रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

# 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. 1675] नई दिल्ली, बृहस्पतिवार, अगस्त 12, 2010/श्रावण 21, 1932
No. 1675] NEW DELHI, THURSDAY, AUGUST 12, 2010/SHRAVANA 21, 1932

## 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 घोषणा की पुष्टि करते हुए दिनांक 4 अगस्त, 2010 को एक आदेश पारित किया था ।

अत:, 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 Agarwaal, 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 Jehad (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, Jehad 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.[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.

1. List of cases after 7th February, 2008.

17. SIMI was banned for the third time when Government of India issued Notification No. S.O. 191(E) dated 8th Februry, 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[2] of the Indian Penal Code, 1860(IPC for short). An association which encourages or aides or the object of

[2] 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, [2][or]

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 or knowing it to be likely that the participants in such activity will 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,] shallbe 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*[3] 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 ***Tehsildar'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. N[illegible] 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 CrP.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 Chandulal 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,