 of Explosive Substances Act and Sections 5 and 9B of Explosives Act.
- 5.120. During the course of investigation, computer, hard drives, laptop etc. were sent for forensic examination. On examination, it was found to contain various jihadi videos and other incriminating contents. On 6<sup>th</sup> April, 2016 pursuant to an administrative order FIRs No.112/2014 and 113/2014 were clubbed together and renumbered as 113/2014. A combined charge sheet was filed on 3<sup>rd</sup> April, 2016 against Barkat Ali, Mohd.Sakib Ansari, Ahsraf Ali, Mashraf Iqbal, Mohd.Javed, Jahir Haq, Mohd.Maruf, Mohd.Wakar Azhar @ Haneef @ Mohseen, Mohammad Ammar Yasar, Tahseen Akhtar @ Monu @ Hassan @ Sahil and Jiyaurrahman @ Wakas.

- 5.121. Alok Vashishtha, (PW-49) deposed as a Nodal Officer of the State of Rajasthan. Apart from the abovementioned cases he deposed about three cases that were registered prior to 2014 which are pending trial. He further stated that the banned organization SIMI has been active in Rajasthan for many years. The organization has influence in many districts of Rajasthan and has contributed in an adverse manner to the peace and communal harmony of the State. SIMI has been broaching a rigid and intolerant ideology among the minority community and mainly in the youth.

DELHI

- 5.122. Statements of three witnesses were recorded from the National Capital Territory of Delhi namely Govind Sharma (PW-41), Attar Singh (PW-44) and Manishi Chandra (PW-45).
- 5.123. Manishi Chandra (PW-45) tendered his affidavit and deposed about FIR No.54/2011 which was registered on the apprehension of accused Mohd. Quateel Siddiqui @ Sajan @ Siraj @ Vivek Mishra on 21<sup>st</sup> November, 2011. Arms, ammunition, fake Indian currency and other incriminating articles were recovered from his possession. During the course of investigation, he disclosed that he was a member of the banned organization Indian Mujahidin (IM) and was involved in various terrorist activities across the country. Subsequently, 18 other accused persons were arrested, and an arms and ammunition factory being run by IM was also unearthed at Meer Vihar in Delhi. As the investigation continued, more incriminating evidence was found against IM and more accused persons were arrested. In September of 2012, Riyaz Bhatkal along with his associate Tehsin @ Monu were planning a blast and discussions were going on for procurement of explosives, arms, fake IDs and participation of Waqas in the blast. It is during this time that Riyaz Bhatkal directed Tehsin @ Monu to get in touch with Haider @ Black Beauty. In December, 2012, when Riyaz asked Monu about the status of explosives he was informed that as per instructions from his seniors Haider @ Black Beauty told him that they were not interested in working with IM. Monu told him that Haider @ Black Beauty's group (SIMI) believed in 'hijrat' that is migration before action which professed that for waging jehad its followers should leave India and join ranks with the jihadis in Afghanistan and from there, consolidate to wage war against India. Riyaz Bhatkal was interested in establishing contact with the *Amir* of Haider for the purpose of forging an alliance. Tehsin @ Monu informed him that Haider @ Black Beauty would assist them in the operation. Monu believed that Haider @ Black Beauty was not in agreement with the earlier SIMI philosophy that doing jihadi work before hijrat was wrong. Agreeing with this, Riyaz Bhatkal had said that these ideological differences between IM and SIMI could be discussed keeping in mind the Quran and Hadees. Tehsin @ Monu further informed him of Haider @ Black Beauty's apprehension about Riyaz Bhatkal's connection with ISI. Haider @ Black Beauty further informed Tehsin @ Monu about the fact that Safdar Nagori had condemned their way of functioning. On 30<sup>th</sup> December, 2012, Monu informed Riyaz Bhatkal about his meeting with Haider @ Black Beauty and discussed whether he could be taken along with for future assignments. Tehsin @ Monu further informed Riyaz Bhatkal that senior members of SIMI were not in the mood to share their IDs for establishing communication. In March, 2013, Tehsin @ Monu discussed the arrangement of explosives with Haider @ Black Beauty. Tehsin @ Monu in his disclosure statement, stated that under the directions of Yasin Bhatkal, he had taken shelter in Ranchi at the house of Imtiyaz Alam who was a member of SIMI. He confessed he had moulded Imtiyaz Alam and taken him out of the fold of SIMI/Haider @ Black Beauty and indoctrinated him to IM. During interrogation, Imtiyaz Alam disclosed that he had met Haider @ Black Beauty in the year 2010 in a Masjid in Ranchi. Haider talked to him about the various atrocities committed on Muslims and about jihad. After his introduction to Haider, he also became a member of SIMI. In the year 2011, Tehsin @ Monu and he discussed plans to unite SIMI and IM to wage jihad. Imtiyaz Alam in his disclosure statement further stated that Tehsin made him meet Yasin Bhatkal while he was residing at his home. Yasin told them that if SIMI and IM reunite, then they can do some great work together. Yasin and Riyaz Bhatkal were both interested in meeting Abdus Subhan @ Tauqeer. Tauqeer was Haider @ Black Beauty's *Amir*. In August, 2012, Tehsin had told him that the next terrorist activity would take place in Delhi. Imtiyaz Alam in his supplementary disclosure statement stated that Tehsin @ Monu used to talk to Haider @ Black Beauty and request him to arrange his meeting with Tauqeer because Riyaz Bhatkal and Yasin Bhatkal were looking for their old accomplice. Haider @ Black Beauty informed him that the one way to meet Tauqeer is via Umair Siddiqui as he was an old link between SIMI and IM.

- 5.124. Govind Sharma (PW-41), tendered his affidavit and deposed about FIR No. 50/2014, which was registered pursuant to a credible information received on 20<sup>th</sup> October, 2014 about the accused of Bijnor blast who were planning to carry out terrorist activities in Delhi. Pursuant to the Bhopal and Khandwa jail break encounters, there was panic among the leaders of SIMI and IM, due to which, members of SIMI and IM were organizing various meetings outside the country to revive SIMI and IMs cadres in India again. During the course of investigation, information was also received that Abdul Subhan @ Abdus Subhan @ Tauqeer was the main conspirator for reviving both SIMI and IM in India. In 2018, Abdul Subhan @ Tauqeer was arrested in FIR No. 08/2018 for offences punishable under Sections 186/353/307/34 IPC & Sections 25/27 of the Arms Act. Abdul Subhan @ Tauqeer in his disclosure statement stated that after the Ahmedabad Surat blasts in 2008, he had escaped to Nepal where he stayed at different places till January, 2018. During his stay in Nepal, he tried to connect with SIMI and IM cadres. He managed to contact one person namely Afif, who was residing in Pakistan through various social media channels. Thereafter, Afif met him at Riyadh in March, 2016 where they discussed the future of SIMI and IM and the purpose for which these organizations were established. In November, 2016, Afif again met him in Riyadh along with Riyaz Bhatkal, Iqbal Bhatkal, Mohsin Chaudhary and Ariz Khan. Subsequently, they had 4-5 meetings in order to discuss the revival plan of SIMI and IM. They also discussed about the killing of 8 SIMI cadres in Bhopal police encounter and decided that they had to take revenge for the same. Since Ariz Khan and he were not in touch with either the SIMI or IM cadre in India, they presumed that they were out of the radius of India's intelligence agencies so they could make a visit to India for the purpose of reuniting SIMI and IM. According to their plan, they visited U.P. and Bihar in India multiple times. In January, 2018, when he was visiting India, he was arrested. Ariz was also supposed to visit India in January/February, 2018 as he had fixed up meetings with ex-cadres of SIMI/IM in U.P. and Delhi.
- 5.125. On 13<sup>th</sup> January, 2018, Ariz Khan was arrested from the India-Nepal border. Ariz Khan in his confessional statement, stated that in the year 2002-03, he came in touch with Atif Ameen who was highly radicalized and motivated for Islam and wanted to do jihad. On motivation from IM and ex-SIMI members, he got involved in execution of several terrorists' incidents in India. He was involved in U.P. Court blast in 2007 and Delhi serial blasts in 2008. In 2008, when the Delhi Police raided his flat at Batla House, he managed to escape while his associates got trapped. After escaping, he went to Nepal and came in touch with Abdul Subhan Qureshi @ Tauqeer and with the help of top operators of IM based in KSA & Pakistan, he planned to revive IM/SIMI in India again.
- 5.126. Attar Singh (PW-44) tendered his affidavit and deposed about two FIRs registered prior to 2014 bearing Nos. 304/2001 and 532/2001. He further deposed about FIR No.50/2014 wherein the disclosure statement of Abdul Subhan Qureshi @ Tauqeer was recorded who stated that he was a member of the banned organization SIMI. He was the editor of SIMI run magazine 'Islamic Movement' which was published from the Delhi headquarter of SIMI. He used to motivate people to join SIMI through articles in his magazine and public meetings. He was very close to the core group of SIMI, and aware of its organizational structure. He was in touch with Riyaz Bhatkal and Iqbal Bhatkal and other members of SIMI/IM before he got arrested. In his supplementary disclosure statement, he stated that in 2014 one person namely Tehsin Akhtar @ Monu had visited Haider @ Black Beauty and told him that Riyaz and Iqbal Bhatkal wanted to contact him. Haider @ Black Beauty conveyed the message to him through Manzar Imam. Since he was not sure about Tehsin's identity and he did not wish to expose his relationship with IM to Haider @ Black Beauty therefore he denied the request to meet on the basis of ideological differences. However, he remained in contact with them through secret platform.
- 5.127. Though not part of the reference but to bring to notice of the Tribunal regarding the continued activities of SIMI, the Union of India also examined Rahul S. (PW-37) from NIA. He tendered his affidavit deposed about RC-02/2019/NIA/KOC registered for the offences punishable under Sections 18/18B/38/39 of UAPA. The case was registered when input was received by the Central Government that one person namely Mohd. Azharuddin who was a resident of Coimbatore along with his associates had been propagating the ideology of terrorist organization ISIS/DAISH. He had been recruiting vulnerable youth in order to carry out terrorist attacks in South India. The abovementioned case was registered against five other persons apart from Mohd. Azharuddin

namely Akram Sindha, Sheikh Hidayatullah, Abubacker M., Sadham Hussain and Ibrahim @ Shahin Shah. During the course of investigation, search was conducted at the house of Mohd. Azharuddin from where 41 documents including books advocating Jihad, magazines published by the banned terrorist organization SIMI, mobile phones, SIM cards, pen drives, hard disk and internet dongle was seized. Search was also conducted at the house of Sheikh Hidayatullah from where a poster attributable to SIMI was recovered besides magazines published by the banned organization SIMI.

- 5.128. S.C.L. Das (PW-50) was examined on behalf of the Ministry of Home Affairs. He tendered his affidavit and deposed that the notification dated 31<sup>st</sup> January 2019 banning SIMI was based on information and material received from State Governments, Union Territories and Intelligence Agencies with regard to the activities of SIMI being carried out post the ban in 2014. He further relied upon the background note and earlier bans which have been reproduced in this report.
- 5.129. He further stated that the evidence recorded by this Tribunal clearly establishes that SIMI continues to indulge in unlawful activities causing a serious threat to the internal security of the country. Various intelligence inputs received further establish that SIMI has been continuing its activities throughout the country. He also stated that despite the ban SIMI and its sympathizers have continued to carry on their unlawful activities under the garb of various cover organizations. They have indulged in radicalizing and brain washing the minds of Muslim youth by Jehadi propaganda and through provocative Taqreers. The arrest of various SIMI activists has revealed their plans to eliminate targeted individuals and establish nexus with like-minded Jehadi outfits in India and abroad.
- 5.130. He further tendered in evidence a sealed cover containing intelligence inputs and correspondence received from the various states as also the Draft of the note put up to the Cabinet Committee on Security. In his cross-examination conducted by Mr. Ashok Aggarwal, Advocate for Mr. Humam Ahmed Siddiqui questions with respect to non-application of mind by the Ministry while handing over the Cabinet Note were put up which were denied by him. He further deposed that the note put up to the Cabinet Committee was prepared as per the laid down practice and procedure which consisted of the background of the subject matter, the summary of the cases, the intelligence inputs, analysis thereof and the views of the Ministries consulted insofar as what was relevant for the Government to form its opinion under Section 3(1) UAPA. He further stated that the material placed before the Cabinet Committee shows reasonable association of the accused with SIMI. Furthermore, suggestions were made to him regarding the authenticity of the background note which were strongly denied by him.

#### PUBLIC HEARING WITNESSES

- 5.131. Statements of two public witnesses namely Mr. Anjum Imandar (PHW-1) and Mr. Sheikh Sarfaraz (PHW-2) was recorded by the Tribunal at Aurangabad and Jabalpur respectively.
- 5.132. Mr. Anjum Imandar (PHW-1) At the outset objection was raised by the Learned ASG with respect to the fact that the affidavit tendered by him was not verified. In his deposition on oath before the Tribunal he deposed about the German Bakery Blast in 2010 and the Farshkhana Bomb Blast in 2014 wherein he stated that the investigation carried out by ATS was faulty and not done as per the procedure. He further handed over a book titled '*Brahminists Bombed Muslims Hanged*' authored by S.M. Mushrif to further his claim that Muslims are being falsely implicated in terrorist cases for crimes that have been carried out by Brahminist organizations. In his cross-examination he stated that the facts stated by him were not based on his personal knowledge but like everybody his knowledge and opinion were based on reading of newspapers, books and magazines.
- 5.133. Mr. Sheikh Sarfaraz (PHW-2) in his testimony stated that he has been falsely implicated in three cases by the local police officers. He further admitted that though the scope of the Tribunal is not to adjudicate the cases registered against him however in most of the cases people have no affiliation to SIMI. He tendered 13 judgments in evidence wherein the accused persons have been acquitted for offences punishable under Sections 3/10/13 UAPA. In furtherance to this claim, during his cross-examination it was revealed that the son of his counsel namely Mohd. Ali was an accused in the Gujarat Bomb Blast case and was in custody for the last 10 years.



VI. **Locus Standi – I.A. No. 01/2019**

- 6.1 Mr. Humam Ahmed Siddiqui, the former President of state unit of SIMI, Uttar Pradesh pursuant to a show cause notice received filed an application before this Tribunal being IA No. 01/2019 putting up his appearance, for participation in the proceedings and sought copies of the documents accompanying the reference under Section 4(1) of the UAPA read with Rule 5 of the UAPA Rules as well as copies of any other evidence filed by the Central Government as and when it is filed. Central Government filed a reply to the application taking an objection that under Section 4 of the UAPA only “the association or the office bearers or members thereof” are entitled to show cause as to why the association should not be declared unlawful and that Mr. Humam Ahmed Siddiqui had no locus standi to move the application in his capacity as a former member of SIMI and as admittedly he does not represent the association. The reply also noted that the evidence filed before this Tribunal on behalf of the Central Government contains extremely sensitive information which cannot be put out in the public domain. According to the Central Government, since SIMI has continued its unlawful activities in a clandestine manner as held by successive Tribunals it would be wholly improper to allow the applicant to participate in the proceedings merely on the averment that he was an ex-member during the period prior to 27<sup>th</sup> September, 2001. The maintainability of the application was also challenged by the Central Government.
- 6.2 Vide the order dated 1<sup>st</sup> July, 2019, this Tribunal decided the application by returning a finding that Mr. Humam Ahmed Siddiqui is entitled to participate in the proceedings and receive documents. It was held:

“1. This application has been moved on behalf of Sh. Humam Ahmad Siddiqui, who was a member and also the President of the state unit of SIMI for Uttar Pradesh, seeking copies of the documents accompanying the reference under Section 4 (1) of the Unlawful Activities (Prevention) Act, 1967 read with Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 as well as the copies of any other evidence filed by the Central Government, as and when it is filed. He submits that he is an affected party on account of the ban on SIMI, in term of the Act and Rules made thereunder.

2. Mr. Ashok Agarwal, learned counsel appearing on behalf of the applicant submits that Mr. Siddiqui got the knowledge of these proceedings pursuant to public notice and notice to the applicant issued by this Tribunal. It is further submitted that ever since the organization was banned in 2001, it has not been in existence thereafter and there are no office bearers or members of the organization.

3. The Central Government has filed its reply to the application stating that the applicant is neither representing the association and nor does he claim to be an office-bearer or member thereof, and, thus, he has no locus to seek copies of documents accompanying the reference and is also not entitled to seek copies of other evidence filed by the Central Government. It is further submitted that it is a cardinal principle of law that where a statute specifically prescribes as to who is entitled to show cause under Section 4 of the UAPA, it is not open for any third party to step into the shoes of the association for the purpose of the present proceedings. Learned ASG submitted that the applicant has not even attempted to explain in his application as to whether he is entitled to show cause as to whether the association should not be declared unlawful. This assumes relevance since the present proceedings are in the nature of a lis between two parties, as held by the Hon’ble Supreme Court.

4. Learned ASG has further submitted that even on past occasions when the alleged ex-members were allowed to participate in the proceedings, the same was on the basis that the expression “members” and “office bearers” will include the members and Office Bearers of the Association when the first ban was imposed on SIMI. However, given that the first ban was imposed as far back as 2001 and the fact that despite such ban SIMI has continued its



*unlawful activities in a clandestine manner as held by successive Tribunals, it would be wholly improper to allow the applicant to participate in the proceedings merely on the averment that they were ex-members during the period prior to 27.09.2001. It is, thus, submitted that the application is not maintainable and is liable to be dismissed.*

5. *Learned ASG while referring to sub-section (2) of Section 3 has submitted that it is only the affected Association, its office bearers and members which is called upon to show cause as to why it should not be declared unlawful. The argument put forth by the learned ASG is that this clause must be interpreted to read exclusion of all the other stakeholders, if any, and only the Association would stand entitled to represent itself before the Tribunal and no one else. It is, thus, argued that the present applicant, by virtue of the said sub-section (2) of Section 3 of the Act stands excluded from the category of persons who can represent the Association in these proceedings.*

6. *In support of her contentions, learned ASG has referred to the decision of the Supreme Court in Jamaat-e-Islaami Hind versus Union of India (1995) 1 SCC 428 wherein the Supreme Court has dealt with the issue of nature of proceedings under UAPA and has held that the nature of enquiry by the Tribunal requires it to weigh the material on which the notification under sub-Section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for to decide the existence of sufficient cause for declaring the Association to be unlawful. The Supreme Court has further held that the entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides and the enquiry is in the nature of adjudication as a lis between the two parties, which, in the present case, are the Central Government and the Association. It is submitted that in view of this observation of the Hon'ble Supreme Court, there is no occasion for this Tribunal to permit a third party, not being an Association to participate in these proceedings.*

7. *Learned ASG next referred to the decision of the Supreme Court in Vaiko, General Secretary, MDMK versus Union of India & Ors (2013-4-L.W.391) to contend that the applicant is not an aggrieved party and that his application seeking copies of the documents and proceedings of the Tribunal is liable to be dismissed. Learned ASG referred to paras 8 & 11 of the said judgment to contend that the applicant is neither an office bearer nor a member of the SIMI organization and, thus, no ground is made out for either for supply of copies as sought for by him or for his participation in these proceedings. Learned ASG also referred to the decision of the Supreme Court in Shobha Suresh Jumani versus Appellate Tribunal Forfeited Property and Another (2001) 5 SCC 755 to press home her submissions.*

8. *Learned ASG, while referring to the decision of the Supreme Court in Digi Cable Network (India) Pvt. Ltd. versus Union of India, 2019 SCC OnLine SC 17, submitted that even if the applicant is not afforded the opportunity to participate in these proceedings and to obtain copies of documents and orders, there would be no violation of the principles of natural justice since in cases where issues of national security are involved, like in the present case, it is the duty of the Court to read into and provide for statutory exclusion even if it is not expressly provided in the Rules. Learned ASG submitted that what is in the interest of national security is not a question of law but is a matter of policy and it is for the executive to decide as to what is in the interest of the State and what is not. It is submitted that since the members of the banned organization were acting against national interest,*

*even if they are not represented in these proceedings, there shall be no violation of the principles of natural justice. It is contended that the principles of natural justice cannot be imported into the issue relating to national security.*

9. *Learned counsel for the applicant, in rejoinder, submitted that the observations of the Supreme Court in Jamaat-e-Islaami (supra) in fact supports their contention that the proceedings before this Tribunal cannot be permitted to be an ex-parte proceeding and the other side must be afforded reasonable opportunity to defend the banned organization. Thus, it is contended that the observation of Supreme Court that the lis is between the two parties must be read as the Central Government on the one side and the former office-bearers or members on the other.*

10. *The Central Government declares an Association as an ‘Unlawful Association’ in terms of sub-section (1) of Section 3 of the Act, and the grounds therefor are required to be specified in terms of sub-section (2). Sub-section (3) of Section 3 provides that no notification declaring an Association as ‘Unlawful Association’ shall have effect until the Tribunal constituted in terms of Section 4(1) of the Act, has confirmed the declaration made therein and the order of the Tribunal is published in the Official Gazette.*

11. *The proviso to sub-section (3), however, authorizes the Central Government to declare an Association as an ‘Unlawful Association’ with immediate effect, without awaiting the confirmation by the Tribunal in terms of Section 4 of the Act, if in its opinion circumstances exist which render it necessary to do so. Of course, the Central Government is required to state the reasons in writing, for exercising its power under this proviso. Relevant portion of Section 3 of the Act reads as under:*

“3. *Declaration of an association as unlawful –*

(1) *If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*

(2) .....

(3) *No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:*

*Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.*

(4) .....

12. *Section 4 of the Act reads as under:*

“4. *Reference to Tribunal.—*

(1) *Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.*

(2) *On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.*

(3) *After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.*

(4) *The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.”*

13. *A harmonious reading of the aforesaid provision with sub-section (2) of Section 4 of the Act, makes the legislative intent very clear. Whenever the Central Government forms an opinion that an Association has become an ‘Unlawful Association’ it may declare it to be so, but the ban comes into operation only on a confirmation by the Tribunal constituted under Section 4 of the Act. Thus, on the date when the Central Government declares an Association as ‘Unlawful’, the Association does not cease to exist with immediate effect. The ‘Association’ has the opportunity to appear before the Tribunal and defend itself and it is only after the Tribunal renders its finding on the ‘Sufficiency of material’ that the ban on the Association becomes operational and the Association ceases to exist. Thus, at the stage of issue of notice, in terms of sub-section (2) of Section 4, the legislature has not contemplated a ceasure of the existence of the Association.*

14. *The dichotomy in the provisions of the Act, which has given rise to the argument of the learned ASG, arises when the Central Government exercises its power under the proviso to sub-section (3) of Section 3 by declaring the Association to be ‘Unlawful’ with immediate effect, thus, taking away its right to defend itself before the Tribunal, prior to the ban coming into force. Thus, when the power under proviso to sub-section (3) is exercised, the effect thereof is that the Association, its office-bearers, and members cease to exist with immediate effect and become ‘Ex’ or ‘Former’ ‘office-bearers’ and ‘members’ of the Association, which does not exist after the ban. The said Association, office-bearers and members shall expose themselves to ‘offences and penalties’ as provided in Section 10 to 14 of Chapter-III of the Act, if they continue to espouse the cause of the Association and identify themselves as the office-bearers and members of the Association.*

15. *Thus, when the Central Government had constituted the Tribunal under Section 4 of the Act, after exercising its powers under proviso to sub-section (3) of Section 3 of the Act, by banning the Association with immediate effect, the right to defend the Association does not get taken away but gets vested with the former office-bearers and members of the Association, like the applicant herein.*

16. *In case the argument advanced by the learned ASG is accepted, the right conferred by way of sub-section (2) of Section 4 of the Act pursuant to show cause notice under Sub-Section 4 of Section 3 of the Act to defend is rendered otiose. In that case, no notice is required to be issued since no*

Association exists after the ban and once there is no Association, then there can be no office-bearers or members. This could never have been the legislative intent. The argument of the learned ASG also runs counter to the decision of the Supreme Court in Jamaat-e-Islami Hind (supra) wherein it was held that the proceedings before the Tribunal are in the nature of list and the Tribunal is required to decide the sufficiency of the cause to declare the Association Unlawful on the material placed by the Government, the Association and any other material called for.

17. Right to form an Association is a fundamental right enshrined under Article 19(1)(c) of the Constitution of India subject to clause (4) of Article 19 of the Constitution providing that nothing in sub-clause (c) of clause 1 of Article 19 shall effect the operation of any existing law in so far it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause. Principles of natural justice warrant that no fundamental right be taken away without affording an opportunity of hearing to the person likely to be aggrieved by such taking away of the right. The Association, if banned by exercising the power under the proviso to sub-Section (3) of Section 3 of the Act, shall continue to have a right of representation and to be heard against the ban through its former office-bearers, members and sympathizers. The Statute cannot be interpreted in a manner so as to lead to denial of the fundamental rights conferred on the citizens by the Constitution or to do away the principles of natural justice. A fair opportunity to show cause and defend is an edifice of the Rule of Law, which must be adhered to scrupulously and diligently.

18. Accordingly, in view of the aforesaid discussion, the objection raised on behalf of the Central Government to the locus of Mr. Humam Ahmad Siddiqui, to participate in these proceedings or to receive documents is rejected. Mr. Humam Ahmad Siddiqui is held entitled to participate in these proceedings. Copies of the material being placed before the Tribunal by the Central Government be supplied to the learned counsel representing Mr. Humam Ahmad Siddiqui.

19. Application is disposed of.”

## VII **Legal Issues:**

- 7.1 On the arguments of parties, besides the issue of privilege of documents which is being separately dealt, broadly the following three issues arise for consideration:
- i. Nature and scope of inquiry before this Tribunal.
  - ii. Admissibility and relevancy of the evidence adduced before this Tribunal in the form of statements made to the police officers and the seizures made during the course of investigation.
  - iii. Whether the notification suffers from non-application of mind and does not pass the test of reasonable restriction under Article 19(4) of the Constitution of India?
- 7.2 Relying upon the decision of the Supreme Court reported as 1995(1) SCC 428 Jamaat-E-Islami Hind vs Union Of India learned ASG has addressed on the scope of inquiry before this Tribunal. It is contended that the proceedings before the Tribunal are akin to civil proceedings and being a lis between the parties has to be decided on the basis of preponderance of probability. The provisions of Evidence Act cannot be made strictly applicable and the Tribunal can devise its own procedure for inquiry. The scope of inquiry before this Tribunal is the adjudication of the extent of sufficient cause for making the declaration. Despite the fact that the association and its erstwhile members were called upon to show cause, no reply or show cause has been submitted by them. Hence, the material placed on record by the Government before the Tribunal has gone un-rebutted. As held by

the Supreme Court, the standard of proof would not be beyond reasonable doubt but the test of greater probability appears to be a pragmatic test applicable to the present proceedings. Reference to this Tribunal is for the purpose of obtaining a judicial confirmation of existence of sufficient cause to support the declaration. Referring to the orders passed by the Tribunals constituted prior to this Tribunal for adjudicating whether there is sufficient cause to ban SIMI, learned ASG has read in extenso the order passed by Justice Sanjiv Khanna and the analysis of the various provisions as applicable in the proceedings before the Tribunal.

- 7.3 Referring to the decision rendered by Justice Sanjiv Khanna it is contended that statements recorded by the police even though confessional in nature are admissible in evidence before the Tribunal for the reason the proceedings are not in the nature of a trial of the accused for commission of the offences. Further, the bar under Section 25 and 26 of the Indian Evidence Act is on the confessions and not the statements. Statements made by accused in police custody have been held to be admissible in civil proceedings as also ancillary proceedings like recovery/possession/custody of the property, departmental and disciplinary proceedings etc. Thus, proceedings before this Tribunal have to be pragmatic and as per the provisions of Civil Procedure Code and the provisions of Evidence Act have to be applied to the extent possible and practicable.
- 7.4 Mr. Ashok Aggarwal, Advocate appearing on behalf of Mr. Humam Ahmed Siddiqui contends that though the Central Government has led evidence to show that lots of crimes have been committed by various people however the material produced before the Tribunal fails to show that these people are connected with SIMI or are members/activists of SIMI. Further, some accused being involved in or convicted of certain offences, cannot lead to the inference and their acts cannot be attributed to be the unlawful activity of the association. Moreover, mere membership of an unlawful organization would not amount to an offence as held by the Supreme Court in the decision reported as 2011 (3) SCC 377 *Arup Bhuyan Vs. State of Assam*. There are procedural and substantive lapses committed by the Central Government while issuing the notification and adducing evidence before this Tribunal. Learned counsel contended that the 'sufficient cause' to declare an organization as unlawful must be guided by the decision of the Supreme Court in *Jamaat* (supra) and cannot exceed the four corners of restrictions permissible under Article 19(4) of the Constitution of India. 'Sufficient cause' must be determined on the basis of an assessment of the credibility of material that is capable of judicial determination. Since imposing ban on SIMI is a restriction on fundamental right to freedom of association and indirectly to freedom of speech and expression, the provisions of the UAPA and UAP Rules must be strictly construed. Reliance is placed on the decision reported as 1974 (2) SCC 121 *Nawab Khan Abbas Khan Vs. State of Gujarat*.
- 7.5 For a fair adjudicating of 'sufficient cause' the material used by the Central Government to form its opinion for issuing the notification dated 31<sup>st</sup> January, 2019 was required to be placed on record at the outset in terms of Rule 5 of the UAP Rules. Relying upon the decision reported as 1980 (4) SCC 544 *Shalini Soni Vs. Union of India* it is contended that the grounds stated in the notification issued by the Central Government under Section 3(1) UAPA are not valid and justifiable as the same are vague and lack material particulars. In the absence of complete documents and evidence supporting the grounds for issuing the notification, the notice issued to show cause by the Tribunal is invalid and no justifiable response thereto can be submitted.
- 7.6 Confessions and statements recorded under Sections 161/162 Cr.P.C. cannot be taken into consideration being inadmissible under the Evidence Act. Reliance of the Central Government on the decision reported as 1981 (2) SCC 493 *Khatris Vs. State of Bihar* to claim that such material is admissible in evidence is incorrect and liable to be rejected. Reliance is placed on the decision of the Bombay High Court reported as 1910 Bombay Law Reporter 899 *Emperor Vs. Harisingh Ganpatsingh*. The true ratio even if *Khatris*'s (supra) case is applicable would be that such statements may be admissible in subsequent or other proceedings provided they are relevant under the Indian Evidence Act. Section 162(1) Cr.P.C. bars the use of such statements except in the manner permitted in the proviso to the said sub-section. Reliance is placed on the decision reported as 2005 (5) SCC 597 *Vinay D. Nagar Vs. State of Rajasthan* wherein it was held that mere lifting of the bar imposed under Section 162 Cr.P.C. is not by itself sufficient to make a statement recorded by the police admissible in evidence.



- 7.7 Use of the expression 'as far as practicable' in the decision in *Jamaat* (supra) does not amount to saying that the Evidence Act may be applied to the proceedings at the subjective discretion of the Tribunal. Further, the alleged confessional statements and statements under Sections 161/162 Cr.P.C. are neither relevant nor admissible in evidence on a perusal of Chapter II of the Evidence Act. The possible gateway for entry of the above statements are Sections 8, 10, 18, 21, 22, 27, 28, 29, 30, 31, 32, 33 and 35 of the Evidence Act and under neither of these provisions the said statements are relevant/admissible. Major portion of the evidence adduced before the Tribunal is in the form of disclosure statements for which the bar under Section 27 Evidence Act applies and only the said portion of the statement which relates distinctly to a fact discovered in consequence of the information received would be admissible in evidence. Reliance is placed on the decisions reported as AIR 1947 PC 67 *Pulukuri Kottayya Vs. Emperor* and 2005 (11) SCC 600 *State Vs. Navjot Sandhu*. The statements recorded under Section 164 Cr.P.C. and produced before this Tribunal also stand on the same footing as statements recorded under Sections 161/162 Cr.P.C. for the purposes of present proceedings. The Rule against hearsay provided under Sections 60 to Section 73 of the Indian Evidence Act also bars reliance on the statements made under Section 161/162 Cr.P.C.
- 7.8 He further contends that the bar as noted in the decision in *Khatiri* (supra) for admissibility of such a statement would also apply to the present proceedings as the same are in continuation in the manner that the ban continues to be imposed since September, 2001 except for a brief break and the material used for the earlier bans has also been used in the present notification and also the offences alleged against SIMI have been under investigation at least since September, 2001 when the first ban order was passed against SIMI. Repeated bans on SIMI under UAPA are violative of Article 19(1)(c) of the Constitution of India and the powers conferred upon Central Government under Section 3(1) read with Section 6 UAPA. The same amounts to permanent denial of the constitutional right to form association as also indirectly, the freedom to speech and expression. Further, no grounds have been made out in the notification to invoke the proviso to Section 3(3) of UAPA. Proviso to Section 3(3) provides that for the notification to come in force with immediate effect reasons in writing are required to be noted however no such reasons have been mentioned in the notification. The satisfaction arrived at for declaring a defunct/non-functional organization as an unlawful organization is not legitimate. The satisfaction arrived at by the competent authority also suffers from non-application of mind. The notification is also violative of the fundamental rights of the members of the association, if at all they exist and guaranteed under Article 14, 19 and 21 of the Constitution of India.
- 7.9. Rebutting the arguments of Mr.Ashok Aggarwal, Advocate, Mr.Sachin Datta, Senior Advocate for the Union of India contends that the Tribunal being vested with the power to regulate its own procedure in all matters as provided under sub-Section (5) of Section 5 subject to Section 9 has been described in *Jamaat* (supra) explaining the reasons why such a latitude is required to be given to the Tribunal. The latitude is not only to the applicability of the provisions of Code of Civil Procedure or the Evidence Act, so as to apply as far as practicable but also to the kind of material that can be considered by the Tribunal and it is thus specifically held that the material to be considered by the Tribunal need not be confined only to legal evidence in the strict sense. Minimum requirements of due process in the form of a written notice, disclosure, opportunity to be heard etc. have been provided under UAPA thus guaranteeing the right of fair hearing and opportunity to the association before the Tribunal. The scrutiny before the Tribunal is not a criminal trial and minimal requirements of principles of natural justice are to be adhered to. Further, the Tribunal is not bound by the material placed by the Government or the association but is competent to call for any other further information as necessary. While adjudicating the sufficiency of cause to declare the association unlawful, the Tribunal is not pronouncing on the guilt of the accused or returning finding as to the guilt by receiving proof beyond reasonable doubt. The Statute itself contemplates that there will be material which may not be disclosed to the association. The proceedings before this Tribunal are in the nature of a lis and the Tribunal is required to weigh the material produced by both the sides and in the present proceedings no material whatsoever has been produced by the association. Contention of learned counsel that the material before the Tribunal is only in the form of confessional statements is incorrect for the reason the witnesses have also produced chats and FSL reports with regard to the data retrieved from the laptops etc. besides various recoveries made. Thus a wide gamut of material has been placed by the Government before the Tribunal. Lastly, the preamble of UAPA itself notes that special provisions have been made for coping with unlawful

activities of the association and it is for this reason that modified procedure of law has been prescribed.

- 7.10. Before proceeding to deal with various legal issues raised by the parties, it would be appropriate to note Sections 3, 4, 5 and 9 of the UAPA and Rules 3 & 5 of the UAP Rules.

Sections 3, 4, 5 and 9 of the UAPA read as under:

*“3. Declaration of an association as unlawful.—(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*

*(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:*

*Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.*

*(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:*

*Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.*

*(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—*

- (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or*
- (b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or*
- (c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or*
- (d) in such other manner as may be prescribed.*

*4. Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.*

*(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.*

*(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of*

six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

5. Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the “Unlawful Activities (Prevention) Tribunal” consisting of one person, to be appointed by the Central Government:

*Provided that no person shall be so appointed unless he is a Judge of a High Court.*

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record from any court or office;
- (e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and [Chapter XXVI] of the [Code].

XXX            XXX            XXX

9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

Rules 3 & 5 of the UAP Rules read as under:

3. Tribunal and District Judge to follow rules of evidence.—(1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section

(4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

[(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—

- (a) make such books of account or other documents a part of the records of the proceedings before it; or
- (b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.]

5. Documents which should accompany a reference to the Tribunal.— Every reference made to the Tribunal under sub-section (1) of section 4 shall be accompanied by—

- (i) a copy of the notification made under sub-section (1) of section 3, and
- (ii) all the facts on which the grounds specified in the said notification are based:

*Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose.”*

7.11 The issue with regard to the scope of inquiry before the Tribunal under the UAPA is no more *res integra* having been dealt with in-depth by the Supreme Court in *Jamaat-E-Islami Hind* (supra) wherein it was held:

“11. [Section 4](#) deals with reference to the Tribunal. Sub-section (1) requires the Central Government to refer the notification issued under sub-section (1) of [Section 3](#) to the Tribunal "for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful". The purpose of making the reference to the Tribunal is an adjudication by the Tribunal of the existence of sufficient cause for making the declaration. The words "adjudicating" and "sufficient cause" in the context are of significance. Sub-section (2) requires the Tribunal, on receipt of the reference, to call upon the association affected 'by notice in writing to show cause' why the association should not be declared unlawful. This requirement would be meaningless unless there is effective notice of the basis on which the declaration is made and a reasonable opportunity to show cause against the same. Sub-section (3) prescribes an inquiry by the Tribunal, in the manner specified, after considering the cause shown to the said notice. The Tribunal may also call for such other information as it may consider necessary from the Central Government or the association to decide whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is required to make an order which it may deem fit "either confirming the declaration made in the notification or cancelling the same". The nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under sub-section (1) of [Section 3](#) is issued by the Central Government, the cause shown by the association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for

declaring the association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context.

12. Section 5 relates to constitution of the Tribunal and its powers. Sub-section (1) of Section 5 clearly provides that no person would be appointed "unless he is a Judge of a High Court". Requirement of a sitting Judge of a High Court to constitute the Tribunal also suggests that the function is judicial in nature. Sub-section (7) says that any proceeding before the Tribunal shall be deemed to be a "judicial proceeding" and the Tribunal shall be deemed to be a "Civil Court" for the purposes specified. Section 6 deals with the period of operation and cancellation of notification. Section 8 has some significance in this context. Sub-section (8) of Section 8 provides' the remedy to any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or subsection 4, by an application made to the District Judge who is required to decide the same after giving the parties an opportunity of being heard. This also indicates the judicial character of the proceeding even under Section 8. Section 9 prescribes the procedure to be followed in the disposal of applications under the Act. Provisions of Section 9 of the Act lay down that the procedure to be followed by the Tribunal in holding an inquiry under sub-section (3) of Section 4 or by the District Judge under Section 8 shall, so far as may be, be the procedure prescribed by the Code of Civil Procedure for the investigation of claims. Sections 10 to 14 in Chapter III relate to "offences and penalties" which indicate the drastic consequences of the action taken under the Act including a declaration made that an association is unlawful. The penal consequences provided are another reason to support the view that the inquiry contemplated by the Tribunal under Section 4 of the Act is judicial in character since the adjudication made by the Tribunal is visited with such drastic consequences.

13. In our opinion, the above scheme of the Act clearly brings out the distinction between this statute and the scheme in the preventive detention laws making provision therein for an Advisory Board to review the detention. The nature of the inquiry preceding the order made by the Tribunal under Section 4 of the Act, and its binding effect, give to it the characteristic of a judicial determination distinguishing it from the opinion of the Advisory Board under the preventive detention laws.

14. In Section 4, the words 'adjudicating' and 'decide' have a legal connotation in the context of the inquiry made by the Tribunal constituted by a sitting Judge of a High Court. The Tribunal is required to 'decide' after "notice to show cause" by the process of 'adjudicating' the points in controversy. These are the essential attributes of a judicial decision.

17. The reference to the Tribunal is for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful. Obviously the purpose is to obtain a judicial confirmation of the existence of sufficient cause to support the action taken. The confirmation is by a sitting High Court Judge after a judicial scrutiny of the kind indicated. This being the nature of inquiry and the purpose for which it is conducted, the materials on which the adjudication is to be made with opportunity to show cause given to the association, must be substantially in consonance with the materials required to support a judicial determination. Reference may be made at this stage to the decision in State of Madras vs. V.G. Row, [1952] SCR 597 on which both sides place reliance.

19. In our opinion, the test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, 1967, is equally applicable in accordance with the decision in V.G. Row. It is, therefore, this test which must determine the meaning



*and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the expression 'adjudication'.*

[Emphasis supplied]

- 7.12 As noted above, sub-Section 5 of Section 5 UAPA provides that subject to Section 9 UAPA, the Tribunal shall have the power to regulate its own procedure in all matters arising out of the discharge of its function and Section 9 provides for the procedure to be followed for disposal of the applications under the Act, according to which subject to the rules made under the Act, the procedure to be followed by the Tribunal in holding any inquiry under Section 4(3) or any application under Section 7(4) or Section 8(8) in so far as may be the procedure laid down in the Code of Civil Procedure 1908 for investigation of the claims. The Code of Civil Procedure 1908 provides for investigation of the claims under Order XXI Rule 58. The said procedure was a summary procedure and does not require rigours of the regular procedure for deciding a suit. Further Rule 3 of the UAP Rules provides that subject to sub-rule (2) the Tribunal shall follow as far as practicable the rules of evidence laid down in the Indian Evidence Act 1872. Thus, contention of Mr. Ashok Aggarwal, Advocate that the rigours of the provisions of Evidence Act would fully apply except where privilege is claimed as per procedure and is allowed deserves to be rejected.
- 7.13 Modulation of the procedure and applicability of the Code of Civil Procedure and the Indian Evidence Act "as far as may be practicable" has been upheld by the Supreme Court in *Jamat* (supra) wherein it has been held that the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such a material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The material need not be confined only to legal evidence in the strict sense and such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept without abdicating its function by merely acting on the *ipsi-dixit* of the Central Government. It was further held that such a course would satisfy the minimum requirements of natural justice tailored to suit the circumstances of each case while protecting the rights of association and its members without jeopardizing the public interest. It would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it, on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.
- 7.14 In *Jamat* (supra) Supreme Court further emphasized that what is a fair procedure in a given case would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense and that the scrutiny is not a criminal trial. The Supreme Court also noted that the Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it.
- 7.15 It has also to be borne in mind that the time period with the Tribunal is six months from the date of issuance of the notification and out of the said six months initial few months are required for notification of the Tribunal and issuance of notice to show cause, as also permitting time for filing reply affidavits. Thus the procedure cannot be so as to not complete the adjudication within the statutory period prescribed.
- 7.16 By incorporation of sub-Section (6) to Section 5 UAPA it is evident that in the inquiry before the Tribunal it is not bound by the material produced by the parties and for a proper adjudication, the Tribunal can also call for any other further material. The reference to Tribunal is thus for the purpose of adjudicating whether or not there is a sufficient cause for declaring the association unlawful.

- 7.17 Before dealing with the rival contentions regarding material and evidence that can be relied upon and the admissibility of the confessions and seizures made during the course of investigation, it would be appropriate to note Sections 25, 26 and 27 of the Indian Evidence Act and Sections 161 and 162 of the Code of Criminal Procedure, 1973.

Sections 25, 26 and 27 of the Indian Evidence Act read as under:

*“25. Confession to police officer not to be proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.*

*26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*

*[Explanation. – In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal procedure, 1882 (10 of 1882)]*

*27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”*

Sections 161 and 162 of the Cr.P.C. read as under:

*161. Examination of witnesses by police.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

*(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*

*(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:*

<sup>2</sup>*[Provided that statement made under this sub-section may also be recorded by audio-video electronic means:]*

<sup>3</sup>*[Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.]*

*162. Statements to police not to be signed: Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

*Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by*

*the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*

*(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.*

*Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”*

- 7.18 Thus according to Section 25 and 26 of the Evidence Act confession made to a police officer or while in custody shall not be proved against a person accused of any offence in a trial of the accused for having committed the offence. These sections do not forbid use of the statement in a proceeding where the accused is not being tried for having committed the said offence or in a civil proceeding or ancillary proceeding like recovery etc.
- 7.19 Reiterating the law laid down by the Division Bench of High Court of Bombay in (1885) ILR 9 Bom 131 Queen-Empress vs Tribhovan Manekchand And Ors. Supreme Court in the decision reported as 1991 SCC (Cri.) 219 Mahesh Kumar Vs. State of Rajasthan noted the possible use of the statement made by an accused to the police officer and held:

*“In Queen Empress Vs. Tribhovan Manekchand (ILR 9 BOM 131) a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in Pohlu Vs. Emperor (AIR 1943 Lah 312 : 45 PLR 391 : 209 IC 546) where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 Cr.P.C. for being made use of as evidence against the accused, this statement could be made use of in enquiry under Section 517 Cr.P.C. when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in Dhanraj Baldeokishan Vs. State (AIR 1965 Raj 238 : (1965) 2 Cr LJ 805 : 1965 Raj LW 289) and the Mysore High Court in Veerabhadrappa Vs. Govinda (ILR (1973) 23 Mys 64). In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt. The accused persons disclaimed the stolen property and there is no reason why the same should not be returned to the owner i.e. the complainant to whom it belongs.”*

- 7.20 With regard to the admissibility of the statement recorded under Section 162 Cr.P.C. Supreme Court in the decision reported as 1981 (2) SCC 493 Khatri & Ors. Vs. State of Bihar & Ors. discussed the legal provisions as laid down in the decision reported as AIR 1959 SC 1012 Tehsildar Singh & Anr. Vs. State of Uttar Pradesh and held that the prohibition under Section 162 of the Cr.P.C. was applicable for use of the statement at any inquiry or trial in respect of any offence under investigation at the time when the statement was made, however, it does not bar or prohibit the use of the statement in any other proceedings, inquiry or trial. Thus, the bar is limited and would have no application for example in any civil proceedings or proceedings under Article 32 and 226 of the Constitution of India. Even in Vinay D. Nagar (supra) Supreme Court following the decision in Khatri (supra) held that the bar of Section 162 Cr.P.C. is in regard to the admissibility of the statement recorded of a person by the Police officer under Section 161 Cr.P.C. and by virtue of Section 162 Cr.P.C. would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter

XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted.

7.21 With reference to police diaries under Section 172 Cr.P.C., Supreme Court in *Khatri* (supra) held that the bar against production of use of case diary enacted in Section 172 Cr.P.C. is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar and does not operate if the case diary is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer, in the said inquiry or trial. This bar also can have no application to a case diary as sought to be produced and used in evidence in a civil proceedings or in a proceeding under Article 32 or 226 of the Constitution of India and particularly when the party calling for the case diary is neither an accused nor is agent in respect of the offence to which the case diary relates. Referring to Section 35 of the Evidence Act it was held that the reports which are part of official record and relate to the fact in issue are relevant and admissible. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of the Section. Supreme Court also noted with approval the decision reported as (1975) 3 SCC 646 *Kanwar Lal Gupta Vs. Amar Nath Chawla* wherein it was held that reports made by the officers of CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 of the Evidence Act on the ground that they were “made by the public servants” in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent. Supreme Court in *Khatri* (supra) also affirmed the Division Bench decision of Nagpur High Court reported as AIR 1952 Nagpur 271 *Chandu Lal Vs. Pushkar Rai* wherein it was held that reports made by revenue officers, though not regarded as having judicial authority where they expressed opinions on the private rights of the parties are relevant under Section 35 of the Evidence Act as reports made by public officers in the discharge of their official duties.

7.22 Contention of Mr. Ashok Aggarwal, Advocate that in the present proceedings as well the confessional statements made before the police can be used limited to the extent provided under Section 27 of the Evidence Act insofar as it relates distinctly to a fact discovered in consequence of the information received deserves to be rejected for the reason as noted above, the bar under Sections 25 and 26 of the Evidence Act is applicable only to the use of the statement of the accused so recorded in a trial of the accused for an offence. Further, the UAPA is a special enactment and Rule 3 provides for a modified procedure and indicates that as far as practicable the Rules of Evidence laid down in Indian Evidence Act, 1872 must be followed. It is for this special provision of Rule 3 UAP Rules that the Supreme Court in *Jamaat* (supra) held that the material before the Tribunal need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept without abdicating its functions by merely acting on the *ipse dixit* of the Central Government. Such a course would satisfy the minimum requirements of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. It was held that the same would ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication. Referring to the decision in *John J. Morrissey and (7. Donald Booher v. Lou B. Brewer)* it was held :

23. In *John J. Morrissey and (7. Donald Booher v. Lou B. Brewer)*, 33 L.Ed. 2d 484, the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under:

" ..... Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and



(f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."

(Emphasis supplied)

- 7.23 Contention raised by Mr. Ashok Aggarwal, Advocate relying on the decision in Nawab Khan Abbas Khan (supra) that since UAPA imposes a restriction on the fundamental right to freedom of association and indirectly to freedom of speech and expressions, the provisions of UAPA and the rules made thereunder have to be strictly construed, has also been dealt by the Supreme Court in Jamaat (supra) wherein it was held:

"26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirements of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its; true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."

(Emphasis supplied)

- 7.24 The provisions of UAPA are clearly extraordinary and preventive in nature and thus provide for a departure from the regular procedure prescribed, in conformity with the preamble of the Act which notes it to be a special enactment for effective prevention of certain unlawful activities of individuals and associations as well as dealing with terrorist activities and for the matters connected therewith. The statement of objects and reasons underlines the purpose of the enactment empowering Parliament to impose by law reasonable restriction in the interest of sovereignty and integrity of India on the freedom of speech and expression, right to assemble peacefully and without arms and right to form association. The provisions of UAPA and the rules made thereunder itself provide for the procedure, for the purpose of taking evidence, in order to determine the sufficiency of grounds, for upholding the ban. Since UAPA is a special enactment, its provisions and the special procedure prescribed thereunder, has to prevail on the general provisions of law applicable.
- 7.25 From the perusal of the provisions as noted above as also the law on the point laid down in various decisions and since the inquiry before this Tribunal is not in the nature of adjudicating the guilt of the accused but to determine the sufficiency of material before the Central Government to declare SIMI as an unlawful association, the confessional statements made by the accused before the police officers as also the search lists and seizure memos are admissible in evidence before this Tribunal and can be used for determining the sufficiency of the material before the Central Government to make the declaration.
- 7.26 Contention of Mr. Ashok Aggarwal that the continuous bans on the association are violative of the constitutional right to form an association as also violative of the right to freedom of speech and expression also deserves to be rejected for the reason the very purpose of determination by the



Tribunal as to whether there is a sufficient cause to declare the association unlawful again is based on objective determination of the existence of grounds for adjudging the reasonableness of restriction placed on the right conferred under Article 19(1)(c) to form the association. The scheme as provided under UAPA requires adjudication of the lis making it implicit that minimum requirement of natural justice is satisfied.

- 7.27 As noted above, in para 19 of the decision of the Supreme Court in *Jamaat* (supra) the scheme of UAPA itself provides for the Tribunal to test the factual existence of grounds amenable to objective determination for adjudicating the reasonableness of the restriction placed on the right conferred under Article 19(1)(c) to form the association. The Tribunal thus while adjudicating the lis between the parties is also required to weigh whether the restriction imposed on the fundamental right as guaranteed under Article 19(1)(c) is reasonable in the interest of sovereignty and integrity of India or public order.
- 7.28 Contentions of Mr. Ashok Agarwal, Advocate that the show cause notice issued does not contain the entire material on which the grounds for issuance of the notification are based, hence no show cause thereto could be submitted and that when a reference is made to the Tribunal the entire material with the Central Government in support of the notification should be forwarded to the Tribunal as also provided to the association also deserves to be rejected. The purpose of conducting inquiry by the Tribunal itself is that the material used for issuance of the notification is taken on oath before the Tribunal so that the Tribunal has means and ways to assess the credibility of the material produced. As held by the Supreme Court in *Jamat* (supra) the nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under Section 3(1) UAPA is issued by the Central Government, the cause shown by the association in reply to the notice issued to it and to take into consideration such further information which it may call for to decide the existence of sufficient cause for declaring the association to be unlawful. Reliance of learned counsel on the decision in *Shalini Soni* (supra) is misconceived as in *Jamaat* (supra) itself Supreme Court clarified in para 13 of the report that the scheme of UAPA clearly brings out the distinction between this Act and the preventive detention laws and the nature of inquiry before the Tribunal under Section 4 of UAPA and its binding effect gives to it the characteristic of a judicial determination distinguishing it from the opinion of the advisory board.
- 7.29 Challenge of Mr. Ashok Aggarwal, Advocate to the notification dated S.O. 564(E) dated 31<sup>st</sup> January, 2019 as also invocation of the proviso to sub-Section (3) of Section 3 UAPA on the ground of non-application of mind also deserves to be rejected, as this Court has perused the sealed cover submitted by Shri S.C.L. Das, Joint Secretary, M.H.A. who appeared as (PW-50) wherein the entire material in the form of notes, correspondence and intelligence inputs have been put up to the Cabinet Committee on security for its approval. Invoking proviso to sub-Section (3) of Section 3 to impose the ban with immediate effect is also well reasoned as noted in the notification itself as under:

*“And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to-*

- (i) *continue its subversive activities and re-organize its activists who are still absconding;*
- (ii) *disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;*
- (iii) *propagate anti-national sentiments;*
- (iv) *escalate secessionism by supporting militancy; and*
- (v) *undertake activities which are prejudicial to the integrity and security of the country;*

*And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect;”*

7.30 In view of the discussion aforesaid, the notification under Section (3) UAPA dated 31<sup>st</sup> January, 2019, neither suffers from the vice of an unreasonable restriction, nor vague nor suffers from non application of mind.

#### VIII Claim of privilege

8.1 Learned ASG contends that the Government is entitled to claim of privilege of certain documents, disclosure whereof affects public interest as provided in the UAPA and the Rules thereunder itself for the reason Rule 3 sub-Rule (2) of the UAP Rules itself provides that if the books of accounts or other documents are claimed by the Government to be of confidential nature the Tribunal or the court as the case may be, shall not make such books or documents a part of the record of proceedings before it nor allow inspection thereof. Further, sub-Rule(5) of the Rule 3 permits the Central Government not to disclose any fact even to the Tribunal which that Government considers against the public interest to disclose. It is contended that dealing with the issue of claiming privilege, Supreme Court in *Jamaat* (supra) held that the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. Thus, subject to disclosure of information which the Central Government considers to be against public interest to disclose, all information and evidence relied on by the Central Government to support the declaration has to be disclosed to the association to enable it to show cause.

8.2 Mr.Ashok Aggarwal, Advocate contends that the material placed by the witnesses of the Central Government in sealed covers cannot be adversely used against the association unless privilege is claimed by a proper procedure founded on an affidavit clearly stating the nature of documents and grounds for seeking non-disclosure. Further, the affidavit should show that each document in question has been carefully read and considered and the person making the affidavit is satisfied that its disclosure would lead to injury to the public interest. No such procedure having been followed by the witnesses, material in the sealed covers is required to be given to the opposite party. Since this Tribunal is required to ascertain the credibility of the conflicting evidence relating to the points in controversy, in the absence of material placed in sealed covers being provided to the opposite party, the said adjudication is meaningless. The claim of privilege under the relevant provisions of UAPA and the Rules thereunder does not stand on a different footing from a claim of privilege under Section 123 of the Evidence Act and is governed by the decision of the Supreme Court reported as 1981 (Supp.) SCC 87 *S.P.Gupta Vs. Union of India & Anr.*

8.3 The issue of claiming privilege by the Central Government on the documents disclosure whereof is injurious to public interest is inbuilt in the UAPA and the rules framed thereunder as provided in Rule 3 and 5 of the UAP Rules re-produced earlier. Sub-Rule (2) of Rule 3 of the UAP Rules starts with a non-obstante clause providing that notwithstanding anything contained in the Indian Evidence Act, 1872 books of account or other documents produced by the Central Government and claimed to be of a confidential nature, the Tribunal shall not make such books of account or documents a part of the records of the proceedings before it or allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it. Rule 5 which provides for the copy of notification and all facts on which the grounds specified in the said notification are based, further provides that nothing in the Rule shall require the Central Government to disclose any fact to the Tribunal which it considers against public interest to disclose.

8.4 The provisions under UAPA and the rules made thereunder forbidding disclosure were deliberated by the Supreme Court in *Jamaat* (supra) and it was held:

“20. As earlier mentioned, the requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a Tribunal constituted by a sitting High Court Judge, which distinguishes the scheme under this Act with the requirement under the preventive detention laws to justify the anticipatory action of preventive detention based on suspicion reached by a process of

subjective satisfaction. The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must be satisfied, to make the adjudication meaningful. No doubt, the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit nondisclosure of confidential documents and information which the Government considers against the public interest to disclose. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Rule 3 also indicates that as far as practicable the rules of evidence laid down in the Indian Evidence Act, 1872 must be followed. A departure has to be made only when the public interest so requires. Thus, subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act.

22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office bearers is in public interest, it may permit its non-disclosure to the association or its office bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members. 'without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by

the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself.

[Emphasis supplied]

8.5 Relevant provision under the Evidence Act permitting the State to claim privilege is Section 123 which reads as under:

*“123. Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”*

8.6 Referring to Section 123 of the Indian Evidence Act which permits the Government to claim privilege in regard to the documents relating to the affairs of the State, disclosure whereof is injurious to public interest, Supreme Court in S.P.Gupta (supra) held that while granting privilege two questions fall for determination of the Court namely (1) whether the document relates to the affairs of the State and (2) whether its disclosure would, in the particular case before the Court, be injurious to public interest. The Court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to the affairs of the State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the non-disclosure would thwart the administration of justice by keeping back from the Court a material document. Thus, the Court has to decide which aspect of the public interest pre-dominates or in the other words whether the public interest which requires that the document should not be produced outweighs the public interest that a Court of justice in performing its functions should not be denied access to relevant evidence. It was held by the Supreme Court as under:

*“73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the nondisclosure would thwart the administration of justice by keeping back from the court a material document. There are two aspects of public interest clashing with each other out of which the court has to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer:*

*“It is universally recognised that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved.”*

[Emphasis supplied]

- 8.7 Further, the rigours as noted in *S.P. Gupta* (supra) for claiming privilege have to be read in context of the provisions of UAPA and the Rules framed thereunder which provide that documents, disclosure whereof may not be in the public interest be not disclosed. The Rule as noted above starts with a non-obstante clause and thus an inbuilt mechanism has been provided under the UAPA and the Rules framed thereunder and the Tribunal is mandated to grant privilege forbidding disclosure where the claim of the Government is that disclosure would be against public interest and on perusal the Tribunal also finds that public interest outweighs the interest of the association/members/office bearers.
- 8.8 In other words, the claim of confidentiality has to satisfy on the test of character of the document and if on an objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document and an act of balancing public interest against the interest of the individual, the officer bearer or the association which has been banned, has to be carried out by the Tribunal.
- 8.9 Further the statement of objects and reasons of the UAPA itself underlines the purpose of the enactment being to provide for the more affective prevention of certain unlawful activities of individuals and associations and for matters connected therein. The statute empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form association and incidentally a restriction on the freedom of speech and expression, to assemble peacefully and with arms. UAPA being a special statute, the procedure provided therein necessarily prevails on the general provisions of law. Further Section 48 of the UAPA itself provides that the provisions of the UAPA and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act giving a clear over-riding position. Thus contention of Mr. Ashok Aggarwal, Advocate that the claim of privilege before this Tribunal can be only in terms of Section 123 of the Indian Evidence Act and as per the mandate of the Constitution Bench in *S.P. Gupta* (supra) deserves to be rejected.
- 8.10 In the present case, as per the procedure eleven witnesses in their affidavits including PW-50 have claimed privilege of documents and submitted documents in sealed covers. In their affidavits, they have stated that the documents submitted to the Tribunal in the sealed cover are privileged and confidential in nature and the same cannot be made available to the banned association or to any third party under the provisions of UAPA as the Government considers it against the public interest to disclose.
- 8.11 A total of 11 sealed covers were handed over by the various witnesses of the Government. Before proceeding to deal with the material in the sealed cover this Tribunal has opened and perused the documents and material placed in sealed covers and re-sealed the same with the seal of the Tribunal while preparing the report.
- 8.12 The nature of material placed in the sealed cover by the ten witnesses is in the form of intelligence reports, secret informations collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, informations revealed on investigation and interrogation of the accused which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. One of the reports also note about a one-month campaign organized by activists of SIMI under the name and banner of an umbrella organization and that the activists of SIMI and some of their members and sympathizers are filing RTI applications in the various proceedings to help the accused or members in the trials for committing various offences. The sealed cover placed on record by Shri S.C.L. Das, Joint Secretary, Ministry of Home Affairs, Government of India who appeared as PW-50 contains the note put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the notification was issued besides intelligence inputs and correspondence in relation thereto. Hence, this Tribunal concludes that the claim of privilege of the documents by the witnesses is in accordance with law and the documents submitted in sealed cover are not required to be disclosed in the public interest.



**IX Analysis of the evidence**

- 9.1 Before dealing with the testimony of 50 witnesses of the Government and the reports submitted by them in sealed cover, this Tribunal would like to first deal with the evidence of the two public witnesses who appeared before the Tribunal and deposed. As noted earlier, Anjum Inamdar (PHW-1) is an Advocate and his version was that investigation carried out by the Police staff of ATS Maharashtra in the German Bakery Blast case in 2010 and the Farashkhana bomb blast in 2014 is not in accordance with the procedure. He also handed over the book authored by S.M. Mushrif wherein the author has expressed his views that Muslims are falsely implicated. He admitted that the facts deposed by him were not based on personal knowledge but his opinion is formed on the basis of newspaper reports, books and magazines. An opinion is not an evidence of fact and is not relevant except when the person rendering an opinion is an expert in terms of Section 45 of the Indian Evidence Act, which the witness is not. Further, as noted, grievance of Sheikh Sarfaraz (PHW-2) was his false implication in three cases. Sheikh Sarfaraz had no personal knowledge about the activities of SIMI. He tendered 12 judgments in which accused were acquitted for offences punishable under Section 3/10/13 UAPA out of which six decisions were delivered prior to the last notification. In the six decisions rendered after the last notification, in Crime No.539/2001 the acquittal was directed as the Investigating Agency failed to prove the Hindi translation of the documents in Urdu. In Crime No.142/2008 the witness turned hostile; in Crime Nos.302/2008, 539/2001 and 7068/2008, it was held that there was no proof beyond reasonable doubt that the accused was a member of SIMI and in Crime No.256/2006 it was not proved who were the speakers at the meeting and whether people from other religion were present causing enmity, hatred and disaffection. In most of the judgments placed on record by this witness, Mohd. Ali, son of Moharram Ali was an accused. Further it was evident from the cross-examination that he was deposing at the instance of his learned counsel Mr.Moharram Ali, whose son Mohd. Ali was in custody in Gujarat bomb blast cases for the last 10 years.
- 9.2 For the purposes of analyzing whether there is sufficient cause to declare 'SIMI' an unlawful association, though this Tribunal will be confining itself to the evidence of offences after the last ban and the judgments delivered thereafter even in the cases registered prior to the last ban, however to show the continuity of action it would also refer to some of the earlier offences committed by the members/activists of SIMI. From the evidence of the 49 Police officers from different States and Union Territory of Delhi, it is evident that the presence of activists of SIMI is in many States across the country, particularly in the States of Kerala, Tamil Nadu, Telengana, Madhya Pradesh, Karnataka, Maharashtra, Bihar, Orissa, Uttar Pradesh, Rajasthan and the Union Territory of Delhi and they continue to commit unlawful activities even after the last ban was imposed in January, 2014. Drawing a time line it has been proved before this Tribunal that despite three bans, in November, 2007 a three-day training camp was organized at Halol, Pavagadh District, near Baroda, Gujarat where thirty members of SIMI attended the programme with prominent leaders like Abdus Subhan Qureshi @ Tauqeer, Qayamuddin Kapria, Chand Mohammed, Amil Parvez, Safdar Nagori besides Alam Zeb Afridi, as was revealed by Alam Zeb Afridi in his confessional statement recorded after his arrest on 23<sup>rd</sup> January, 2016. Again in June, 2008 despite the bans, a camp of the activists of SIMI was organized at Wagamon for which FIR No. 257/2008 was registered wherein besides other accused Abdus Subhan Qureshi @ Tauqeer and Sheikh Mehboob were also accused. The judgment has been pronounced in FIR No.257/2008 on 14<sup>th</sup> May, 2018 by the learned Special Court convicting accused Saduli, Hafeez Hussain, Safdar Nagori, Shibily P, Mohammed Ansar P A, Abdul Sathar, Aamil Parwez, Mohammed Sami, Mohd Asif, Nadeem Sayeed, Mufti Abdul Bashar, Danish @ Safi, Manzar Imam, Alam Jeb Afridi, Dr. Asadulla H A, Mohammed Abu Faisal Khan @ Shamsheer, Kamaruddin Nagori, Shakeel Ahammed and Dr. Mirza Ahamed Baig inter alia for offences punishable under Sections 120B/122/124A/153 IPC, Sections 10/13/18/20/38 of UAPA, Section 4 Explosive Substance Act and Section 25/27 Arms Act returning a finding that the persons convicted were members of SIMI. Since Abdus Subhan Qureshi @ Tauqeer could not be arrested, trial qua him was separated and trial qua Sheikh Mehboob stood abated as he died during the trial. The learned Special Judge also held that almost all the persons including accused 1 to 7, 14, 24, 26, 29, 30 and 34 were workers of SIMI who took part in the camp of SIMI and some of them were leaders of SIMI hailing from different States namely Kerala, Gujarat, Madhya Pradesh, Uttar Pradesh and Jharkhand. The lectures given at the camp propagated ideologies and advocated the interests of SIMI which has been declared an unlawful association. Even the various study classes

organized in the camp advocated the ideology of SIMI. While concluding, the learned Special Judge in Para 143 of the judgment held as under:

*“The evidence on record clearly establishes that the accused No. 1 to 7, 11, 14, 15, 24, 26, 29, 30, 33, 34, 36 and 38 who attended the training camp organized by SIMI at Wagamon on 10<sup>th</sup>, 11<sup>th</sup> and 12 of December, 2007 have undergone various training such as swimming, motor bike racing, rock climbing, rope climbing, firing practice and also conducted classes for promoting ideologies of the SIMI. At the place of occurrence and in MOI car, the presence of explosive substances such as Potassium Chloride, Aluminum powder and Sulphur were detected. The accused hail from various parts of the country such as Kerala, Karnataka, Madhya Pradesh, Maharashtra, Jharkhand and Gujarat. It has come out in evidence that they came from different parts of the country to a hillock in Kerala at Wagamon and conducted a secret camp there for three days. Unless there was a prior meeting of their minds, the accused from six different States of India could not have come together at Wagamon with the intention furthering the objectives of the banned organization SIMI. On a careful examination of the roles played by each accused at the camp it is evident that it is pursuance of a criminal conspiracy hatched by them at the camp was conducted. The various criminal acts committed by the accused at Wagamon prove the prior meeting of their minds. The existence of criminal conspiracy can be readily inferred from the acts of the accused detailed above. Considering all these aspects I am of the view that the prosecution has succeeded in establishing the requirements and ingredients of Section 120B of IPC also.”*

- 9.3 The activities of the members/activists of SIMI continued and while lodged in Khandwa jail Abu Faizal, Amjad, Aijajudeen, Zakir Hussain, Sheikh Mehboob, Mohd. Aslam and Abid Mirza escaped from the jail on 1<sup>st</sup> October, 2013. On 1<sup>st</sup> February, 2014 at about 9:00 A.M., six armed men committed dacoity on the point of fire-arms at the State Bank of India, Choppadandi Branch, Karimnagar District, State of Telengana and after confining and threatening the bank staff took away net cash of ₹46,00,000/- The accused were captured in the CCTV cameras. Investigations also revealed that they were the same accused persons who had robbed two motorcycles on 1<sup>st</sup> February, 2014 and after the commission of offence of dacoity had parked the motorcycles at a parking stand. The six accused identified with the help of CCTV footages were Aijajudeen, Sheikh Mehboob, Zakir Hussain, Amjad, Mohd. Aslam and Yunus @ Mohd. Saliq all members of SIMI, professing its ideology out of which Sheikh Mehboob was one of the accused chargesheeted in the Wagmon Camp case. After escaping from the jail Aijajudeen, Mohd. Aslam, Sheikh Mehboob, Zakir Hussain, Amjad Khan and Mohd. Saliq were also involved in the twin blast in coach Nos. S-4 and S-5 at Chennai Central Railway Station on 1<sup>st</sup> May, 2014 at 7:20 A.M. causing injuries to 15 persons. These accused were duly identified from the photographs captured in the CCTV footages in the other incidents which were identified by the co-passengers. The movement of these accused at the relevant time of the train was also corroborated by the call details.
- 9.4 After committing twin blast at Chennai Central Railway Station on 1<sup>st</sup> May, 2014 Aijajudeen, Sheikh Mehboob, Zakir Hussain, Amjad Khan and Mohd. Aslam stayed in a rental house at Dharwad, Karnataka under assumed identity and thereafter on 10<sup>th</sup> July, 2014 Aijajudeen, Sheikh Mehboob, Zakir Hussain, Amjad Khan, Mohd. Aslam were involved in the low-intensity blast that occurred near Shri Swami Snack Centre, Budhwar Peth, Pune causing injuries to five persons including Police officials. The five accused named were identified from the images retrieved from the footages recovered from the CCTVs installed in the area.
- 9.5 After fleeing from Pune, Aijajudeen, Zakir Hussain, Mohd. Aslam, Mohd. Saliq @ Yunus, Amjad Khan and Sheikh Mehboob took refuge in tenanted accommodation at Bijour where they continued their clandestine activities and when they were preparing bombs, an accidental explosion took place causing burn injuries to Sheikh Mehboob. The part-money looted from the State Bank of India at Choppadandi was recovered from the house of the co-accused who had given shelter to these six accused. Further the laptop recovered from the tenanted accommodation where these accused stayed before the blast revealed that they were active members of SIMI. Having escaped from Bijour, Aijajudeen and Mohd. Aslam went into hiding in Telengana. Since on the basis of CCTV footages and identification by the people their complicity in the offence of bank dacoity was known, the

police of Telangana was searching them. While making their escape, on 1<sup>st</sup> April, 2015 Aijajudeen and Mohd. Aslam first killed two Police officers who were checking at Suryapet Bus Stop and severely injured two Police Constables. They snatched their carbine as well and fled away. On 4<sup>th</sup> April, 2015 while escaping they again killed one Police Officer and injured two others when Mohd. Aslam and Aijajudeen also died in exchange of fire.

- 9.6 The remaining four accused who were involved in the Bijnour blast and in the earlier cases, escaped and took refuge in assumed identity and were finally arrested by the Police at Rourkela Plant Site on 17<sup>th</sup> February, 2016. In view of their other involvements they were transferred subsequently to Bhopal jail. On 31<sup>st</sup> October, 2016, eight SIMI activists escaped from the jail killing one Police officer and confining a guard. On the next day when the eight accused who had fled from Bhopal, Central Jail were spotted by the local villagers, on arrival of the police team, they tried to run on being apprehended and injured three Police officers by knives and daggers besides pelting stones and firing. In the cross-fire all the eight accused namely Sheikh Mujeed, Akeel Khilji, Zakir Hussain, Khalid, Amjad Khan, Sheikh Mehboob, Majid and Mohd. Saliq @ Yunus were killed.
- 9.7 After the arrest of Sheikh Mehboob, Amjad Khan, Zakir Hussain and Mohd. Saliq @ Yunus at Rourkela plant site on 17<sup>th</sup> February, 2016 as noted above in the testimony of Tapan Kumar Mohanty (PW-46) statement of Amjad Khan was recorded who disclosed that in the year 2004 Sheikh Mehboob, Mohd. Saliq and Firoz took him to the house of Akhil Khilji where he was delivering a speech about revival of SIMI. Thereafter, he was informed about the Darsh programmes and its affiliation by the members of SIMI in the year 2005 and he started attending the weekly meetings with Sheikh Mehboob and Mohd. Saliq @ Yunus where he was introduced to Ekrar Sheikh and Abu Faizal and along with Abu Faizal, he conducted illegal activities and later they were all lodged in Khandwa jail when he along with other SIMI members namely Abu Faizal, Aijajudeen, Mohd. Aslam, Zakir Hussain, Sheikh Mehboob and Akhil Khilji made a plan to escape from jail. That all these above named accused who committed the above noted offences were active members of SIMI is also evident from the statement of Abu Faizal recorded after the Bhopal Jail break on 31<sup>st</sup> October, 2016
- 9.8 Though Bodh Gaya blast took place on 7<sup>th</sup> July, 2013 the two main accused Umair Siddiqui and Azharuddin Qureshi were arrested from Raipur in FIR No.740/2013 on 4<sup>th</sup> November, 2013 and 6<sup>th</sup> November, 2013 respectively. Intiyaz Ansari was arrested at Patna Railway Junction where he revealed that his co-accused were attending Hunkar Rally at Gandhi Maidan. On the same day, a series of bomb blasts took place at Gandhi Maidan which resulted in death of six persons and injuries to 89 persons. It was revealed that Umair Siddiqui, Azharuddin Qureshi, Haider Ali and Mujibullah Ansari were the main accused involved in both the Bodh Gaya blast as well as Patna blast.
- 9.9 Confessional statements of Umair Siddiqui and Azharuddin Qureshi recorded on 21<sup>st</sup> December, 2013 under Section 164 Cr.P.C. and exhibited before this Tribunal as Ex.PW-28/2 and PW-28/3 respectively revealed that even after the ban was imposed by the Central Government on SIMI on 27<sup>th</sup> November, 2001 in 2004, Mohd. Ali of Jabalpur along with Abdus Subhan Qureshi @ Tauqeer, both members of SIMI, visited Raipur. Later, it was revealed that Mohd. Ali, son of Moharram Ali was the editor of an English magazine and wanted in Ahmedabad blast cases. In the year 2007 SIMI was divided in two groups one of Shahid Badr Falah and the second one of Safdar Nagori. The SIMI cadres of M.P. went to Safdar Nagori and Umair Siddiqui was in the said group. In October, 2010 Iqrar Sheikh, Inamul Sheikh and Abu Faizal had brought Haider to Raipur for the first time. He disclosed his name as Abdullah and that he was the member of SIMI but did not tell from which place he was coming. In the Taqreer that followed, Abu Faizal and Iqrar Sheikh spoke about various topics. A programme was arranged in March, 2001 on the occasion of Holi where lecture on Darsh-E-Quran was given and a film on the WTC attack i.e. 9/11 was shown on the laptop besides lectures on jihad etc. were given. In 2011 Abu Faizal, Iqrar Sheikh and Mojibur Rahman were arrested and Haider Ali again came to meet him for the second time in October, 2011 when he asked Umair Siddiqui and other members of Raipur about the functioning and networking of SIMI. Haider had brought ₹4 lakh which were given to him by Abu Faizal out of which ₹2 lakh were meant for the families of those who were behind the bars and ₹2 lakh for legal aid. In January-February, 2013 Tehseen @ Monu and Waqas had asked Haider to work with them since they wanted to use the network of SIMI and Haider informed them that they were working for ISI. Thereafter, with the

help of Haider Ali, he agreed to the proposal and carried out the blasts. Azharuddin Qureshi also revealed about the networking as also how he along with Umair learnt making the bombs. The two confessional statements of Umair Siddiqui and Azharuddin Qureshi show that despite repeated bans SIMI and its activists continued to work and in a concerted manner committed various offences. During the course of trial besides the confessional statements, protected witnesses also spoke about the Darsh-e-Quran, a programme of SIMI and about the association of the various accused to SIMI.

- 9.10 The learned Special Judge, NIA has delivered the judgment in the Bodh Gaya blast case on 25<sup>th</sup> May, 2018 which was exhibited as Ex.PW-28/12 before the Tribunal, wherein these two confessional statements have been held to be admissible and relevant and besides the other evidence available relying upon these confessional statements, the learned Special Judge, NIA has convicted Umair Siddiqui, Azharuddin Qureshi, Imtiyaz Ansari, Haider Ali and Mujibullah Ansari inter alia for offences punishable under Sections 153-A/120-B IPC and Sections 16/18/20/23 UAPA. The learned Special Judge held :

*“..... I have read the confessional statements of both the accused, Exts. 48 and 48/1 a number of times in light of its denunciation by the ld. Defence lawyer as not being voluntary and liable to be discarded. On perusal of Exts. 48 and 48/1 it would appear that Umair and Azhar, apart from confessing their role in the matter of planning and conspiracy for causing bomb blast, in the matter of being member of SIMI and in that capacity conducted several programmes at various places in association with other members of SIMI, where the ‘Jehadi’ talks used to take place for taking revenge, in the matter of procuring explosive materials and in harbouring the offenders after bomb blast. Both the said accused have also attributed about different role of accused Haider Ali in the commission of such offence. It seems fair to note here that since all these three accused persons are facing joint trial, the confession of Umair and Azharuddin are relevant against Haider in view of Section 30 of Indian Evidence Act. The law decided by Hon’ble Apex Court in the case of Kashmira Singh Vrs. State is worth to note here in this regard. On meticulous perusal of evidence of PW 67 it would appear that repeatedly he tried to make both the accused, understand the implications and consequences of their confession and it also appears that not only he warned them, but also made them understand by giving time for reflection, as both the accused persons were brought before him in the pre-lunch session at about 11.30 a.m. and they were asked questions by the ld. Magistrate and then they were handed over to the Bench Clerk to keep them in the court room and to produce after 2-3 hours and accordingly, they were produced and their confessional statements were recorded, wherein they have said about the details of their family and their role with regard to bomb blast at Bodh Gaya, they have admitted about their activities as member of SIMI and regarding its programmes. Accused Umair Siddiqui and Azharuddin have confessed about their participation in the planning for committing bomb blast at Bodh Gaya temple and have also confessed that they had procured and supplied chemical to Haider Ali in carrying out the bomb blast at Bodh Gaya. Accused Umair Siddiqui has confessed that he along with his family members and others including Haider, Mujibullah had gone to Keral to see the first Masjid. Haider came to him on 12<sup>th</sup> July at Raipur and at that time his hairs were very small. The record reveals that prior to making their confession before the Magistrate both the accused persons remained in custody for quite good times and during the period they might have disclosed the names of the area and as such naming those area by them in their confession is absolutely natural and normal phenomena. Section 463 of Cr.P.C. gives a corrective measure to this court with regard to confessional statement of both the accused persons while recording their confessional statement u/s 164 Cr.P.C. general questions were put to them by the Magistrate (as reflects from PW 67) and were not reduced into writing in Exts. 48 and 48/1 by the ld. Magistrate does not frustrate the essence of confessional statement of Umair Siddiqui and Azharuddin because such omission had not prejudiced the accused as during evidence of the Magistrate (PW 67) series of questions were asked by ld. Defence lawyer regarding the entire episode of recording of both the confessional statements.....”*



- 9.11 These confessional statements of Umair Siddiqui and Azharuddin Qureshi recorded on 21<sup>st</sup> December, 2013 under Section 164 Cr.P.C. also corroborate the statement of Yasin Bhatkal which he made after his arrest and revealed that Riyaz Bhatkal, presently the leader of Indian Mujahideen (IM) and erstwhile member of SIMI (presently supposed to be in Pakistan) was making efforts to use the cadres of SIMI for furthering the unlawful activities of IM and it is for this reason that they were trying to use the services of Tehsin @ Monu and Wakas to get in touch with Haider who could contact his *Amir* i.e. Abdus Subhan Qureshi @ Tauqeer, an erstwhile member of SIMI and an accused in the Wagamon camp case who had shifted his base to Nepal.
- 9.12 Evidence adduced by the witnesses who appeared from NIA and Special Cell, Delhi Police revealed that Riyaz Bhatkal was making his efforts and using the cadres of SIMI for furthering the unlawful activities of IM. Mohd.Quateel Siddiqui was arrested in FIR No.54/2011 along with arms, ammunitions, fake currency etc., the same being the first arrest of a member of IM followed by eighteen other accused being arrested. Investigations carried out from the various accused revealed that Riyaz Bhatkal along with his associate Tehseen @ Monu were planning blast and discussions were going on in this regard and about the participation of Wakas. Riyaz asked Tehseen @ Monu to get in touch with Haider @ Black Beauty so that he could involve his *Amir* i.e. Abdus Subhan Qureshi @ Tauqeer who had fled the country after the Ahmadabad Blast in 2008 and was residing in Nepal. Abdus Subhan Qureshi did not agree to meet Riyaz Bhatkal via Haider @ Black Beauty rather met him on his own directly at Riyadh along with Ariz Khan, Iqbal Bhatkal, Mohsin Chaudhary, Afif and two more persons. Abdus Subhan Qureshi @ Tauqeer knew Riyaz Bhatkal very well as they used to meet in Mumbai for SIMI programme.
- 9.13 At Riyadh they discussed about the revival plan of SIMI/IM and decided to take revenge for the death of eight SIMI cadres in encounter after the Bhopal Jail break on 1<sup>st</sup> November, 2016. It was thus decided that Abdus Subhan Qureshi @ Tauqeer and Ariz Khan would go to India to revive the SIMI/IM modules. However after Abdus Subhan Qureshi crossed the Indo-Nepal Border and was coming to Ghazipur, he was arrested on 9<sup>th</sup> July, 2018. He also stated that he was in contact with Afif in Pakistan and also about the SIMI cadres having escaped Khandwa jail out of which he knew Abu Faizal and Sheikh Mehboob. He established contact with Alam Zeb Afridi also in December, 2014 whereafter Alam Zeb Afridi was arrested by NIA. Though he did not agree to meet Riyaz Bhatkal through Haider @ Black Beauty, Afif met him at Riyadh in March, 2016 where they discussed about SIMI/IM's future and again in November, 2016, whereafter they met four to five times.
- 9.14 Statement of Ariz Khan @ Junaid who was arrested also while entering into India revealed that on the motivation of ex-SIMI members and IM, he got involved in execution of several terrorist incidents including the UP Court Blast 2007, Jaipur, Ahmadabad, Delhi Serial Blast in the year 2008. On 19<sup>th</sup> September, 2008, a Delhi Police Team raided their flat at Batla House where he and Shahzad managed to escape from the flat while Atif Ameen, Mohd.Saif and Mohd.Sajid were trapped. He stayed in various hideouts initially in India together with Shahzad and then later went to Nepal where he get in touch with Abdus Subhan Qureshi @ Tauqeer and with the help of top operatives of IM based in KSA and Pakistan planned to revive IM/SIMI in India by contacting the SIMI sympathizers and sleeper cells.
- 9.15 The fact that IM is trying to operate through SIMI cadres is also evident from the evidence of the witnesses who appeared from the State of Rajasthan who deposed about the arrest of Zia-ur-Rehman @ Waqas, Maruf @ Ibrahim and Mohd.Wakar Azhar and Niyajuddin. Further arrest of Ashraf Ali at Jodhpur also revealed the association between the member and activists of SIMI and IM.
- 9.16 Alam Zeb Afridi who has been convicted for being a member of SIMI in the Wagamon Camp Case after being released in the said FIR continued his activities and was involved in two fire incidents at the Israeli Visa Centre at Bangalore on 2<sup>nd</sup> August, 2014 and 29<sup>th</sup> November, 2015. Alam Zeb Afridi was also one of the accused in Church Street Blast case on 28<sup>th</sup> December, 2014 at about 8:30 P.M., killing one woman and causing grievous injuries to number of people. Alam Zeb Afridi was involved in 32 blast cases which took place in 2008 in Ahmedabad and Surat. Finally Alam Zeb Afridi was arrested by the joint team of Karnataka Police and NIA on 23<sup>rd</sup> January, 2016.
- 9.17 In his confessional statement Alam Zeb Afridi stated about his association with SIMI. He also spoke about a three day training camp at Halol attended by Safdar Nagori, his group members and other



SIMI members including Abdus Subhan Qureshi @ Tauqeer. Alam Zeb Afridi stated that he was a native of Juhapura, Ahmadabad, Gujarat and that after failing in the 12<sup>th</sup> standard he joined Jamat-E-Islami in the year 2004. He used to go to the library and read books, magazines and other material. He also read about the riots of Gujarat in the year 2002. He used to read Tehrik-e-Millat, a monthly magazine published by SIMI. Though the said magazine was not on the register in the library but one unknown person used to keep these magazines in the library. After being attracted to the ideology of SIMI, he became its executive member and committed firstly the blasts at Ahmadabad and Surat, then fire on Israeli Visa Centre twice and was also involved in Church Street Blast.

- 9.18 As held by the Supreme Court in *Jamat (supra)* this Tribunal is required to modulate a procedure so as to objectively determine the credibility of the material produced before it and thereafter weigh the same in the nature of adjudication of a lis between two parties, the outcome whereof would show whether or not there is sufficient cause for declaring the association unlawful. The material placed before the Tribunal is pursuant to affidavits on oath tendered by Police officers, some of whom are also the investigating officers and have thus direct information with regard to the facts revealed during the course of investigations and statements made before them. Other witnesses are supervisory officers and/ or nodal officers who have collected informations on the basis of records maintained in the various offices of the Police department, the material produced being, inter alia, admissible under Section 35 of the Indian Evidence Act. The credibility of the statements of the accused recorded before them also gets established by the fact that in the statements of some of the accused recorded by different Police officers from different jurisdiction similar facts and evidences are emerging.
- 9.19 From the evidence led before this Tribunal it is evident that the accused who have committed various offences in various jurisdiction have been found to be members/activists of SIMI and by entering into conspiracy they committed various offences in line with the ideologies and propagation of SIMI. Further evidence has come on record in the form of statement of witnesses as also findings by the Courts of competent jurisdiction that some of the accused who have committed the offences as noted above are members of SIMI, some of whom have also been convicted for being members of the unlawful association/ raising funds for the association participating in its activities, thereby negating the plea that the offences were committed in individual capacity with no linkage to SIMI.
- 9.20 From the material placed before the Tribunal and as noted above, it is evident that members/activists of SIMI who were involved in commission of heinous offences and unlawful activities prior to the seventh ban continued commission of heinous offences and unlawful activities then after the last ban with members within and outside the country, on their own and/or with the support of other terrorist organizations.
- 9.21 The arrest of Abdul Rehman Umari, the erstwhile State President of SIMI operating under the name of *Wahadat-e-Islami* and Khwaja Moinuddin on 18<sup>th</sup> June, 2014, Shah Mudassar and Shoaib Alam in Crime No.338/2014 on 22<sup>nd</sup> October, 2014 and shouting of slogans by 18 persons including Abu Faizal, Irfan Nagori, Umer Ahmed etc. on 17<sup>th</sup> May, 2014 shows that the members and activists of SIMI are continuing with their objectives.
- 9.22 From the arrest of Pathan Tausif Khan and Sanna Khan @ Shahansha and Gulam Sarvar Khan in Crime No.377/2017 extensive recoveries in the form of training modules, code words, messages, jehadi literature, jail break strategies at different jails, names of the SIMI activists who had been killed in police encounter, name of the CBI Special Judge who convicted Safdar Nagori and other SIMI activists, name of a Government Advocate, pen drives, SIM cards, memory cards inter alia were recovered which clearly shows that the activists of SIMI were still continuing with their activities despite the repeated bans on SIMI and some of the accused involved in terrorist activities like Pathan Tausif Khan were given shelter by Gulam Sarvar Khan who was an Ansar of SIMI and that the members of SIMI who retired, joined the new organization *Wahadat-e-Islami Hind* and continued with the activities. Thus, members of SIMI continue to give support to other members. Further the materials/files recovered from the pen drives, memory card etc reveal the links between Al-Qaida, ISIS, JEM, LET and SIMI.
- 9.23 From the evidence of witnesses particularly PW-8, PW-11, PW-14, PW-17, PW-28, PW-31, PW-33 and PW-45, there is sufficient material to show that the activists of SIMI are getting finances in two forms besides the foreign funding. The funds received within the country can be broadly classified

in two different heads; i) Jhakat/Donation and funds from members/ ex-members and sympathizers and ii) by robberies and dacoities.

- 9.24 Jhakat/Donation/Funds from members/ex-members and sympathizers: Though the literal meaning of Jhakat is religious tax, however from the evidence of witnesses it is revealed that monies were being collected as donations for which donation slips were issued and they were being utilized for funding the unlawful activities of members, activists, sympathizers of SIMI and to carry out its aims and objectives. D. Hari Kumar Yadav (PW-8) who has deposed about the CR.No. 338/2014 stated that on 22<sup>nd</sup> October, 2014 at 9.50 hours while Inspector S. Ramachander Reddy was on normal checking duty on Secundrabad Railway Station, he noticed two persons in suspicious circumstances, namely Shah Mudassir Talha and Shoaib Ahmed Khan @ Tareek. On their search incriminating material in the form of literature, CDs, pen-drives, mobile phone, original passport of Shoib Ahmed, cash and a donation slip for a sum of ₹100/- in favour of SIMI were recovered. Ankit Garg (PW-28) also deposed that Farooq Saheb, the Treasurer of Jhakat Committee went for Haj when protected the witness (X-10), worked as the Treasurer of the Committee for two months and found that a sum of ₹ 30,000/- had been given from the Committee fund to Haider. Abhishek Maheshwari (PW-17) deposed that in CR.No. 740/2013 on search of Umair Siddiqui's residence blank SIMI Membership forms, ammonium nitrate, laptop, lay-out planning of Bodh Gaya bomb blast, etc. were recovered. From the house search of Umair Siddiqui donation slips were recovered. In his statement recorded under Section 164 Cr.P.C. Umair Siddiqui stated that he received ₹ 2.5 lakhs from Haider which had been given by Abu Faizal. The said amount was given through one Saddani Darbar at Raipur. Further, Haider gave ₹ 55,000/- to Abu Faizal which he kept for Patna bomb blast and also borrowed money from one of his friends. Haider also brought ₹ 70,000/- to deposit and send for the expenses of Muslim families relating to SIMI of Madhya Pradesh. Umair's personal expenses were met through Hidayat Bhai and Aslam Bhai of Ranchi and Aftab Bhai of Mujafarpur. Azharuddin Qureshi stated that Umair Siddiqui used to bear the expenses of their lodging and boarding through the money of Jhakat and used to get all his work done through him. Witness Ramesh Sahu stated that Amar Parvez used to collect donations for SIMI from Raipur and even now a sum of ₹ 72,500/- was kept as donation for SIMI from Raipur with his associate Wahid. Witness Abdul Mosim Khan stated that he had attended one of the programmes of SIMI wherein it was stated that those killed in the attack were martyrs and will go to Jannat, that they had to do Jihad against Hindustan and collect funds for training of Jehadees. Further, Anurag Kumar (PW-31) also deposed in relation to the collection of funds for Jihad. The learned Special Judge while convicting Umair Siddiqui, Haider Ali and Azharuddin Qureshi held that Haider was given ₹10,000/- as funds collected as Chanda on the request of Shahbaz. The witness who appeared before the Trial Court also gave ₹30,000/- to Haider Ali and the said money was given by Jhakat Committee run by Ujair Bhai. After taking money Haider asked him '*bomb rakhne chalega*', however the witness refused.
- 9.25 Rajesh Kumar (PW-33) deposed about the statements made by Umair Siddiqui and Azharuddin Qureshi who revealed that they arranged the logistics, plannings, hide-outs, raising of funds and procuring explosives and chemicals used in the preparation of IEDs in which Haider Ali @ Black Beauty, a trained bomb maker, also helped them to raise funds and to carry out the attack. Ankit Garg, (PW-28) the Nodal Officer of NIA deposed on the basis of statements of Umair Siddiqui recorded under Section 164 Cr.P.C. which revealed that Haider was given ₹ 4 lakhs by Abu Faizal, ₹2 lakhs for the families of members of SIMI who were inside and ₹ 2 lakh for their legal aid. In the Bodh Gaya blast for which FIR No. 162/2013, 163/2013 and 164/2013 were registered and were transferred to NIA and re-registered as NIA case RC No. 7/2013, 8/2013 and 9/2013, the Special Judge, NIA Court has already convicted Umair Siddiqui, Azharuddin Qureshi, Imtiyaz Ansari, Haider Ali and Mujibullah Ansari for various provisions including Section 16/18/20/23 of UAPA besides Sections 120B/153A/307 IPC and 3/4 of Explosives Act. Haider Ali, Umair Siddiqui, Azharuddin Qureshi have also been convicted for offence punishable under Section 17 of the UAPA for raising funds for terrorist activities vide the judgment dated 25<sup>th</sup> May, 2018. Further during the course of trial witnesses have also spoken of efforts made by SIMI members in its meetings to collect funds.
- 9.26 Collection of funds through robberies and dacoities: T. Usha Rani (PW-14) deposed about the dacoity committed at State Bank of India Choppadandi, Karimnagar District on 1<sup>st</sup> February, 2014 by six persons out of which four entered inside the bank and at the point of knife took away net cash

approximately ₹ 46 lakhs for which CR. No. 16/2014 was registered at PS Choppadandi, Karimnagar. The movements of the accused while committing the dacoity were captured in the CCTV cameras and from the photographs so developed it was revealed that the accused had first robbed two motorcycles and after the incident parked the said two motorcycles at the parking stand. Chance prints of left thumb and left middle finger of Mohd. Aslam S/o Ramjan recovered from the State Bank of India, Choppadandi Branch tallied with his finger impressions. After the Bijour blast took place on 12<sup>th</sup> September, 2014 photographs of the accused collected from the CCTV it was revealed that the accused who were hiding at Bijour and making explosives which accidentally exploded were the same who were involved in the Choppadandi dacoity case. Further, from the house of the co-accused who had given shelter to the main accused namely Husna, a sum of ₹7,74,600/- was recovered, which were the same currency notes robbed from State Bank of India, Choppadandi Branch i.e. the train blasts at Chennai Central Railway Station on 1<sup>st</sup> May, 2015, followed by the low intensity blast at Pune on 10<sup>th</sup> July, 2015, whereafter they moved to Bijour, which fact has also been proved by the testimony of Sudhanshu Singh (PW-30). It is thus evident that the activists of SIMI after the escape from Khandwa jail committed dacoity of ₹ 46 Lakhs on 1<sup>st</sup> February, 2014 and thereafter the looted money was used in committing number of offences. Even prior thereto Abu Faizal, Chief of SIMI of Indore Unit and Aijajudeen etc., were found involved in the dacoity which took place at Mannapuram Gold Finance Company in the year 2010 wherein judgment was delivered by the Competent Court on 31<sup>st</sup> March, 2018 and Abu Faizal and Mohd. Iqrar have been convicted for offences punishable under Section 120B read with 395/397 IPC, Section 10(1)A and 17 of UAPA. However, proceedings qua Mohd. Aslam, Zakir Hussain, Mohd. Aijajudeen and Sheikh Mujib Ahmed, the accused also involved in the Choppadandi dacoity case, were abated as they had died in cross-fires after their escape.

- 9.27 Foreign funding: In his confessional statement recorded Yasin Bhatkal stated about the influence of Riyaz Bhatkal, one of the superiors of IM and earlier member of SIMI based in Pakistan. He stated that pursuant to a message received from Riyaz he received a sum of ₹40,000/- by transfer via Western Union. Yasin Bhatkal also revealed that as and when required Riyaz used to send money through Western Union in the names of two/three persons. The decoded chats also revealed that money sent by Riyaz through different channels was received at various places and distributed including to the activists of SIMI which cadre they were using. Further arrest of Mohd. Faiz in Crime No. 9/2019 where he was trying to travel abroad on a fictitious name also revealed about his earlier visits to different countries for raising funds for SIMI.
- 9.28 Frontal Organization/connect with other Terrorist Organizations : In relation to FIR No.338/2014 PW-8 D.Hari Kumar Yadav stated that the material recovered from the facebook account of Shoaib had literature about forming of the explosive material, Jehadi methodology along with chats with counterparts in Afghanistan, Iran, Pakistan, for example belonging to Zahid A1 Hindi, Abu Saif etc. The two accused were in touch with foreign organization namely ISIS and Al-Qaida. The analysis of the laptops and the hard-disks contained incriminating material like speeches of Maulana Masood Azhar, Jaish-E-Mohammad, formally quoted as 'Hyderabad Biryani', with few videos bites downloaded from *Al Isabha* websites which is the media of ISIS. Pen drives/memory cards recovered after the arrest of Pathan Tausif Khan and Ghulam Sarvar Khan revealed the links of Al-Quida, ISIS, JEM and LET with SIMI. Further sufficient evidence has come on record to prove that IM is using the cadres of SIMI for its terrorist activities.
- 9.29 Evidence on record also reveals that in the early adolescent age boys are indoctrinated resulting in their commission of offences even when they are juveniles or immediately on attaining the age of majority. During the trial in Bodh Gaya blast case witnesses have spoken that in the meetings of SIMI it was also discussed how to associate new boys with SIMI organization. Some of the accused arrested and facing trial/ convicted were as young as 18-25 years and before reaching the age of majority trained into making bombs etc. Illustrative example of recruitment of young boys is an inquiry report submitted before the Juvenile Justice Board in respect of one 'T' on 16<sup>th</sup> August, 2018 in CR. No. 740/2013 registered at PS Civil Lines, Raipur for offences punishable under Sections 212/ 216/ 121/ 124A/ 153A IPC, Sections 3/7/10/11/13/15/16/18/19/20/39/41 UAPA, Sections 25/27 Arms Act and Section 345 Explosive Substance Act. The association of 'T' started with SIMI in the year 2012 when he was aged 14 years. 'T' stated that he came in contact with Haider Ali @ Abdullah, head of SIMI organization in Bihar in the year 2012 and on the asking of

the Haider, he took membership of SIMI and became its active member. He went to Raipur with Haider number of times in the year 2013 and stayed in Raja Talab where meetings used to take place with other organizations of SIMI. He was also involved in the Bodh Gaya bomb blast and Patna bomb blast with Haider. 'T' stated that in the meetings of SIMI activists in Raipur, the members used to discuss about waging war against India, sedition and explosion of bomb and bringing Islamic governance in India etc. One of the witnesses has also stated that the members of SIMI retire at the age of 30 years and thereafter form *Jamaat-E-Islami*.

- 9.30 Ten witnesses of the police have given information including intelligence reports and interrogation reports of the various accused in sealed cover which reveal about the funds received by the members/activists of SIMI and that the activities and ideologies of SIMI are being carried out by frontal organizations, the cadres of SIMI are being used by other terrorist outfits and also reveal names of other accused involved in the larger conspiracies who have not been arrested as yet. Material in sealed cover also reveals about number of Frontal Organizations and connect with other terrorist organizations disclosure whereof would be injurious to public interest.
- 9.31 From the evidence adduced before this Tribunal and the material placed on record it is evident that the activities of SIMI are continuing through its members/activists/sympathizers, they are expanding the cadres by indoctrinating young boys and that its cadre is being used by other terrorist organizations to continue unlawful/terrorist activities in India. Some of the Members/activists of SIMI are working under the umbrella of frontal organization and/or are having links with number of other terrorist organizations e.g. Al-Qaeda, LET, JEM, ISIS, IM etc. It is also evident that they are continuing to receive funds within India as also through foreign funding despite SIMI having been declared a banned organisation in the year 2001 which ban is still continuing till date except for a very brief period.

#### X. Conclusion

- 10.1 Having analyzed the evidence led before this Tribunal, there is sufficient material to hold that conditions of Section 2(p)(i) and (ii) of UAPA are satisfied in the present case. Hence, in view of the findings as above, it is held that there is sufficient cause for declaring Students Islamic Movement of India (SIMI) as an "unlawful association" and an order is passed under Section 4 (3) of the UAPA confirming the declaration made in the notification of the Ministry of Home Affairs S.O. 564(E) dated 31<sup>st</sup> January, 2019 issued under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

JUSTICE MUKTA GUPTA

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

July 29, 2019

[F. No. 14017/29/2019-NI-III]

S. C. L. DAS, Jt. Secy.

#### ANNEXURE – I

#### DETAILS OF CASES REGISTERED AGAINST SIMI ON OR AFTER 1<sup>ST</sup> FEBRUARY 2014

##### BIHAR

1. Case Crime No. 377/2017 has been registered at Civil Lines Police Station, Gaya, Bihar under sections 216, 124A, 120B and 34 of the Indian Penal Code and under sections 13, 16, 18, 19, 20 and 38 of the Unlawful Activities (Prevention) Act, 1967 against the accused Pathan Tauseef Khan *alias* Mohd. Atiq, Shahanshah Khan *alias* Sanna Khan, Gulam Sarvar Khan and their unknown associates for their alleged involvement into seditious activities, harboring terrorist, being the member of proscribed terrorist organization and getting involved into terror related activities.

##### KARNATAKA



2. Case Crime No. 309/2014 has been registered at Cubbon Park Police Station, Bengaluru, Karnataka under sections 121, 121A, 120B, 153, 307 and 302 of the Indian Penal Code and sections 3, 4 and 5 of the Explosive Substances Act, 1908 and sections 3, 10, 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against the accused Alamjeb Afridi *alias* Alamjeb Khan *alias* Mohammed Rafiq *alias* Jaweed *alias* Jaid Afridi *alias* Alamzeb Khan *alias* Chikna *alias* Javed in the matter of Bangalore Church Street Blast. This case was taken over by National Investigation Agency and re-registered the case as National Investigation Agency Case No. RC 01/2015/NIA/Hyd. on 20.05.2015.

#### MADHYA PRADESH

3. Case Crime No. 424/2014 has been registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967 against the accused Majid Nagori and seventeen others. Accused Akil Khilji, Khalid Ahmed and Abdul Majid had shot dead in police encounter after absconding from judicial custody. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted the rest of the fifteen accused under sections 153B and 295B of the Indian Penal Code for three years rigorous imprisonment and fine of rupees one thousand for each accused person.
4. Case Crime No. 100/2015 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 294, 353, 506 and 34 of the Indian Penal Code against the accused Abu Faizal and Sharafat. After hearing, the Court of Chief Judicial Magistrate, Bhopal has convicted both the accused under section 353 of the Indian Penal Code for two years rigorous imprisonment and fine of rupees five hundred each and convicted under section 506 of the Indian Penal Code for three years rigorous imprisonment and fine of rupees five hundred for each accused person.
5. Case Crime No. 393/2016 has been registered at Moghat Road Police Station, Khandwa, Madhya Pradesh under section 124A of the Indian Penal Code against the accused Mohd. Aasif Shayar.
6. Case Crime No. 270/2016 has been registered at Gandhi Nagar Police Station, Bhopal, Madhya Pradesh under sections 342, 307, 302, 120B, 224, 34 and 353 of the Indian Penal Code and sections 3, 10, 13, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016.
7. Case Crime No. 355/2016 has been registered at Gunja Police Station, Bhopal, Madhya Pradesh under sections 307, 147, 148, 149 and 332 of the Indian Penal Code and sections 25 and 27 of the Arms Act, 1959 (54 of 1959) and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 against Akeel Khilji and seven others. All the accused have been shot dead in police encounter in Bhopal on 31.10.2016.

#### MAHARASHTRA

8. Case Crime No. 09/2014 has been registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 307, 324, 427 and 120B of the Indian Penal Code read with sections 3, 4 and 5 of the Explosives Act, 1884 (4 of 1884) read with sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 against five SIMI activists, in the matter of blast occurred opposite to Shree Swami Samarth Snack Centre, Budhwar Peth, Pune, Maharashtra. Out of five accused, two were shot dead in police encounter with Telangana Police at Nalgonda, Telangana and three were shot dead in Police Encounter with Madhya Pradesh Police, after illegally escaping from the Bhopal Central Jail.

#### ODISHA

9. Case Crime No. 38 dated 17.02.2016 at Plant Site Police Station, Rourkela, Odisha under sections 147, 148, 120B, 121, 121A, 122, 307, 467, 471 and 149 of the Indian Penal Code read with sections 25 and 27 of the Arms Act, 1959 and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 has been registered against four SIMI hard core terrorists along with mother of one of the terrorist namely (1) Sk. Mehboob *alias* Guddu *alias* Aftab; (2) Md. Amzad Khan *alias* Pappu *alias* Daud *alias* Umar *alias* Gopal Singh; (3) Zakir Husain *alias* Sadiq *alias* Vicky Don *alias* Vinay Kumar *alias* Anand Joshi *alias* Imtiaz; (4) Md. Saliq *alias* Sallu *alias* Yunus *alias* Sanjay; and (5) Najma Bee (Mother of Sk. Mehboob) for their arrest on 16/17.02.2016 night from Qureshi Mohalla, Nala Road, Rourkela, District-Sundargarh. During investigation, it is learnt that, the above four terrorists were active members of SIMI which is a banned organisation and were killed in Police encounter in Bhopal on 30/31.10.2016, following Jail break in Bhopal (Madhya Pradesh).



TAMIL NADU

10. Case Crime No. 02/2014 has been registered by S.B.C.I.D. Metro Police, Chennai, Tamil Nadu under sections 326, 307 and 302 of the Indian Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with section 151 of the Railways Act, 1989 (Formerly Chennai Railway Police Cr. No. 273/2014) in the matter of two IED blasts, occurred in Train No. 12509 (Bangalore-Guwahati Express) at Platform No. 9 in Chennai Central Railway Station. During the investigation, the involvement of three ex-SIMI activists have been established. All these ex-SIMI cadres have been killed in two separate encounters.
11. Case Crime No. 432/2014 has been registered by D2 Selvapuram Police Station, Coimbatore, Tamil Nadu under sections 120B, 153A and 505(1) of the Indian Penal Code against ten accused persons including some ex-SIMI cadres for hatching a conspiracy with an intention to eliminate Hindu Organisation leaders in Coimbatore in order to create communal disharmony.

TELANGANA

12. Case Crime No. 30/2014 has been registered by Mehboobnagar-II Town Police Station, Mahabubnagar, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Mahaboobnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016.
13. Case Crime No. 10/2014 has been registered by Devarakonda Police Station, Nalgonda, Telangana under section 379 of the Indian Penal Code against six SIMI activists for theft of motorcycle at Devarakonda, Nalgonda, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016.
14. Case Crime No. 16/2014 has been registered by Choppadandi Police Station, Karimnagar, Telangana under sections 395 of the Indian Penal Code, clause (a) and clause (b) of sub-section (1) of section 25 and section 27 of the Arms Act, 1959, sections 10, 13, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 against six SIMI activists for robbery of rupees forty six lakhs from State Bank of India, Choppadandi, Karimnagar, Telangana. Out of these six accused persons, three died in Police Encounter at Bhopal on 30.10.2016.
15. Case Crime No. 120/2015 has been registered by Suryapet TN Police Station, Nalgonda, Telangana under sections 302, 307, 394 and 34 of the Indian Penal Code, sub-section (1) of section 25 of the Arms Act, 1959 against two SIMI activists for opening fire on police team, killing two police personnel and injuring Circle Inspector and Home Guard, while the police team conducted frisking on suspicious passengers in Suryapet Hi-tech bus stop at Nalgonda district on 01/02.04.2015. The accused grabbed a 9 MM Carbine weapon from police team and fled away. These accused died in Police encounter on 04.04.2015 at Janakipuram, Nalgonda, Telangana.
16. Case Crime No. 34/2015 has been registered by Mothkur Police Station, Nalgonda, Telangana under sections 302, 307 and 34 of the Indian Penal Code and section 27 of the Arms Act, 1959. The facts of the case are that, in the morning hours on 04.04.2015, Police team was moving to Janakipuram, Nalgonda district. In the meantime, two assailants came from opposite direction and an exchange of fire took place between the police and the assailants, resulting in death of assailants and a Police Constable, besides injuring an Inspector of Police of Ramannapet Police Station and a Sub-Inspector of Police of Atmakur Police Station. Police seized two country made short weapons and one 9 MM carbine from the scene of offence which was stolen from the slain policemen at Suryapet, Nalgonda. The dead assailants were identified as activists of SIMI cadre.
17. Case Crime No. 22/2015 has been registered by Arvapalli Police Station, Telangana under section 384 of the Indian Penal Code. The facts of the case are that, while the complainant was proceeding on his bike and reached Arvapalli village centre, where the two accused persons stopped him and kept gun on his abdomen and head and forcibly took his bike and fled away with high speed towards Thirumalagiri. The two assailants died later and were identified as activists of SIMI cadre.
18. Case Crime No. 23/2015 has been registered by Arvapalli Police Station, Telangana under section 307 of the Indian Penal Code and clause (A) of sub-section (1) of section 25 of the Arms Act, 1959. The facts of the case are that, the complainant stated that on credible information he along with his staff crossed bridge of Sri Ram Sagar Project canal at Seethampuram where they found two persons

escaping. On being asked to stop, they started firing with weapons and in return the complainant also fired against them with his service pistol but the accused escaped. The two assailants died later and were identified as activists of SIMI cadre.

19. Case Crime No. 338/2014 has been registered by Gopalpuram Police Station, Hyderabad, Telangana under sections 121, 121A, 153A and 120B of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. The facts of the case are that, the Hyderabad Police arrested two accused (both resident of Maharashtra State) at Secunderabad Railway Station. They were the members of the newly created 'Electronic War Fare Technology Group/SIMI' to help the Indian branch of Al-Qaeda. It is learnt that they came to Hyderabad to go to Afghanistan to participate in Al-Qaeda training programme.

#### UTTAR PRADESH

20. Case Crime No. 964/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016.
21. Case Crime No. 965/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18, 23, 21, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 against eleven accused for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). The case was transferred to National Investigation Agency for further investigation. It was found in the case that, a SIMI module was involved in the incident. Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016.
22. Case Crime No. 966/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016.
23. Case Crime No. 967/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under section 4/25 of the Arms Act, 1959 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016.
24. Case Crime No. 968/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 against eleven SIMI activists for Improvised Explosive Device Blast that took place in a rented room in Bijnor (Uttar Pradesh). Out of the eleven accused persons, two were killed in an encounter with Telangana Police on 04.04.2015 and four were killed in an encounter with Madhya Pradesh Police on 31.10.2016.
25. Case Crime No. 974/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014.
26. Case Crime No. 975/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court.
27. Case Crime No. 976/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court.
28. Case Crime No. 977/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 121A, 122, 216 and 120B of the Indian Penal Code in the matter of Bijnor Blast case. Later on, this case was merged with Case Crime No. 964/2014.

29. Case Crime No. 978/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 4 and 5 of the Explosive Substances Act, 1908 in the matter of Bijnor Blast case. This case is pending in trial Court;
30. Case Crime No. 979/2014 has been registered by Kotwali Police Station, Bijnor, Uttar Pradesh under sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 in the matter of Bijnor Blast case. This case is pending in trial Court.

DELHI

31. Case Crime No. 50/2014 has been registered by Special Cell Police Station, Delhi under section 120B of the Indian Penal Code and sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 after the accidental blast in Bijnor (Uttar Pradesh) on 12.09.2014 in the hideout of reported absconding members of SIMI.

NATIONAL INVESTIGATION AGENCY (NIA)

32. Case Crime No. RC-01/2015/NIA-DLI has been registered by National Investigation Agency under sections 121A and 122 of the Indian Penal Code, section 25 of the Arms Act, 1959, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against eleven accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh.
33. Case Crime No. RC-10/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against one accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh.
34. Case Crime No. RC-11/2015/NIA-DLI has been registered by National Investigation Agency under sections 120B, 121A and 122 of the Indian Penal Code, sections 4 and 5 of the Explosive Substances Act, 1908 and sections 13, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 against two accused in the matter of Improvised Explosive Device Blast at Bijnor, Uttar Pradesh.

ANNEXURE - II

**DETAILS OF CASES IN WHICH, JUDGEMENT HAVE BEEN DELIVERED AND ENDED WITH CONVICTION OF ACCUSED SIMI ACTIVISTS ON OR AFTER THE BAN IMPOSED ON 1<sup>ST</sup> FEBRUARY, 2014.**

MADHYA PRADESH

- (1) One SIMI activist was sentenced to two years rigorous imprisonment and a fine of rupees one thousand by the Court of Additional Chief Judicial Magistrate, Indore in Case Crime No. 479/2001, registered at Aerodrome Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967.
- (2) One SIMI activist was sentenced to two years simple imprisonment by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 304/2001, registered at Khajrana Police Station, Indore, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967.
- (3) One SIMI activist was sentenced to two years imprisonment and a fine of rupees five hundred by the First Class Court, Burhanpur in Case Crime No. 269/2001, registered at Kotwali Police Station, Burhanpur, Madhya Pradesh under section 153A of the Indian Penal Code and sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967.
- (4) Two SIMI activists were sentenced to one year rigorous imprisonment and a fine of rupees five hundred each under sections 153A and 153B of the Indian Penal Code and two year rigorous imprisonment and a fine of rupees five hundred each under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Chief Judicial Magistrate, Sihor in Case Crime No. 239/2008, registered at Kotwali Police Station, Sihor, Madhya Pradesh under section 153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967.

- (5) Three SIMI activists were sentenced to five years rigorous imprisonment each and eleven SIMI activists were sentenced to life imprisonment by Fourth Additional District and Sessions Judge, Indore in Case Crime No. 120/2008, registered at Pithampur Police Station, Dhar, Madhya Pradesh under sections 122, 124A and 153A of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959 and sections 3, 4, 5 and 6 of the Explosives Act, 1884 (4 of 1884).
- (6) One SIMI activist was sentenced to three years rigorous imprisonment and a fine of rupees five hundred by the Court of Judicial Magistrate of first class, Indore in Case Crime No. 181/2008, registered at Aerodrome Police Station, Indore, Madhya Pradesh under sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967.
- (7) Three SIMI activist were sentenced to life imprisonment each and a fine of rupees one thousand each under sections 307 and 120B of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 14/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 307, 295, 153A, 124A, 120B, 212 and 34 of the Indian Penal Code and sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case.
- (8) One SIMI activist was sentenced to life imprisonment and fine of rupees one thousand under sections 302 and 120B of the Indian Penal Code, life imprisonment and fine of rupees one thousand under clause (a) of sub-section (1) of section 16 of the Unlawful Activities (Prevention) Act, 1967, ten years rigorous imprisonment and fine of rupees one thousand under section 18 of the Unlawful Activities (Prevention) Act, 1967, seven years rigorous imprisonment and fine of rupees one thousand under section 27 of the Arms Act, 1959, three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959. Another SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under clause (a) of sub-section 1B of section 25 of the Arms Act, 1959 (54 of 1959) by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 728/2009, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 302, 120B and 34 of the Indian Penal Code, sections 3, 10, 13, 15, 16A, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case.
- (9) One SIMI activist was sentenced to three years rigorous imprisonment and fine of rupees one thousand under section 379 of the Indian Penal Code, seven years rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code. One another SIMI activist was sentenced to three years of rigorous imprisonment and fine of rupees one thousand under section 411 of the Indian Penal Code, seven years of rigorous imprisonment and fine of rupees one thousand under section 468 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 72/2010, registered at Itarsi Police Station, Hoshangabad, Madhya Pradesh under sections 379, 468 and 411 of the Indian Penal Code and sections 3, 10, 13 and 18 of the Unlawful Activities (Prevention) Act, 1967. Case against one another accused has been dropped due to his death in police encounter by Telangana Police.
- (10) Two SIMI activists were sentenced to life imprisonment for each and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal code, life imprisonment for each and fine of rupees one thousand each under section 120B of the Indian Penal Code, two years of rigorous imprisonment and fine of rupees one thousand each under clause (a) of sub-section (1) of section 10 of the Unlawful Activities (Prevention) Act, 1967, life imprisonment and fine of rupees one thousand each under section 17 of the Unlawful Activities (Prevention) Act, 1967 by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 431/2010, registered at Hanuman Ganj Police Station, Bhopal, Madhya Pradesh under sections 395, 397 and 120B of the Indian Penal Code, sections 25 and 27 of the Arms Act, 1959, sections 3, 10, 13, 16, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967. Case against two accused is pending trial in the court and against four other accused has been dropped due to their death in police encounter.
- (11) Three SIMI activists were sentenced to life imprisonment and fine of rupees one thousand each under sections 395 and 397 of the Indian Penal Code by the Court of Special Judge, National Investigation



Agency, Bhopal in Case Crime No. 149/2010, registered at Pipaliya Mandi Police Station, Mandasaur, Madhya Pradesh under sections 195, 397 and 124 of the Indian Penal Code, sections 3, 10, 13(1), 15, 16, 17, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959. Case against four other accused has been dropped due to their death in police encounter in the case.

- (12) Five SIMI activists were sentenced to three years of imprisonment and fine of rupees two thousand each under 25-1(B) of the Arms Act, 1959 by the Court of Additional Sessions Judge (Second), Khandwa in Case Crime No. 319/2011, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 153A of the Indian Penal Code, sections 3, 10, 13, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 and sections 25 and 27 of the Arms Act, 1959.
- (13) One SIMI activist was sentenced to two years of rigorous imprisonment under section 224 of the Indian Penal Code by the Court of Special Judge, National Investigation Agency, Bhopal in Case Crime No. 542/2013, registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 224, 120B, 212 and 216 of the Indian Penal Code, sections 3, 10, 13, 16, 17, 18, 19, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 and section 3 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984). Case against one accused is pending trial in the court and against four accused has been dropped due to their death in police encounter. Case against two other accused has not started due to their death in police encounter in their absconding period in the case.
- (14) Fifteen SIMI activists were sentenced to three years of rigorous imprisonment and fine of rupees one thousand each under sections 153B and 295B of the Indian Penal Code by the Court of Chief Judicial Magistrate, Bhopal in Case Crime No. 424/2014, registered at MP Nagar Police Station, Bhopal, Madhya Pradesh under sections 295, 153B and 34 of the Indian Penal Code and section 10 of the Unlawful Activities (Prevention) Act, 1967. Case against three other accused has been dropped due to their death in police encounter in the case.

#### MAHARASHTRA

- (15) Two SIMI activists were sentenced to rigorous imprisonment for life and one SIMI activist was sentenced to fourteen years of rigorous imprisonment by the Maharashtra Control of Organised Crime Special Court, Arthur Road, Mumbai in L.A.C. No. 03/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under section 120B of the Indian Penal Code read with sections 5, 6 and 9-B of the Explosives Act, 1884 read with sections 4 and 5 of the Explosive Substances Act, 1908 (6 of 1908) read with sections 3 and 25 of the Arms Act, 1959 read with sections 10, 13, 16, 18 and 23 of the Unlawful Activities (Prevention) Act, 1967 read with section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (30 of 1999).
- (16) Three SIMI activists were sentenced to death and six SIMI activists were sentenced to life imprisonment by the Maharashtra Control of Organised Crime Special Court, Brihan Mumbai in Case Crime No. 05/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under clause (i) of sub-section (1) of section 3, sub-section(2) of section (3), sub-section (4) of section 3 and sub-section (5) of section 3 of the Maharashtra Control of Organised Crime Act, 1999 read with sections 10, 13, 16, 18, 19, 20 and 40 of the Unlawful Activities (Prevention) Act, 1967 read with sections 302, 307, 326, 325, 324, 427, 436, 121A, 123, 124A, 120B, 201 and 212 of the Indian Penal Code read with sections 6 and 9-B of the Explosives Act, 1884 read with sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 read with sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 (3 of 1984) read with sections 151, 152, 153 and 154 of the Railways Act, 1989 (24 of 1989) read with section 12(1)(c) of the Passports Act, 1967 (15 of 1967).
- (17) One SIMI activist was convicted for seven years of rigorous imprisonment and fine of rupees thirty thousand by Additional Chief Metropolitan Magistrate, Sewri Court in L.A.C. No. 04/2006, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967. Supplementary Charge Sheets were filed against some other SIMI activists in this case and the trial is pending for the same.
- (18) One SIMI activist was convicted and sentenced to death by Special Sessions Court, Shivaji Nagar, Pune in Case Crime No. 06/2010, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 120B, 153A, 302, 307, 326, 325, 324, 427, 467, 468, 471, 474, 109 and 34 of the Indian



Penal Code read with sections 3, 4 and 5 of the Explosive Substances Act, 1908 read with sections 10, 13, 16, 18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967.

- (19) Two SIMI activists were convicted under section 489C of the Indian Penal Code and sentenced to rigorous imprisonment for six years and to pay fine of rupees ten thousand each and in default of payment of fine to suffer simple imprisonment of six months by the Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai in Case Crime No. 31/2011, registered by Anti Terrorism Squad, Mumbai, Maharashtra under sections 120B, 489B, 489C and 489E of the Indian Penal Code read with sections 10, 13, 17 and 18B of the Unlawful Activities (Prevention) Act, 1967.
- (20) Ten SIMI activists were convicted and sentenced to rigorous imprisonments and/or life imprisonments and/or fine under various sections of law by the Court of Special Judge designated under the Prevention of Terrorism Act, 2002 (2 of 2002) at Greater Mumbai, Maharashtra under the Prevention of Terrorism Act Special Case No. 02/2003, registered as C.R. No. 21/2003 and C.R. No. 59/2003 by DCB CID Unit-6, Mumbai, Maharashtra for offences under the Prevention of Terrorism Act, 2002, the Indian Penal Code, the Explosive Substances Act, 1908, the Explosives Act, 1884, the Prevention of Damage to Public Property Act, 1984 and the Railways Act, 1989 for having been committed the act of three bomb explosion at places namely Mc Donald Hotel, Mumbai Central Railway Station, Monghibhai Market Vile Parle and in second class general compartment of Kalyan local train by way of conspiracy, the act preparatory to a terrorist act with intent to threaten the unity, integrity, security or sovereignty of India and to strike terror in the public at large.

#### TELANGANA

- (21) Three SIMI members were convicted under sections 148, 324 and 332 of the Indian Penal Code in Case Crime No. 882/2004, registered by Saifabad Police Station, Hyderabad, Telangana under sections 147, 148, 307, 332, 224, 427 and 149 of the Indian Penal Code. The facts of the case are that, on 31.10.2004, Moulana Md. Naseeruddin attended Crime Investigation Department Control Room in the Director General of Police Office, Hyderabad and while leaving office Dr. Narendra Kumar Amin, Assistant Commissioner of Police, Crime Investigation Department, Ahmedabad executed non-bailable arrest warrant on him. At that time, accused led by Mahabub Ali, President, Darsghah-e-Jihad-o-Shahadat (DJS) attacked on Police, beat them indiscriminately and took away Naseeruddin. The Assistant Commissioner of Police, Ahmedabad opened fire and took over possession of the accused. The SIMI accused in this case were responsible for supplying of CDs to SIMI leaders who were also connected in Case Crime No. 462/1998 of Mahakal Police Station, Ujjain, Madhya Pradesh for the same.

#### NATIONAL INVESTIGATION AGENCY (NIA)

- (22) Two SIMI activists were convicted under sections 120B and 124A of the Indian Penal Code besides section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were sentenced to seven years rigorous imprisonment and fine of rupees sixty thousand and two SIMI activists were sentenced to five years rigorous imprisonment and fine of rupees fifty five thousand by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-03/2010/NIA-DLI, registered by National Investigation Agency under sections 120B and 124A of the Indian Penal Code and section 10 and clause (b) of sub-section (i) of section 13 of the Unlawful Activities (Prevention) Act, 1967.
- (23) Eighteen SIMI activists convicted and sentenced to seven years rigorous imprisonment with fine for each accused by the Special National Investigation Agency Court, Ernakulam, Kerala in Case Crime No. RC-04/2010/NIA-DLI, registered by National Investigation Agency under sections 120B, 122, 124A and 153A of the Indian Penal Code, sections 3, 5, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 besides sections 25 and 27 of the Arms Act, 1959.
- (24) Two SIMI activists were convicted and sentenced to three years imprisonment under section 153A read with section 120B of the Indian Penal Code and life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; two SIMI activists were also convicted and sentenced to three years and ten years imprisonment with a fine of rupees ten thousand under section 153A read with section 120B of the Indian Penal Code and section 120B read with section 307 of the Indian Penal Code respectively, along with life imprisonment and a fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful

Activities (Prevention) Act, 1967; one SIMI activist was convicted and sentenced to three years, ten years and fourteen years of imprisonment and fine of rupees twenty thousand under section 153A read with section 120B of the Indian Penal Code, sections 120B and 307 of the Indian Penal Code and section 458 of the Indian Penal Code respectively, along with life imprisonment and fine of rupees forty thousand under sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 by the Special National Investigation Agency Court, Patna, Bihar in Case Crime No. RC-07/2013/NIA-DLI, RC-08/2013/NIA-DLI and RC-09/2013/NIA-DLI, registered by National Investigation Agency under sections 153A, 324, 307, 427 and 452 of the Indian Penal Code, section 17 of the Indian Criminal Law Amendment Act, 1908 (14 of 1908), sections 3 and 4 of the Explosive Substances Act, 1908 and sections 16, 18, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967. One Juvenile accused was also convicted for three years in the case.