SIMI's Saga with UAPA Tribunals

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"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."

Justice P K Shali; UAPA Tribunal 2012; para 45

PEOPLES UNION FOR DEMOCRATIC RIGHTS has long held that freedoms conferred by the Constitution as well as those which flow from International Covenant on Civil and Political Rights (ICCPR), are intrinsic to our pursuit of democratic rights. These 'freedoms' are not only meant for individuals but also, and most significantly, for our right to form associations in order to promote and propagate collectively held perspectives/views in the public domain. Of all the freedoms we enjoy, free speech matters most, both to individuals as well as to associations. It is also a settled matter of law that any law or rule that curbs the freedoms conferred by Part III of our Constitution must be examined for its substantive as well procedural aspects to establish its "reasonableness".

In 2012, the Coordination of Democratic Rights Organisations published a report on the Unlawful Activities (Prevention) Act [*The Terror of Law: UAPA and the Myth of National Security*] which traced the history of the Act and presented a substantive critique of its sections, particularly its 'extraordinary' nature which confers sweeping powers to the police to arrest and detain political dissenters. This present report looks at the provision of imposing a ban under the UAPA and the power and scope of the tribunal set up under the Act to determine the efficacy of the government's ban order on unlawful organizations. This tribunal is headed by a sitting judge of the High Court making the review a judicial one for a ban order on "unlawful organisations". However, after the 2004 amendment, the Act permits a ban on an organisation for being a "terrorist organisation" and provides merely a non-judicial review committee which aggrieved persons can turn to. The focus of the present report is on the working of the judicial tribunal because the review committees' proceedings, if any, are not available in public domain and there is no way of knowing whether any of the 33 organisations listed in the Schedule to the Act have ever contested the ban. In contrast, the Tribunal's orders produced each time a ban was challenged by the banned organization, are available in the public domain. The report examines the workings of three Tribunals, 2010, 2012, 2014, related to the Students Islamic Movement of India (SIMI) in order to determine whether the Tribunal actually acts as a check on arbitrary actions of the Executive and as a safeguard for the aggrieved.

SIMI is the only organization that has challenged every order imposing a ban before the Tribunal starting from 2001. It has consistently deposed before the tribunal set up for this purpose under section 4 of UAPA. This report documents the charges that have been levelled against SIMI, analyses the functioning of tribunals, highlights the fatal flaw of the Act and argues for the repeal of the UAPA.

1. The Trials and Tribulations of Tribunals

ON 30 JULY 2014, a special tribunal headed by Justice Suresh Kait of the Delhi High Court banned the Students Islamic Movement of India (SIMI) for a period of five years. This was the seventh successive ban since 2001 when SIMI was first proscribed under the Unlawful Activities Prevention Act (UAPA) by the then NDA led Central Government. Notably, unlike the previous orders which were for two years each, the 2014 notification brought by the UPA Government was for five years, since it had amended the Act in 2012 which extended the ban period on the grounds that it would "reduce the cost of administering the ban". This amendment was made on the recommendation of the 2012 tribunal judge, Justice V.K. Shali, who concluded his judgment by stating that the entire functioning of the tribunal "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." The judge further claimed that since a High Court judge heads the tribunal, "the normal adjudicatory work assigned to the Judge is also impacted, resulting in the delay of disposal of normal cases also." While the government readily amended the law at the behest of the tribunal judgment, it deliberately overlooked the fact that notified organizations have the right to challenge the government's ban notification (S.4(3)) and that the tribunal is expected to hold inquiries within six months to adjudicate the veracity of the government's claim (S.4(1)). The UAPA mandates the setting up of a tribunal headed by a High Court judge for the purpose of adjudicating the ban notification (S.5(1)) and, if, SIMI had chosen not to challenge the ban, then the tribunal would wind up its activities within a month after confirming the ban notification. Since other organisations have not challenged the ban there was no "cost" incurred. Neither was the matter discussed in Parliament, not was the initial rationale for maintaining a reasonably small duration even mentioned.

Since 2001 when SIMI was first banned, an official history of its anti-national character created by intelligence agencies and government officials has been proffered before and accepted by successive tribunals. According to this account, despite the ban, SIMI continues to be involved in spreading communal hatred, persists in committing terror attacks and, remains steadfast in its ideological goal of establishing Islamic rule in India. Way back in 2002, the then NDA led Government had argued that SIMI was associated with the Hizbul Mujahideen, Al-Ummah, Tamil Nadu Muslim Munnetra Kazagham and other secessionist organizations; that it was involved in killing of Hindus, especially those associated with the RSS since 1993; that it launched a country wide campaign from 1996 to mobilize support for the 'caliphate'; and, that its pro-Pak attitude was evident during the Kargil crisis. Further, it was argued, through oral and written literature, that SIMI activists eulogized pan-Islamic terrorist leaders and deliberately distorted historical facts in order to stoke militant ideas in the minds of impressionable Muslim youth. Subsequently, successive prosecution agencies cited SIMI's involvement in a large number of blasts, serial bombings and terrorist attacks in different cities and town across the country to ensure the continuance of the ban. In 2014, the grounds remained much the same as the organization was stated to have links with Pakistan based terrorist organization such as the Laskar-e-Taiba (LeT) and Indian Mujahideen (IM), the latter is claimed to be the brainchild of erstwhile SIMI members. In keeping with this account of SIMI's continuing subversive and seditious history, the police claimed that the low intensity Bijnor blast of 12 September 2014 was a handiwork of five SIMI suspects who escaped in a jailbreak from Khandwa in Madhya Pradesh in October 2013. In October 2014,

Hyderabad police arrested two suspected SIMI activists hailing from Maharashtra, Shoeb Ahmad Khan and Shah Mudassir, on charges of hatching terror conspiracies with cross border terrorists along with three SIMI activists of Hyderabad.

Unlike the tribunals which have indicted SIMI for its anti-national and criminal character based on depositions made primarily by police officials, the decisions of criminal courts in the cases which reached the trial stage tell a different story. In a writ petition before the Supreme Court, two erstwhile SIMI members submitted that out of 111 cases included in the background note prepared by the Centre before imposing ban orders in 2012, in 97 of these cases either the courts acquitted the accused or the government dropped the charges. This trend of acquittal has only continued in recent times. In April 2013, a local court in Kanpur acquitted seven persons who were arrested between the nights of 26 and 27 September 2001 for allegedly giving hate speeches in their locality. They were acquitted of all charges as the court found no evidence against them. Further, in August 2014, four suspected SIMI members accused in a robbery case in 2010 in Ratlam district of Madhya Pradesh were acquitted. Likewise, on 1st September 2014, a local court in Bhopal acquitted Mohammad Sajid, Mohammad Sadiq, Abu Faisal Khan and Mohammad Iqrar because the prosecution failed to prove that they were involved in the robbery attempt, and it also did not submit any documentary evidence to link them with SIMI. Still more recently, in November 2014, a local court in Mumbai acquitted nine SIMI activists due to lack of evidence. The accused were arrested in September 2001 from Mumbai after the police raided their office at Kurla and found 'seditious' literature and photographs of Osama Bin Laden. All 9 were granted bail as the police arrested them before even the copy of the notification (of banning SIMI) reached the State Home Department. They were subsequently re-arrested for giving provocative speeches and distributing seditious pamphlets outside a local mosque in suburban Mumbai. Finally, in 2014, all were acquitted as the prosecution failed to prove its case. It needs to be noted that even cases which were cited as 'sufficient reasons' for proscribing

NIA and SIMI

Official figures regarding SIMI cases have to be gathered individually as there are no official figures available. In many instances, the NIA has conducted its investigations charge-sheeted and convicted alleged SIMI accused in its special courts. These cases have a special importance as they figure as instances of proof in government notifications such as the conviction of 13 accused in an NIA court in Kerala which was shown in the 2014 ban notification. The Patna serial blasts (October 2013) which the NIA has investigated is shown as instances of a deep anti-BJP plot hatched by accused Hyder Ali, the alleged SIMI in-charge of Jharkhand against Narendra Modi's election campaigns.

The NIA investigations lead to 'larger plots' unearthed from a specific incident as evident in the Patna blasts case which it took over after the Bihar Police stated that it did not have a database on terror suspects. In January 2015, the NIA judge framed charges against 11 accused stating that 4 of them belonged to the Indian Mujahideen and were connected with the 'terror module' in Raipur. The investigations also show how the conspirators have started using Chhattisgarh as a safe haven as against usual terror places in Madhya Pradesh.

Set up in 2008 as a "Central Counter Terrorism Law Enforcement Agency in India", the NIA is "*mandated, at the national level, to investigate and prosecute offences affecting the sovereignty, security and integrity of India".* It has the powers to seek assistance from various intelligence and state agencies to probe 'inter-state' crimes such as those allegedly committed by IM or SIMI. Section 6(4) of the NIA Act allows the Central Government to transfer any case relating to any Schedule offence. A schedule offence means offences covered under the eight Acts listed in the Schedule, including the UAPA. Thus, under S.6(5), the Centre has the powers to *suomoto* transfer cases to NIA for investigation and prosecution.

SIMI in 2001 were not upheld by the courts. In April 2014, for lack of evidence, a special court in Lucknow acquitted three accused, Abdul Mobin, Gulzar Ahmed Vani and Kaleem Akhtar who had spent over a decade behind bars for suspected roles in bomb blasts in 2000. While Vani was a suspected Hizbul Mujahideen member, Mobin was an active member and former president of SIMI and a student of Aligarh Muslim University. Notably, the involvement of Mobin and Vani in terror attacks formed a significant part of the government's submission before the first tribunal in 2002. However, it needs to be noted that while a number of SIMI accused have been acquitted by trial courts, a large number have been framed and convicted particularly by the NIA (National Investigation Agency) courts (See Box: NIA and SIMI).

While the prosecution has produced arrests and convictions as important pieces of evidence before tribunals, SIMI's legal submissions, spanning over nearly fourteen years, have drawn considerable attention to the tribunals' arbitrary functioning. For instance, the second prosecution witness, S. Sasidaran, Investigating Officer (IO) of case number 159/2006, presented before the 2010 tribunal a case of sedition and unlawful activities against five SIMI activists of Binanipuram P.S. in Kerala. The case was four years old and occurred on Independence Day in 2006 when the five accused allegedly organized a secret meeting on the issue of "participation of Muslims in the freedom struggle" in Happy Auditorium in Panayikulam town. The speakers allegedly advocated and incited the abetment of unlawful activities in favour of Kashmir's secession from India. The police claimed that false propaganda regarding torture of Muslims by the Indian government and propagation of Pakistani pamphlets such as "Mass Resistance in Kashmir" were circulated among the audience comprising 18 sympathizers. All five accused were arrested along with incriminating evidence from the spot but were released on bail by the High Court within two months as the investigation in the case was 'slow'. The case was handed over to the Joint Investigation Team (JIT) in 2008 which arrested several others who had allegedly participated in the meeting. In February 2010, the case was handed over to the NIA and the case was presented again before the 2012 tribunal when prosecution witness, Lhari Dorjee Lhatoo (SP of the NIA), informed the judge that the NIA had filed the charge-sheet in the said case in December 2010. The total number of participants was shown as 13 as against 18 in the previous instance and Lhatoo admitted that the NIA case did not mention the accused making hate speeches against the Government of India. Interestingly, the original complainant, Rashid Moulvi, was made into an accused and arrested in 2008 by the JIT and subsequently became an "approver" by the NIA while in custody. Consequently, the NIA pursued the case wholly on the testimony of Moulvi.

Despite the apparent infirmities, the 2012 tribunal judge, V.K. Shali, accepted the deposition as the case "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." He also noted how such misguided youth were keen to carry out a "Jehad" in the form of extremist activities in Kashmir and how the seized materials presented by Lhatoo proffer evidence for the same. He then went on to observe that "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 by-product of their perverted mind." The over-zealous judge failed to recognize that many Indians, not just Muslims but Hindus, Sikhs, Christians, Animists, etc. have questioned the way in which accession was brought about, how pledges and promises were broken and, why bloody military suppression is still carried out for the sake of sovereignty. Queries about the princely states and their incorporation in the two

Decoding UAPA Sections

Chapter II of UAPA, "Unlawful Associations", sections 3- 9, deals with various aspects of the tribunal, including the particulars of its judicial character. However, the tribunal judgements often make references to some sections which aid the Government to defend its ban notification.

S.3(2) mandates that ban notifications must specify the grounds. Till 2008, the Government never produced any 'grounds' and got away with only a 'background' note to support its ban notification. After the Gita Mittal tribunal in 2008, the Government was forced to provide 'grounds', i.e. proper justification through evidence.

S.3(2) empowers the Government not to disclose any fact which it considers to be against public interest". Typically, the Government counsel takes this plea in order to withhold facts since the same is supported by Rule 3(2) of the Act.

S.3(3) allows the Government to declare an association unlawful with immediate effect, circumventing the procedure of notification in the official gazette and ratification by the tribunal. Routinely, the prosecution defends itself by asserting that there were reasons for the 'immediate effect' ban order and arrests.

S.4(1) states that the task of the tribunal is to adjudicate whether or not there is sufficient cause for declaring an association unlawful. 'Adjudicate' is not meant to establish the innocence of the banned organization but to deliberate whether or not the Government has successfully defended its ban notification. In this regard, 'sufficient cause' is interpreted in two radically different ways: it can either mean the evidence of 'one ground' cited by the ban notification, or it could equally mean a mass of assertions of clandestine activities of the banned organizations, where the probability of error in rejecting the government's claim is viewed to be greater than that in accepting it. This latter is called, 'preponderance of probability' and such a criterion makes a mockery of the presumption of innocence that forms a central pillar of the Fundamental Rights in the Constitution and the Universal Declaration of Human Rights to which India is signatory.

S.4(3) allows office bearers or member of the association to represent the organization before the tribunal. The Government counsel repeatedly demanded that the SIMI appellants be regarded as 'office bearers' not 'ex-office bearers' as it would prove that SIMI continues, despite the ban.

S.6(2) allows any aggrieved person to appeal against the ban notification. However, 'aggrieved persons' are never disinterested as they are identified in the tribunal as either supporters of the banned organizations or members of its 'front' organizations. S.41 provides the prosecution the premise for showing that there is a continuation of association between erstwhile members.

Rule 3(2) states that the tribunal shall follow the procedures of the Indian Evidence Act, as far as practicable. This clause conveniently enables the tribunal to deliberately modify and dilute the rules of evidence.

Dominions are legitimate subjects of debate which render the Kashmir issue more problematic than the sanitized official version. Evidently, the free play of the judge's personal proclivities which are passed off as reasoned arguments are premised upon the wide latitude which the tribunal offers to the prosecution in building their cases against SIMI. The Happy Auditorium incident was a meeting in which a few speakers addressed, what the judge calls, the "deep rooted hurt of young disgruntled Muslim youth". However, the meeting is important insofar as it is links the accused involved with other crimes. Consequently, the larger case against SIMI assumes importance as against the infirmities of isolated ones. So, P.A. Shaduli, the prime accused in the Happy Auditorium case is also involved in the Wagamon training camp in Kerala in which 30 suspected SIMI members conducted secret arms training in December 2007. Along with another accused, Mohammad Ansar, Shaduli is again a co-accused in the Ahmedabad bomb blast of 2008. Moreover, since Shaduli is the brother of P.A. Shibly, the alleged hardcore SIMI operator and a key associate

of the dreaded Safdar Nagori, the Happy Auditorium case assumes a "Jihadi" significance which is consistent with the larger story of cross border terrorism and anti-national activities. In short, the context of anti-nationalism which looms over each and every case enables the tribunal to sidestep critical questions of the nitty-gritty of a particular case in favour of generalized 'truths' based on stereotypes of Islamic fundamentalism.

Besides challenging the unfair procedures of the tribunal, SIMI has contested the ban by arguing that it ceased to exist as an organization after it was first banned in 2001 and that the post 2001 cases levelled against it by the prosecution are neither true nor fair. SIMI's rebuttal has highlighted the wholly undemocratic exercise inherent in challenging the ban as the UAPA states that formal dissolution does not mean an end to its continuance (See Box, *Decoding UAPA sections*). The tribunal proceedings show how this section has been upheld by the prosecution and by judges to deny SIMI's argument and to legitimize the continuance of its ban by alluding to its clandestine character. The 2012 tribunal judge reprimanded the applicants' lawyer by saying, "It would be travesty of truth in case the submission of Mr. (Ashok) 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." Not surprisingly, the erstwhile representatives of SIMI who appeared before tribunals have had to defend themselves against the common charge of being members of a banned organization. Further, the factionalism, the supposed split of 2006 which produced the hard-core splinter group led by Nagori, Shibly and others, has contradicted the legal position that erstwhile representatives took before the tribunal. Despite the plea that a large number of Muslim youth are persecuted on account of the activities of some, the official account has rehearsed the view that SIMI has had a continued existence through its underground activities and assumption of new front organizations. The effort of challenging while being damned is best summed up in Shahid Badr Falihi's affidavit submitted before the 2010 tribunal. Badr, the national president of SIMI before the ban, was arrested in 2001 but he represented the organization before each of the tribunals between 2003 and 2010. However, in 2010 he stated that he was no longer willing to contest the ban as he wished to "put an end to this mindless, futile, unequal, unethical and unjust exercise in which the Government has shamelessly used the Judiciary to achieve its ends of casting a shadow of criminality on the entire Muslim community." Badr's observation that the entire effort was a "mindless" and "unjust exercise" has merit and is borne out by the three successive tribunal judgments after 2010 which have strengthened the case against SIMI as the prosecution has consistently drawn attention to its clandestine character.

SIMI's varied legal submissions offer a very sharp understanding of how the law is actually a sectarian tool and a repressive measure against a vast body of Muslim youth on whom it casts a "shadow of criminality". The sectarian outcome of UAPA is wider than that of SIMI as the tribunals' functioning show the deliberate erosion of the right to association and propagation of one's beliefs under UAPA. Tribunals are expected to act as a check on the arbitrary actions of the Executive and act as a safeguard for the aggrieved. However, if without even the commission of a crime, the Government can declare an organization to be 'unlawful' or 'terrorist', then a grave threat faces us as an entire ideology can be silenced at whim. If the tribunal's observations, comments and pronouncements can easily expand the horizon of what is impermissible and make a perspective into an ideology in order to bring those who are not legally barred under its purview by claiming them as 'front organizations, then the gravity gets compounded. The consequences that follow from an injudicious and/or opaque process affect two of the most cherished freedoms, namely Freedom

of Expression and Freedom to form an Association in order to propagate and promote one's politics. These are two instruments available to the oppressed and the marginalized to make themselves heard and to fight legitimately for their beliefs. This report examines the written orders of the tribunal of 2010 and 2012 and draws upon secondary sources to examine critically whether the procedure followed, evidence presented and the judicial observations made by the judge provide a level playing field to the aggrieved or, that the law is so constructed that even judicial review becomes a mere formality devoid of substance.

2. Evidence Presented: The Case Against SIMI

THE SEVEN SUCCESSIVE BANS pronounced on SIMI in the last fourteen-years were ratified by tribunals set up for especially for this purpose. (See Box: *Tribunal Timeline*) However, there was a brief period of five months at the time of the first notification by the UPA led government (September 2005-February 2006), when, technically, there was no ban on SIMI. Yet, SIMI could not carry out any legitimate activities as it was engulfed in wide-ranging criticisms, including judicial pronouncements. For instance, while referring the matter of the ban to a larger bench, a two member bench of the Supreme Court in 2007 pronounced: *You are a secessionist organization. You have not stopped your activities. It is for the third time that you have been banned.*

In this growing climate of repeated bans, verdicts, arrests and anti-SIMI rhetoric, the 2008 tribunal judgment marked a departure. The Home Ministry issued a notification in 2008 renewing the ban, as earlier, on familiar grounds of SIMI's involvement in anti-national activities and in spreading communal hatred. However, Justice Gita Mittal pointed out that the government could not merely invoke the ban based on earlier records as it had to provide the necessary *grounds*. She asked the government: "You have to satisfy the tribunal about the sufficiency of the reason behind issuing a fresh notification". The tribunal held that the background note is an "opinion" which cannot be taken into consideration whereas it is the "grounds" which provide factual reasons. The judge further stated: "It is settled that so far as the requirement of furnishing 'grounds' is concerned, it would require furnishing of basic facts and the supporting material… The evidence has to relate to the facts set out in the background note." The judgment noted that "if a notification is issued without setting out its conclusions or grounds, then certainly the other party would be at a disadvantage and not know the case which it had to meet." Justice Mittal's cancellation of the notification simultaneously lifted the ban on SIMI. Nonetheless, even before SIMI was officially notified, the Centre appealed to the Chief Justice of the Supreme Court for a stay against the Tribunal decision. The very next day, the Court stayed the judgment and, subsequently, the stay remained for the entire length of the two year notification period. Needless to say that while the Court promptly responded to the government's plea of staying the judgment, it could not find the time to deliberate on the three appeals filed by Shahid Badr against the three tribunal verdicts of 2002, 2004 and 2006 respectively.

Notwithstanding the Court's intervention, the 2008 tribunal's question regarding 'grounds' accompanying ban notification casts an unflattering light on the functioning of the earlier tribunals which had merely endorsed government notifications. The Justice Gita Mittal tribunal insisted that government notifications had to, as per law provide grounds for justification of the ban. Accordingly, the 2010 notification highlighted 13 fresh cases; the 2012 one cited a total of 26 cases and, the 2014 notice drew attention to 10 new cases to support the ban. Equally, while two convictions were mentioned in the 2010 notification, eight were

Tribunal Timeline					
Ban Date	**Constitution of Tribunal**	**Date of Tribunal Order**	**Name of Judge**	**Status of Ban**	**Comments**
27.09.2001	9.10.2001	26.03.2002	Justice S.K. Agarwal	Upheld	No grounds provided
26.09.2003	23.10.2003	23.03.2004	Justice R.C. Chopra	Upheld	No grounds provided
08.02.2006	21.04.2006	07.08.2006	Justice B.N.Chaturvedi	Upheld	No grounds provided
07.02.2008	05.03.2008	05.08.2008	Justice Gita Mittal	Struck Down	Pointed out government's insufficient evidence
05.02.2010	05.03.2010	04.08.2010	Justice Sanjiv Khanna	Upheld	13 new cases as grounds
03.02.2012	01.03.2012	01.08.2012	Justice V.K. Shali	Upheld	26 new cases as grounds
04.02.2014	27.02.2014	31.07.2014	Justice Suresh Kait	Upheld	10 new cases as grounds. Ban imposed for 5 years.

listed in 2012 and seven in 2014. Accordingly, the task of the tribunal from 2010 onward assumed a larger importance as the task of adjudication had to deal with the legitimacy of the grounds provided by the government in its notification. Depositions become important as witnesses were expected to substantiate why the ban must be upheld. From 2010 onward, it became possible to examine the procedures adopted by tribunals for determining the veracity of the government's decision for banning SIMI. Offered below is an analysis based on the depositions provided by various prosecution witnesses before the two tribunals of 2010 and 2012.

The Offences

The tribunal judgement is not the best place for gathering data on the exact nature of offences which SIMI is said to have committed as the judgement excerpts relevant portions from the detailed hearings and annexes them with the judge's comments. Notwithstanding the incompleteness of the information, the data culled from the 2012 judgment shows that out of the 43 depositions, 42 were accepted and, while 1 deposition is unclear, the breakup of the others show:

Unlawful Meeting/Training Camp	7
Membership of Banned Organization	10
Banned Literature	7
Bomb Blasts	5
Killings of Policemen	4
Attack on Civilians	3
Robbery/Looting	3
Fake Currency	1
Firearms	1
Others	1
Total	*42*

It needs to be noted that the category "Membership" or "Unlawful Meeting" is more complex than the apparent sense of the terms as the depositions offer information regarding a common accused involved in several crimes and wanted in different states. Hence, the data is insufficient to show the actual offences as the depositions involve overlapping FIRs and testimonies. (See Box: The life and death of Viquaruddin Ahmed) For convenience, a few broad parameters are identified below such as terror plots, banned literature and front organizations which help address the depositions.

TERROR PLOTS

In the course of the 2012 judgment, the judge repeats the phrase, 'sufficient cause' fifteen times

to draw attention to the need for banning SIMI. The phrase is drawn from the Act which states that the task of the tribunal is to determine whether or not there is *sufficient cause* for imposing the ban. A reading of the judgment shows that such *sufficient cause* lies in SIMI's anti-national activities and seditious character evident in its terror plots. More importantly, since the ban, these terror plots are said to have engulfed large swathes of the country, from Kerala to Kashmir and from Gujarat to Bengal. For the prosecution, these plots are presented to reiterate SIMI's continuance in anti-national activities despite bans. Two alternative possible conclusions can be deduced: one that, bans are ineffective and should be reconsidered; and two that, bans must continue in order to prevent the further proliferation of unlawful activities. Predictably, the tribunals do not engage with the first since it, conveniently, cannot be accommodated within the narrowed field of adjudication.

A case in point is that of Madhya Pradesh where SIMI's plots are said to have multiplied over time, and where terror modules are said to recur in some known places. In the background note prepared for the 2012 notification, Madhya Pradesh figures prominently as it is mentioned as many as 16 times in the 26 cases cited and 12 witnesses and a "public person" also deposed before the tribunal in this regard. The prominence of Madhya Pradesh is noteworthy especially since the state is not known to have witnessed any serious blasts or terrorist attacks. Yet, news reports show an enormously large number of cases and arrests in different parts of the state in SIMI related matters. The formidable influence of Safdar Nagori, post 2001, is certainly a contributory factor and his arrest along with 12 associates from Pithampur in Dhar district in 2008 (No. 120/08) is considered a huge success by the establishment. The arrest set off a chain of events and as many as 22 cases were lodged in different parts of the state within the following two months as the alleged recoveries and confessions, including Nagori's 'unlawful' Narco analysis, are said to have given fresh leads to the police. The nature of these cases was clearly suspicious and when the appellants' lawyer strongly rebutted them as false and fictitious, the 2010 judge was compelled to agree. He admitted that there "*is some merit in the submission of Mr Ashok Aggarwal advocate*". A recent civil rights report (*Guilt by Association*) has shown in detail how identical, including commas and dots, these cases are and, how the arrests were followed by the accused being implicated in several blast episodes all across the country. According to the report, as many as 75 cases were registered against 181 accused in the period between 2001 and 2012.

The uneven distribution of cases gives rise to questions regarding the connection between registration of cases and electoral politics. For instance, 2008 is a significant year as far as SIMI cases are concerned. While the importance of the Nagori factor has been stressed, it should not be forgotten that Assembly elections too happened that year in Madhya Pradesh and BJP emerged as the winner. Curbing of crime and electoral politics have other dimensions too. The handsome rewards given by the Shivraj Chauhan government to men in uniform following Nagori's arrest underlines how the competitive logic of incentives which drives the police into solving "terror" crimes by SIMI is also coloured by electoral calculations. The media propagation of these terror plots forms a strategic part of this politics of patronage and collaboration which thrives in the name of national security. It should be remembered that when the police administration was being felicitated, Hindu right wing organizations, particularly Abhinav Bharat, was operating out of MP. All in all, a disturbingly new political geography is emerging in the wake of these plots; one in which cities and towns are being communally reorganized with madrassas, mosques, seminaries occupying hot spots in this terror tourism.

FRONT ORGANIZATIONS

One of the most commonly alleged crimes against SIMI activists is that they are members of a banned organization or members of a 'front' organization. Several prosecution witnesses presented cases of

'front' organizations such as the I.G. Police (CID), Jaipur's submission before the 2012 tribunal. He stated that SIMI had developed an "*intolerant and parochial*" outlook and that it had widely disseminated its hateful ideology through Wahadat-e-Islami, a front organization. However, during cross examination he admitted that the said organization was not banned and that its office bearers were not charged for any offence. The judge accepted his testimony as well as that of the DIG-Intelligence, West Bengal who stated that SIMI had formed several front organizations and that their activities were "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 (INL), Youth Islamic Association (YIA), Federation of Muslim Association (FOMA) etc. to get the ban on the organization (SIMI) withdrawn." Similarly, in the case of the raid on Nanma Book Stall, ASI Police Kozhikode claimed in 2012, that the Book Stall was a front organization for SIMI. The ASI gave information about the raid on the stall in 2010 in which the books, publications, etc. seized, "questions 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". He stated that the manager, C.A. Mahin, is an activist of ISA, Islamic Students Association, a front organization of SIMI. Further, Nanma's Trust comprised individuals who were close to the Minority Rights Watch (MRW), also a front organization for SIMI. Significantly, the judge accepted the sealed submissions made by the I.G. Police (CID), Kerala in the said matter, saying that the *one thing highlighted from his* [IGP's] *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*."

Unlike the prosecution's evidence with regard to front organizations, the objections raised by supposed members of 'front' organizations are not easily accepted. The case of Haroon Ali Mozawala, General Secretary of Khair-e-Unmat Trust, is a case in point as Mozawala raised an objection before the 2012 tribunal regarding the inclusion of his Trust in the government's background note. Mozawala averred that his Trust is a public charitable one which aims to spread social education among underprivileged youth.

The life and death of Viquaruddin Ahmed

In the 2012 tribunal, Viquar Ahmed, a Hyderabad youth and active SIMI operator, is initially shown as involved in two cases of 2009: one, when he resisted arrest by a surveillance team by opening fire and injuring 2 policemen in Hyderabad; two, when he opened fire on police party knowing they were Hindus and killed 1 policeman. However, on the basis of two further depositions, the 2012 tribunal records that Viquar was arrested in 2010 and his confessional statement shows his involvement in crimes of looting and shooting in 2007 and still older crimes of robberies and murders. Significantly, Viquar is re-arrested for the same crime of killing a policeman (mentioned above) but the case becomes broader as Viquar confesses to being active in front organizations, in anti-Hindu plots following the Mecca Masjid blasts of 2007. Viquar's proximity to other hard-core SIMI leader is established and his close contacts with another Hyderabad accused, Moutashim Billa is also reiterated. Finally, Viquar becomes connected with another the larger case connecting activities in Hyderabad with those of the Gujarat blasts.

The trajectory of Viquar Ahmed is instructive as his crimes are shown as much more than that of killing of 1 policeman or of opening fire on a surveillance team. He is presented as an active member of SIMI, a functionary who participated in terrorist activities and worked through front organizations which are known to be anti-Hindu. So, Viquar Ahmed would find mention in all categories of crimes listed above. Sadly, when Viquar was shot dead in a prison van in Warangal in April 2015 along with five other accused, a section of the media believed the police story entirely and projected the deceased Viquar as a "man who came close to assassinating Narendra Modi". The source of the police story lies in Viquar's police confession which the tribunal accepted wholly.

Mozawala also pointed out that his Trust is known to be an immensely respectable and peaceful organization, one which has never had any conflict of interest with the administration. Hence, the government's notification which listed it as a front organization was a baseless one. However, during his cross examination, the prosecution argued that one of the trustees had association with SIMI and another one had a criminal case leading to conviction in the matter of breach of public peace in a rally organized by the Samajwadi Party in Mumbai. Besides other doubts which the judge expresses, the more concrete one was regarding records and receipts of the Trust as it had received foreign donations and that the filing of the necessary FCR (Foreign Contribution Returns) had been delayed when he appeared before the tribunal.

In keeping with the spirit of the cross-examination, the judge argued that the trust awarded financial assistance to only those students who were successful in reciting *Namaz* and *Daru-e-Sharif.* Even while the judge noted that this condition could be waved at times, in his conclusion, he stated that the Trust was engaged in *breeding fanatics.* He further argued that the scholarships were given to students who 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."

The cross-questioning of Mozawala shows that the space for 'aggrieved members' in the Tribunal is very limited as he is deemed to be a supporter of the banned organization by working through its front organization. Typically, under the lens of UAPA, the public conduct of one trustee or the delay in filing returns or the receipt of foreign donations are proofs of guilt. The illustration of 'front' organizations shows how the ambit of the ban is wide enough to include a whole new section of individuals and their activities and how their actions become a justification of the ban.

BANNED LITERATURE

Banned literature forms a substantial part of the evidence provided against SIMI and the range of this literature is wide enough to include train tickets, hotel bills, emails, posters, pamphlets, books, receipts, etc. For instance, the Addl. SP of Jaipur ATS presented a variety of such 'literature' including a pamphlet entitled, *Babri masjid kipukar* during his deposition before the 2010 tribunal in connection with the Jaipur blasts of 2008. He also provided information about a four-page email sent by accused Shahbaz Hussain just before the blasts. Hussain, who had been arrested in 2008, was identified as IM and also SIMI as he was the editor of "Islamic Movement", a monthly magazine of SIMI. In another instance, a police officer from Mumbai stated that after the Ahmedabad blasts, an email from IM were sent to the police officers of Maharashtra and Gujarat threatening them *with annihilation.* The judgment notes how the email was *designed to instigate and hurt religious feelings* and it also contained photographs of *cars captioned* "Your Favourite Toys" and "The Cars that Devastated" and also IEDs were captioned as, "Weapons of Mass Destruction".

Besides emails, the common charge against SIMI is that of 'objectionable literature' and its propagation of its ideology through publications. When Safdar Nagori was arrested in 2008, *objectionable literature* and *training books of SIMI* were recovered from the site. The DSP of Hubli stated before the 2010 tribunal that among the recoveries made from the raid on accused, Liaquat Ali who was arrested in 2008, his laptop showed that he had uploaded *the most barbaric scenes* pertaining to the Babri Masjid demolitions and several successive riots and *pictures of police action on Muslim community during riots and discourses.* The prosecution's presentation of visual representations is also accompanied with oral ones in keeping with the Government's background notes which cite such sources. In 2012, the Government cited literature culled digital data recovered from various places which included *motivational songs in Urdu, probably recorded in*

Pakistan meant for spreading communal hatred. A common curriculum in this propaganda is purportedly to "wipe out Hindus from Kashmir", exhort "Muslims to revolt and avenge the demolition of Babri Masjid" and "divide India." Interestingly, one of the books seized from the Nanma Book Stall, "Islam and Nationality", was already available online and had been translated in many foreign languages besides Malayalam. Another one which the police showed was the Malayalam version of journalist Ajit Sahi's "SIMI Fiction", a book that had not been banned anywhere! Despite these goof ups, the heat on Nanma Book Trust remained and its managing director, Abdul Rahman was arrested in September 2013 over a 'Jihadi' book, an Urdu work, *Dawatum Jihadam* written by a Hyderabad based cleric, Moulana Abdul Aleem Islahi. Islahi claimed that he had never written a book called *Dawatum Jihadum*but that he had written *Jaliyahat-ke-Khilaaf-Jung* (Struggle against Ignorance) which had been translated into Malayalam four years before. Nanma Books was first raided in 2006, at about the same time as the Happy Auditorium incident.

While there is no clarity regarding the definition of 'banned literature', it is abundantly clear that any material, written or visual related to mobilization in the name of or dissemination of 'Jihadi' ideology constitutes banned literature. However, for the purpose of the prosecution which often does not have the time to read books and examine the ideological slant of the writing, banned literature can have a much more precise meaning: receipt books which can connect collection of funds with banned organizations. (See Box: A Dental Student) For instance in 2010, SI Police, Ujjain drew attention to membership forms, coupons and receipt donations to SIMI from accused Kayamuddin. The DSP of the Happy Auditorium Case not only presented an alleged Pakistani booklet, "Mass Resistance in Kashmir" but also the receipt book of the Auditorium which is privately owned and was allegedly booked for a Quran class on 15 August 2006 and where 18 SIMI activists conducted a 'secret' meeting on the nation's failure to protect Indian Muslims.

The generic arena of banned literature suffers from vagueness and this vagueness is upheld by the Tribunal. The vagueness is compounded by the fact that the Tribunal deliberately disregards the necessary distinction between what was published and by whom before and after the ban. For instance, in the case of Shahbaz Hussain, the judge

A dental student

In 2008, Shane Karim, a dental student of Bijapur (Karnataka) was arrested with 5 others for distributing provocative pamphlets. Karim, news reports say, had masterminded the poster campaign and had ordered 10,000 to be printed and put up in Bijapur. In 2010, the DSP Bijapur stated before the tribunal that Karim had printed the handbills and the recoveries made show that the accused had deeper plans as pictures of Gujarat and Malegaon were found amid propaganda literature. Karim had allegedly confessed to being an active member of SIMI since 2000 and had organized several SIMI functions in Bijapur. However, during cross examination the DSP admitted that Karim's statement as well as that of his co-accused was taken in custody. Two years later, another DSP(of Chitraguda District), showed a slew of charges in the FIR (no. 260/2008) and reiterated that the contents of the poster were aimed at creating communal hatred as they were full of slogans such as "Our struggle for final and complete supremacy of Allah".

During cross question, the DSP, Chitraguda District agreed that the name, 'SIMI', was indeed absent from the recoveries made but that the name, 'IBT', an acronym for Islamic Book Trust, was evident in the left side of the poster. More importantly he stated that Karim had confessed to printing the poster and collecting money with a receipt book which had 'SIM' printed on it. Notwithstanding the prosecution's story, the High Court of Karnataka, in March 2010, granted bail to Karim primarily because of want of evidence. The judge noted that the investigation had failed to show any incriminating evidence which attract the provisions of the UAPA. Karim's contention in court was that he was wholly innocent and had been picked up on the confession of a co-accused.

makes a pointed note of how the appellants had in their written submission admitted that Hussain was the editor of the magazine, *prior to the ban.* The judge, however, chooses to ignore the clause, 'prior to the ban' as the admission of the appellants is proof of guilt. This is apparent from the fact that the SP-CID, Tamil Nadu submitted a certified copy of a Tamil publication entitled, *Seithi Madal*, before the 2012 tribunal and provided a copy of a judgement passed in 2012 in which six persons were convicted regarding the seditious contents of the magazine by a fast track court in Coimbatore. What is astonishing is that the tribunal accepted the deposition in a case which occurred in 1999 as the magazine, *Seithi Madal*, was published by SIMI in May and June of that year.

The Prosecution's Method

The prosecution's presentation of violent crimes such as bomb blasts, killings and robberies follows a certain method as evident in the seven cases of attacks/killings presented before the 2012 tribunal. What is noticeable in all the cases is the overwhelming reliance on police confessions as illustrated in the case of Viquaruddin (See Box: The life and death of Vikaruddin) or in the Madhya Pradesh cases of 2009 and 2011 where SIMI activists allegedly killed 3 persons (1 policemen and 2 civilians) and attacked ATS jawans, respectively. Two, the prosecution invariably draws a connection between SIMI and IM as evident in the Delhi cases of 2011 where a low intensity blast in a car, firing on foreign nationals in Jama Masjid, and the arrest of one suspected terrorist with firearms are all connected to IM and SIMI. Three, flowing from the above, an immediate case is always part of a larger anti-Hindu conspiracy. For instance, in a case where a local journalist was shot at by three unknown men in Ujjain in 2011, the prosecution showed how seven men were immediately arrested. The importance of this isolated case can be gauged from the fact that the judge draws attention to this attempted attack in order to discuss one of the accused, Abu Faizal, who is said to be close to Safdar Nagori and a mastermind of many conspiracies. The Ujjain case is also listed in the grounds that the Centre had provided in 2012. Significantly, what is not disclosed in the tribunal judgment is that the local journalist is a VHP leader, Bherulal Tank who *also* runs a newspaper agency.

The convergence of these methods allows the prosecution to stress on the importance of overlapping testimonies gathered by different investigative agencies. The case of Sarfaraz Nawaz is instructive as he is presented as a top SIMI and IM man who played a key role in the Kozhikode and Bangalore blasts (2006, 2008), helped recruits from Kerala to receive arms training from LeT militants in Kashmir and raised funds while staying in Muscat. Nawaz was secretly smuggled by the RAW in March 2009 from Oman and confessions extracted by different wings of the police helped establish his 'dreaded' character. With each change in investigating agency, the alteration in the framing of charges occurred conveniently and the NIA investigation was instituted to examine the advocacy of terrorism and waging of war against the Government of India. Keeping Nawaz in mind, the SP of the NIA informed the 2012 tribunal that SIMI was recruiting Muslim youth from Kerala and "indoctrinating" them for waging war against Government of India and for committing other "terrorist acts" in J&K. He emphatically stated that SIMI is an "anti-national" organization which harms the communal harmony of the country and that the "*ban is legally justified*".

Given the varied methods adopted by the prosecution, the following section examines the recurring features of police confessions, presentation of old cases and submission of classified information.

PAST CASES

In 2010, when the Inspector SIT Hyderabad submitted five cases of which two were of 2004, the judge stated these *were not relevant as such* but accepted the 2008 confessional statement of Moutashim Billa who had been absconding since 2004. The judge's reasons for admitting the 2004 case was because it helped establish the terror

profile of SIMI. In his confession, Billa gave information about his 'jihadi' father, Moulana Abdul Islahi's activities and involvement with prominent SIMI leaders. He also shed light on his fugitive life during which he stayed within the Jihadi fold of SIMI and was closely connected with Safdar Nagori and held important discussions on the division of SIMI. He stated that he had conducted training camps in Karnataka with Nagori and that similar camps were scheduled for Madhya Pradesh. Billa's statement helped corroborate the confessions of some key accused and helped justify the ban, even while the trial court thought otherwise. (See Box: The son of a preacher)

Like the 2010 tribunal, the 2012 tribunal accepted depositions pertaining to past cases in which there were some modifications. The SP Patna submitted a chargesheet of 2007 in which four accused were sent to trial and also submitted an additional supplementary chargesheet of 2008 regarding three others in the said case. The Inspector Crime, Navi Mumbai produced a certified copy of a case of 2006 against six persons of which only two were arrested by him. Subsequently, a third one was arrested in 2011 and that a supplementary chargesheet was also filed in the case. As far as the Kerala cases cited above are concerned, the secret meeting at Happy Auditorium (2006), the raid on Nanma Book Stall (2008) or the Wagamon training camp (2008), made routine appearances before both the tribunals, 2010 and 2012. The tribunal also accepted cases pertaining to 2001-2002. The I.G. Police, CID Jaipur, presented three FIRs of 2001 but which are not substantiated in the judgement. The DIG Intelligence, West Bengal provided chargesheets of six cases of 2001 which too were not

The son of a preacher

The tribunal judgements, like the Government's notification and 'grounds', draw attention to some particular individuals who are said to be 'masterminds' such as Nagori, Shibly, Shaduli or Abu Faizal. Besides these preachers and teachers, there are many others who play a prominent role in their particular area. One of them is Moutashim Billa, who belongs to hard-line clerical family known for its proximity to the Nagoris and Shiblys whose brother was killed by the state forces during a protest rally. Billa became a proclaimed offender in November 2004 when TTSI (Tehreek Tahaffuz Shahar-e-Islam), a supposed front of SIMI, protested the arrest of a cleric, Moulana Nasiruddin by the Gujarat police for his alleged conspiracy in the Haren Pandya murder case and for instigating Jihadi activities against the Gujarat riots. During the protest a large number of police vehicles were burnt and Narendra Amin, the controversial Gujarat encounter specialist, opened fire and killed Billa's brother, Salim Islahi.

Like many Hyderabad youth who live in the shadow of suspicion, Billa was finally picked up on the statement of a co-accused in March 2008. His arrest was strongly protested by the residents of the locality which also included women and children. Along with 20 other youth, Billa was shown as part of the criminal conspiracy following the Mecca Masjid blasts in 2007. The case was thrown out by the Metropolitan Sessions Judge, Radha Krishna in December 2008, for want of evidence. As the news reports of that period show, the arrested youth had been tortured severely in custody. Presently Billa is acquitted of all cases and is pursuing his M Tech from Osmania University. As a 27 year old youth who has seen enough of the ways of the police, it was not surprising for him to find that he has been accused of another crime now. In October 2014, the police claimed that Billa helped two SIMI activists from Maharashtra to go for training in Afghanistan. In a press conference which he convened after the police's latest claim, Billa had one clear opinion: *"By implicating me they are trying to cover up for their own incompetence and protect Gujarat police officers who shot dead my brother".* Incidentally, on October 29, 2014, a local Hyderabad court acquitted Billa and another accused, Shakeel, in the 2004 case whilst three others were awarded a punishment of four years each.

Outside of the prosecution's account, Moutasim Billa's story is a fit case for understanding how articulate and radical Muslim youth are punished by the UAPA.

substantiated. The DC, SID Mumbai annexed 12 chargesheets dealing with cases of 2001-2002 and he admitted that he had not investigated any of the cases. Likewise the SP Patna submitted a "true copy" of a 2001 case against 16 SIMI members who conducted secret meetings and made communal and provocative speeches.

The acceptance of old cases, or cases which show some modification, raises a question about the tribunal's functioning. If, the tribunal is set up after each ban period is over, then it stands to reason that it should admit cases which fall within its time purview. The inclusion of old cases in which there are little or marginal change suggests that the prosecution does not have the details of all the recent cases or that there aren't as many recent cases for it to show. Yet, the latitude given to the prosecution to present these cases also enables them to give shoddy information. For instance, the SP Patna informed the tribunal that one of the accused was a dangerous one who had been involved in a variety of terrorist cases throughout the country including the Ahmedabad blasts and part of a conspiracy which attempted to blow up the Howrah Bridge in 2002. However, during cross examination, she admitted that there were no FIRs against SIMI members after 2001. She also admitted that her statement regarding the dangerous accused was based on a letter sent by DC, Gandhi Nagar and that she had nowhere perused the documents personally.

Besides, old cases allow the prosecution to reiterate an entire history of SIMI's activities even before its ban period, as evident in the Hyderabad CID inspector's deposition before the 2012 tribunal. The inspector presented a case of 2002 which had 11 accused of which two were killed in encounter killings in 2002 and one was still absconding. Despite the delay, the case had not been committed to trial and the inspector presented a supplementary chargesheet against two of the accused and a confessional statement of one other who had been taken into custody in recent times. Apart from providing an extended background to the case which showed the subversive hand of all the accused, the confessional statement is used liberally before the tribunal to indict SIMI. The accused, Syed Salahuddin's confession says that when he was the President of SIMI between 1998 and 2000, he had visited *Babri Masjid site at Faizabad to collect the particulars of Kara sevaks, who are the main persons responsible for the demolition of Babri Masjid, for taking revenge against them.* The inspector informed the tribunal that Salahuddin had, in his confession, informed that about 400-500 persons attended a conference in Aurangabad in 1999 in which Sheikh 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.* Since the 2012 tribunal was willing to admit the confession of Salahuddin pertaining to his activities prior to the ban, two legitimate issues arise: the relevance of such depositions and the acceptance of police confessions.

POLICE CONFESSIONS

The 2012 tribunal noted that 13 of the 43 prosecution witnesses relied solely on police confessions. Actually, a closer inspection of the depositions reveals that as many as 25 witnesses, not 13, relied on police confessions. To take one example: the City Superintendent of Police, Rewa presented an account of a deep "anti-RSS plot" hatched by SIMI conspirators, namely Abu Faizal, Sheikh Mehmood and Mohd. Iqrar. The nature of the plot involved sending hate mails from internet cafes to avoid detection, holding training camps in Raipur and Bhopal in May 2011 in order to galvanize SIMI members and the decision to loot banks or institutions which lend money on interest as charging interest is 'un-Islamic', the witness stated. As a police investigator the Rewa chief provided details on the modus operandi followed by the accused to avoid detection: besides adopting Hindu names, the members would not go online; instead, they would draft a message and give the passwords to the members on the other side, who would open the file, read the message and thereafter delete the same. The Rewa chief stated that this modus operandi not only helped SIMI to continue its activities and also widen its

membership. The whole project was geared towards t*argeting the selected persons who were acting as hurdles in the way of propagating the objectives of SIMI*. From the seized documents, hard disks and other recoveries, the Rewa SP showed books and other printed materials which listed 44 methods of waging Jehad for bringing Islamic rule in the country. During cross-examination, the police chief admitted that his entire information was based on confessional statements made by the accused whilst in police custody.

Understandably, the applicants, via their lawyer, argued that the tribunal should reject police confessions as they were in contravention of sections 25 & 26 of the Indian Evidence Act, 1872. The Act bars a confession to police to be used either to establish an offence or to be used as proof. Instead of acknowledging the merit in the applicant's claim, the judge offered some very significant departures from established procedures. He agreed with the prosecution's viewpoint that the tribunal is not a "trial" against accused persons but only an 'inquiry' into the matter of ban notification. Further, the judge opined that the tribunal has the power to examine confessions not as legal evidence but as "other" materials necessary for forming a reasoned opinion on the issue of the ban. In the above instance of the deposition made by the Rewa SP, the judge lauded the testimony because the plethora of seized articles—books, DVD and VCDs—contained "seditious material" and were recovered from the accused. Even when it was pointed out that the name 'SIMI' is not used in any of the seized materials, the judge still concluded that the witness's deposition *shows that the activities of the SIMI are continuing even as on date.* The disquieting aspect of the functioning of the tribunal is that while it accepts depositions which strain to connect individual charges with the larger picture of Jehadi conspiracy and anti-Hindu plots, it pays no attention to the police methods of arrest, killings or of extracting confessions. So, while the arrest of a dreaded terrorist, Mohammad Abrar, in Aurangabad in 2011 is accepted, the fact that the arrest also involved the killing of another suspect, Azhar Qureshi is glossed over as the prosecution argued that "the suspect opened fire at the police party which retaliated in self-defence."

CLASSIFIED EVIDENCE

In the course of the 2012 tribunal, the prosecution submitted eight sealed envelopes and one witness, the Joint Secretary, MHA, submitted nine sealed envelopes. The sealed envelopes were in the "form

Police confessions: lessons from history

Confessions extracted by the police during interrogation of a suspect are considered unreliable since there is a high probability that there are associated with torture or other forms of coercion. Hence suspects are likely to make or sign false statements that the police wishes. Hence the Evidence Act rules out the use of confessions made to the police. This established norm was overturned by the Terrorist and Disruptive Activities (Prevention) Act (TADA) that was passed in 1985. During its decade long history the law was hounded by this provision wherein it became impossible to differentiate between innocence and guilt. Attempts were made to counter this situation firstly through stipulating that a senior police officer records the statement and secondly through review committees to recheck whether the case against the suspect was indeed genuine. But all these cosmetic attempts failed, till in 1995 the Parliament was forced to allow the law to lapse. That law was a time bound law that automatically lapsed after two years. The later reincarnations of TADA, never permitted police confessions.

In 2004, the latest avatar of TADA was merged into the UAPA and the extraordinary provisions of TADA to deal with an extraordinary situation became a permanent fixture in the law books. Yet, it was never considered sensible by Parliament to meddle with the norm of disallowing police confessions. Ironically, it was not the law makers but judges of High Courts facing an extraordinary position as Tribunal heads that overturned the rules of evidence to justify bans on organisations. And these bans,in turn, have the capacity to parade many a law abiding citizen into a threat to the sovereignty and integrity of India.

The concocted cases against Imran Hashmi

Tribunals don't necessarily consider all cases dealing with the banned organization as the prosecution and appellants are expected to respond to the Central Government's notification. So, Imran Ansari's case was not brought before the tribunal even though he is profiled as a terror suspect as he was an important SIMI functionary of Madhya Pradesh. Imran, an engineering student of Indore, was first arrested on the night of 26-27 September 2001 in Kanpur for allegedly giving hate speeches and spent a minimum of six months in custody before being granted bail. While still in jail a fresh case was slapped on him as he was accused of presiding over a national conference in Surat. How could Imran be in Surat if he was in jail? The police claimed that he escaped whilst several others were arrested. A couple of years later, in 2006, he was arrested by the Khandwa police in Bhopal on the basis of a memorandum of a co-accused who allegedly told the police that Imran was the editor of the SIMI mouthpiece, *Tehreek-e-Millat*.Imran was again charged even while his arrest violated the Supreme Court's ruling which stated that signatures to memorandums taken in custody alleging involvement of an accused cannot be treated as evidence. Imran's trials and tribulations were far from over as his identity as a suspect lent him to being interrogated by the Mumbai police for the July 2006 train blasts. Although no evidence could be found against him, he was charged in another case in November of the same year. This time he was charged for conspiring terror plots with old associates. Strangely, the incident happened when he was being accompanied by policemen from Khandwa to Indore in connection with an old case. He was accused of holding a 'secret meeting' in a restaurant with the owner and few others for committing terror attacks and for disturbing communal harmony in Indore. That was not all; in 2008 the police claimed that one accused, Mohammad Naved Irfan, had confessed that he was in touch with Imran since 2006 and the latter was implicated in the FIR 192/08 at Khajrana PS.

In all, Imran has already spent over five years in jail and although he has not been implicated in any heinous offences—bomb blasts or murder cases—he still has to fight numerous court battles which are expensive and time consuming. Moreover, the trajectory of his cases is indicative of the arbitrary nature of the ban provision which grants the police immense power to arrest and detain inconvenient activists who cannot be brought into the dragnet easily. The successive cases which are flimsy and shocking are aimed at crippling his political and personal life as they ensure that he remains under the police's scanner for a long time. Imran was in his early twenties when he was first apprehended and has been fighting for justice for nearly fourteen years since. Although in 2013 he was acquitted in the very first case of 2001, he will still have to spend considerable time within the labyrinth of criminal justice system before being set free altogether.

of CDs, VCDs, audio CD, pamphlets, book, magazine and literature" which contained what the judge described as "sensitive information which cannot be disclosed to the applicants." The Special Branch I.G. Police (CID Headquarters, Kerala) submitted sealed envelopes and, during cross examination, stated that the seized materials (from the Nanma Book Stall) were sufficient to "cause disharmony among communities." A closer perusal shows that the I.G.P.'s sealed envelopes was meant to corroborate the evidence provided by ACP Kozhikode on the matter of book stall raid, an issue discussed above.(See the section *Front Organizations)*

The applicants objected to the manner in which the government claimed this special privilege and demanded that either the tribunal discloses or rejects the sealed envelopes as it violated the principle of natural justice. They asserted their right to challenge the government's notification through its refusal to disclose materials and insisted that this claim jeopardized their ability to effectively participate in the tribunal. Besides citing the **S**upreme Court judgment in *Jamaat-e-Islami Hind vs. Union of India, 1994* which entitled the affected party the right to information, the applicants pointed out that the government could only claim such a special privilege provided it

followed due procedure as laid down in the IEA. The government counsel rejected the applicants' assertion on the ground that, Rule 3(2) of UAPA empowers the government not to disclose information when it is against "public interest".

The judge argued that the provisions of the IEA are not meant to be adhered to in a *stricto-senso* manner but in its 'broad principles'. He admitted that 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". In short, the special nature of the special 'Act' enables its provisions to supersede the provisions of normal law and the principles of natural justice remain subservient to the larger interest of public interest. The judge too cited the *Jamaat-e-Islami* judgment to point out that the need to safeguard public interest can outweigh the principles of natural justice. The judge did not restrict his opinions merely to the above but went on to argue that if the sensitive information, presented in sealed envelopes, is released, 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". Finally, he stated that if any "reasonable law knowing person" were to study the contents, he would be left with no doubt regarding the clandestine nature of SIMI and its continuous efforts at re-grouping and mobilizing impressionable youth for undertaking illegal and unlawful activities.

The judge's pronouncements seek to discredit SIMI without giving it a chance to know why it is being damned as the necessary evidence remains undisclosed on the ground of national security. Simultaneously, he argues for the necessity of secret materials in order to prove the damned nature of the banned organization. While the circularity of this argument may well defeat the reasonableness of a "reasonable law knowing person" yet, its power and effectiveness are derived from the extraordinary subversions of natural justice allowed for by UAPA. Undoubtedly, it is fairly clear that the tribunal's adjudication can never be in favour of the applicants but the extent to which the prosecution monopolizes its power of special privilege is noteworthy.

Under the UAPA, the tribunal's adjudication is an "inquiry" determined by the "preponderance of probability" (a phrase that both tribunal judges use), and not a trial governed by the principle of beyond reasonable doubt. In a trial veracity of evidence has to be established first. Not in an "inquiry". Whatever the government submits is presumed to be in "good faith". And quality of evidence is not verified. It is taken at its word, literally and metaphorically. As has been pointed out, the prosecution presents a mass of infirm evidence and still the tribunal favours them as they demonstrate 'preponderance of probability'. Not surprisingly, the 2012 tribunal declared: *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.* In the name of adjudication, the prosecution is granted wide latitude to present a gory picture of how SIMI has, over time, morphed into the most dangerous terrorist organization, the IM or Indian Mujahideen. Much of the evidence centres on the issue of membership of banned organization and literature, for both are cognizable crimes under UAPA. Obviously, the precept of preponderance is a veritable sleight of hand which helps justify the ban and the lowered standards premised on the vague phraseology, "so far as may be" (S.9, UAPA), ensure that a pernicious laxity permeates the entire procedures. The following chapter probes these issues further. By examining the consequences of *a certain amount of laxity and departure* in the tribunal's functioning.

3. Subversion by Law: Functioning of the Tribunal

THE *INTRODUCTION* TO THE UAPA (1967) recalls how the 16th Amendment to the Constitution in 1963 specifically enabled the state to "*impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India*". The legislative imperative was to place "reasonable restrictions" on "the freedom of speech; right to assemble peaceably and without arms; and the right to form associations or unions." In short, the UAPA was enacted in order to curb the political freedoms guaranteed in Articles 19(1)(a), 19(1)(c) and 21 of the Constitution in the name of safeguarding the 'sovereignty and integrity' of India (See Box: Of political freedoms and national sovereignty). While the legal repercussions of the UAPA's 'reasonable restrictions' will be dealt with below, the political implications of such restrictions are obvious: they allow governments in power to create laws which muzzle dissent. A perusal of the history prior to the UAPA's promulgation and the subsequent one, spanning nearly half a century, demonstrates how this particular political imperative had and has been enlarged in other laws, both state and central. More pertinently, the UAPA amendments of 2004, 2008 and 2012 show that despite repeal, some of the worst features of TADA and POTA have been imported within the law in order to give more teeth to existing sections. The 2012 amendment is particularly pernicious as it widens the definition of person to include 'association of persons or body of individuals' (S.2), enhances the period of ban (S.6), incorporates economic acts within the ambit of terrorist activity (S.15) and introduces a whole new section which criminalizes the raising of funds whether legitimate or illegitimate (S.17). The tribunal procedures too have been modified by this continuing history of encroachment of rights by legislative fiats. Section 9 was amended in 2004 when the Code of Civil Procedure (1908) was replaced by the Code of Criminal Procedure (1898) in the case of prohibitory orders regarding the use of funds or notification of place (S.7(4) and 8(8)).

The tribunal's functioning raises a fundamental question related to the purpose of the UAPA: should political freedoms be curtailed in the name of sovereignty of the state? To contextualize the question: why has SIMI been banned and what purpose do such bans serve? If, as the tribunal repeatedly states that, the existence of SIMI cannot be ended by the pronouncement of a ban since it continues to flourish in its underground capacity, a point reiterated in the Act (S.4.1), then the very logic of banning is flawed, misguided and specious. This political question which strikes at the very core of the law will be addressed in the context of 'reasonable restrictions' of fundamental rights and 'public interest' in the final chapter. For the present, it is worth assessing the extent to which the tribunal procedures depart from the safeguards envisaged in settled law including the Act. If, as the Supreme Court held in the *State of Madras vs. V.G. Row, 1952*, 'reasonable restrictions' are reasonable "only in very exceptional circumstances and within the narrowest limits", then the procedural safeguards laid down in law must be followed entirely and wholly in order to prevent any miscarriage of justice. Indeed, reading down of procedures, including the Indian Evidence Act, which facilitate the narrative that authorities concoct, debilitate those challenging the ban. How uniformly are the laws enforced and how equally do the laws apply in such real situations?

PROCEDURAL SAFEGUARDS

In order to check the tribunal from exceeding its legislative brief, the UAPA provides some necessary safeguards such as: (1) specification of 'grounds' by the Central Government in its gazette notification; (2) declaration of the notification period; (3) presence of a sitting High Court judge as the tribunal head; and (4) adoption of the Civil Procedure Code (1908) for adjudicating the sufficiency of the government's claim. The functioning of the tribunal specified in S.4(3) of the

Act requires the tribunal to consider the cause and adjudicate the matter expeditiously within a period of six months from the time of the notification and declare its verdict in the official gazette. The rationale behind each of these checks is meant to curb the possible arbitrary functioning of the tribunal. The importance of the Civil Procedure Code can be appreciated from the fact that the primary purpose of the tribunal is not to sit on judgment on the appellants or conduct a trial but to decide the merits in the government's claim of SIMI's 'unlawfulness'. In this regard, the Supreme Court judgment *Jamaat-e-Islami Hind vs Union of India, 1994* (henceforth, *Jamaat-e-Islami Hind*) spells out the scope of the tribunal's civil powers which enable it to: (i) commission, summon and examine witnesses; (ii) admit and receive evidence including affidavits; and (iii) requisition public records. The tribunal's judicial proceedings are in keeping with the provisions of S.193, IPC (punishment for false evidence in any stage of a judicial proceeding), S.228, IPC (intentional insult or interruption to public servant sitting in judicial proceeding), S.195, Cr.P.C. (giving or fabricating false evidence) and the procedures of adjudication as mandated in Order XXI, Rule 58 of the Code of Civil Procedure (1908). As a civil court, the tribunal has a specific brief, of adjudicating "whether or not there is sufficient cause for declaring an association unlawful" (S.4(1)). On the subject of adjudication, the judgment in *Jamaat-e-Islami Hind* clearly states that the task of the tribunal is to arrive at an objective decision: whether or not, "the material to support the declaration outweighs the material against it, and the additional weight to support the declaration is sufficient to sustain it." A reading of the 2010 and 2012 judgments show that the judges are only too mindful of this task and the 2010 tribunal judge specifically cites a 1992 order drawing attention to how, "The Tribunal has to autonomously adjudicate whether or not there is sufficient cause for declaring the association unlawful." What is at stake here is the interpretation of the word, 'autonomously' as the question remains whether, or not, the tribunals have followed the *Jamaat-e-Islami Hind* ruling regarding objective decisions which have to be, "made on the basis of material placed before the Tribunal by the two sides." In short, the process of adjudication must give the appellants, as noted in *Jamaat-e-Islami Hind*, "a reasonable opportunity to the association to rebut the correctness of allegations against it". The point is important particularly since Shahid Badr, in his affidavit before the 2010 tribunal, stated how he was never given such an opportunity: "Personally, on every occasion that the matter was contested before the tribunal the central govt. made completely false, unsupported and sweeping allegations against me of fund raising and continuing the activities of the unlawful association".

In order to prevent the government from making 'unsupported and sweeping allegations', the Act specifically stresses the primacy of 'grounds' accompanying the notification: "Every such notification shall specify the grounds on which it is issued"(S.3(2)). Equally, the tribunal must be furnished with "all the facts on which the grounds are specified in the said notification are based" (Rule 5(II)). 'Grounds' are not 'opinions' or subsidiary evidence; they comprise facts which substantiate the notification. Drawing attention to the lack of 'grounds', the 2008 tribunal judge observed that "all material particulars with regards to the dates of the offences, details of the FIRs registered by the police or the details of the pending prosecutions are not mentioned. Most of the allegations made in the background note are not supported by any deposition". Grounds, as pointed out in *Vakil Singh vs. State of J&K, 1974*, "must contain the pith and substance of primary facts but not subsidiary facts or evidential details." Clearly, the specification of grounds is not the same as the presentation of the 'background' note which the 2001, 2003, 2006 and 2008 notifications provided. The decision to declare an association 'unlawful' cannot be merely effected by the production of notifications; the grounds for why an association "is or has become, an unlawful association" (S.3(1)) have to be spelt out. Taking note of "the formula of subjective satisfaction of the Government or of its officers" inherent in mere

declarations which can "override a basic freedom guaranteed to citizens", the apex court in *V.G. Row, 1952* had reiterated that such sanctions cannot "receive judicial approval as a general pattern". Evidently, the tribunal is expected to adjudicate on the basis of the materials provided and not on background notes supporting the notifications.

Given the importance of 'grounds', how is it that the notifications issued before 2008 were at all admitted and entertained by the three tribunals headed by Justices S.K. Aggarwal, R.C. Chopra and B.N. Chaturvedi? In fact the 2006 tribunal had noted while issuing the notification, that no fresh grounds or reasons for declaring SIMI as an unlawful association were mentioned. Worse, a comparison between the 2006 and 2008 notifications show that the latter was a mere verbatim copy of the former. Undoubtedly, after 2008, the government had to provide 'grounds' and 13 were listed in 2010 and 26 in 2012. However, even though the last few notifications have been supported by 'grounds', doesn't the faulty and specious history prior to 2010 cast a long shadow of doubt on the legality of the ban on SIMI? Instead of acknowledging the same, the 2010 judge cited the earlier bans with a mere proviso, that Justice Mittal "held that the Notification issued by the Central Government was deficient as it failed to set out the "grounds" why SIMI should be banned." The judge nowhere reflected on the importance of Justice Mittal's observation as he carried on to narrate how the government filed a special leave petition in the Supreme Court and how the latter upheld the notification but referred the matter to a three judge bench. The subject was, henceforth, closed for the judge and as far as the Court was concerned, it finally heard the matter in May 2014 and promptly referred it to a larger bench. The judgment is awaited.

The question becomes even more important because a large number of FIRs and chargesheets find their way to constitute "grounds" listed by the government in its Gazette Notification banning an organisation, such as the Hubli and Belgaum conspiracy cases. Take the acquittal of all 17 persons in the Hubli conspiracy case by the Additional Sessions judge Gopal Krishna Kolli on 30 April 2015 wherein he ruled that the prosecution failed to prove that the accused have committed "any offence as alleged". It took seven years and seven orders issued by the Karnataka High Court from 2008-2013 for day-to-day trial, for speedy trial to commence in 2013. (See Box for more.) Significantly, all the civilian witnesses testified against the prosecution claim and prosecution failed to provide any incriminating evidence to back their claim. Thus the nature of "grounds" and the facts provided to hold them up are in themselves of doubtful evidentiary value.

Notwithstanding the fact that the ban on SIMI has been continuously, and erroneously, upheld since it was first proscribed in 2001, the provision in the Act clearly mandates that such notifications are time-bound, not indefinite ban orders. Section 6(1) states that once the notification is confirmed by the tribunal, the ban period will "remain in force for a period of two years from the date on which the notification becomes effective". The logic of this safeguard is clear: it is to prevent the government from exercising its diktat in a permanent manner. Till before 2014, the six notifications were issued for a period of two years only. On account of this safeguard there was a brief period of five months (Sept 2005-Feb 2006), when, technically no ban was in place as the previous one, issued in 2003, completed its two years in September 2005 and the fresh was issued five months later. Possibly because of this, the 2012 amendment which enhanced the ban period from two to five years was done with a view to prevent the repetition of such technical snags which can potentially offer the outlawed organization a chance to continue its legitimate activities. Obviously, this current enhancement will adversely affect SIMI as the latter will remain a banned organization till the next notification, in 2019. Significantly, while there were noisy debates on other amended provisions within the legislature, there was hardly any discussion on the extension of the ban period. Clearly, the idea of longer ban periods is readily accepted across political parties and the present

government made the amendment appear 'reasonable' as it stated that the enhancement was meant to reduce administrative costs.

DILUTION OF SAFEGUARDS

While the law provides safeguards to check arbitrariness, it also includes exceptions which can override or dilute the protections. For instance, the government is stipulated to follow a certain procedure while announcing the ban notification. It must publish its notification in the official gazette and also state the grounds to support its declaration. Section 3(4) (publication of notification) and Rule 4 (additional mode of service of notification u/s. 3) lay down that the said organization which has been declared 'unlawful' must be served a copy of the notification. Subsequently, the government has to form a single judge (High Court) tribunal within thirty days of the notification which must take note of the government's declaration and confirm the same. Hence, the government cannot, at will, declare an association unlawful and proceed to use its executive powers against the association and its members. However, even while the Act is stringent in denying the government the power to exercise the formula of subjective satisfaction, S.3(3) empowers the Government to declare an association unlawful with 'immediate effect' and it is up to the government to decide whether or not. Common sense dictates that the government will exercise this power as it will not wish to delay and wait for the ratification by the tribunal. Undoubtedly, 'opinions' cannot be formed on the basis of suspicion or conjectures; they have to arise out of valid circumstances and materials—the 'grounds' specified earlier. In *Mohammad Jafar vs. Union of India, 1994*, the apex court had particularly underscored the grave violations implicit in the above clause. The court said that banning an organization without giving the latter a chance to represent its case "is violative of the Constitution" as it has a "drastic effect of curtailing the freedom under Article 19(1)(c) with immediate effect." Keeping this in mind, the court had reiterated the need for the Central Government to justify its actions by committing it in writing, by "adducing proper reasons." Nonetheless, it will be noticed that the 'immediate effect' proviso can easily provide a platform for the preponderance of opinions which may be plausible but not necessarily true. A look at what happened in September 2001 confirms that the clause of 'immediate effect' was exercised by the Government on SIMI from the midnight of 26-27 September onward. Among the many police acts, the raid in SIMI's Kurla office (referred to in chapter 1) that night was not only a hasty act carried out before the notification reached the state home

The civil court with criminal procedures

The Tribunal operates like a civil court because the banned organisation or others aggrieved by it can appeal against the imposition of ban. In a criminal trial the State is obliged to file a charge-sheet and try a person for commission of crime.Under UAPA, S.5(6), the judicial proceedings of the tribunal are deemed to be those of a civil court while trying a suit. However, S.9 of UAPA allows for the incorporation of the Criminal Code in matters related to prohibition orders on the use of funds (S.7(4)) and premises (S.8(8)) for the purpose of unlawful activities. Although the application of the Criminal Code is restricted, the tribunal can, if required, double up as a criminal court. Taking note of its dual character, the 2010 judge pointed out that as per S.9 of UAPA, "*the opinion formed by the Tribunal will be governed by principles as applicable to civil law and the principles*." But when civil law procedures are applied to test the veracity of the government's claim regarding the 'unlawful' and terrorist nature of SIMI, a contradiction between procedure and subject matter is apparent. The argument that procedure and subject matter can be kept apart is certainly not true as the modus operandi of the civil proceedings show that the "suit" is heavily slanted in favour of the prosecution. The tribunals are less concerned with SIMI's appeal against the ban and more inclined to consider whether or not the prosecution has supported its claim by fulfilling the test of preponderance of probability. Consequently, despite the tribunal's stated civil role of adjudication, the procedural sleight propels a constant slide towards indictment of the appellants.

department but also one which could not stand before a court of law. Clearly then, the Kurla action was based on an *opinion*, that **all** SIMI activists are suspects in the eyes of law and deserve to be arrested with 'immediate effect'.

The exceptions written into the Act have a power of producing an arena of subjectivity and prejudice within existing clauses. For instance, even though the provision on notification is binding, the government need not declare any facts, if compelling circumstances are present to justify this non-disclosure. Of course, it is understood that the intention of the government is to safeguard the public against harmful information, but 'public interest' is a wide and ambiguous arena which exceeds objective definition. The subjective possibility of what comprises 'public interest' can act as a convenient shield for not disclosing relevant facts. Further, since the *Jamaat-e-Islami Hind*held that "the requirements of natural justice have to be tailored to safeguard public interest which must outweigh every lesser interest", the government counsels have readily taken this plea for not disclosing material to the appellants. For instance, in 2012 when the appellants argued that the government had not shown any affidavit or application to support the matter of non-disclosure, the ASG (Additional Solicitor General) stated that S.3(2) empowered the government to do so. The judge agreed with the ASG on the grounds that the Act gives the government greater power "to withhold the information or material from the aggrieved party."

This particular caveat, public interest, has the potential of doubly overriding the mandated procedures as it enables the government to withhold relevant materials from the association and also modify the rules of evidence despite the fact that the Act upholds the Indian Evidence Act (1872) for procedural purposes (Rule 3 (2)). Notably, the 2010 judge drew attention to this very section in order to argue 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". Unlike the strict adherence that 'provisions' demand, 'rules' can and do ensure flexibility and the judge's observation stems from the fact that the said section includes the phrase, "as far as practicable" before mentioning the IEA. The import of the phrase, '*as far as practicable*' and the modification noted by the judge, '*rules of evidence*', substantially alter the tribunal's workings as the judge infers that "*strict rules and principles of proof or documents and materials*" need not be followed as they may not be "*practical and pragmatic*". In other words, the tribunal can accept lowered standards in matters of summoning witnesses, records, other necessary data and admit infirm evidence from the prosecution's side. Clearly, the formula of "*practical and pragmatic*", the sub-text of "*as far as practicable*", is a very handy one via which the tribunal can conveniently condone the absence of investigating officers, while accepting their evidence; accept charges in the absence of chargesheets and other documents, or accept uncertified records as final ones; admit second-hand, or 'reported' cases as legitimate pieces of evidence; and, allow police confessions as admissible evidence.

Quite clearly, the phrase, '*as far as practicable'* allows for wilful departures which determine the modus operandi of the tribunal as a whole. For instance, the 2010 judge makes a very tendentious argument in favour of accepting police confessions by reading the above phrase along with the *Jamaat-e-Islami Hind* acknowledgment that "a departure has to be made only when public interest so requires", or that "the materials need not be confined only to the legal evidence in a strict sense". So, while police confessions are not admissible under S.24 of the IEA and not even in trials under the UAPA, the judge argues that the tribunal is not a 'criminal proceeding' and that S.24 need not apply in a 'strict sense'. Besides, he opines that since many deponent-accused have accepted their links with SIMI in their confessions and have confirmed the existence of the 'unlawful association' (S.2(p)), their confessions are relevant and admissible. Further, since confessions are allowed for under S.18 of Maharashtra Control of

Organized Crime Act, 1999 (MCOCA), a commonly invoked law by the prosecution against the accused, he states that they can be admitted as evidence before the tribunal as "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." The import of the judge's circular argument is not difficult to fathom: confessions by members of banned organizations should be admitted as the members, in any case, stand convicted in the eyes of the Act. And, even though the tribunal is a civil proceeding, it is nevertheless a judicial one constituted under the same Act which bans and convicts unlawful associations and members. Hence, confessional statements are important pieces of evidence as is hearsay, or evidence given by a testifying witness. It is significant to note that the tribunal procedures are so pliant that an entirely different law can be invoked at will to justify the admission of police confessions. After this, there was really nothing new that the 2012 judge could add other than reiterate his predecessor's reasoning in favour of confessional statements.

Along with the proviso, 'as far as practicable', the tribunals uphold another, more substantial clause, the 'sufficiency principle'. Drawing upon the tribunal's task, "whether or not there is sufficient cause for declaring the association unlawful" (S.4(1)), the 2012 judge argued 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." While the judge's inference of 'one ground' may well be derived from established provisions of arbitration, the import of the same in the context of adjudication between the government and the accused organization has a very definite impact. Even if, 'one ground' is the most crucial one, the government counsel can deploy it in order to manipulate the "pragmatic test" of "greater probability", as mandated by the *Jamaat-e-Islami Hind,* to its advantage. For instance, the weight of the government's argument before both tribunals was that of SIMI's continued existence, despite the ban. In order to establish the same, the prosecution submitted materials to show SIMI's unlawful existence evident in its involvement in terrorist attacks and through its proliferation of front organizations. Accordingly, exhibition of police confessions, production of banned literature, or presentation of intercepted email discussions become supporting documents meant to satisfy the 'one ground' principle. Since the Act also confirms the clandestine existence of an association after the ban, the 'one ground' formula simultaneously confirms the pragmatic test of greater probability and also justifies the re-imposition of the ban. In such an event, where the government is not compelled to prove the many grounds separately, the 'one ground' clause can put the principle of natural justice at risk. Simply put, when the government declares an association 'unlawful' then it has to prove its many grounds before a court of law on the principle of greater probability. If instead, the court of law is willing to accept 'one ground', then the government is the more fortunate party in the adjudication. Consequently, the appellant is placed at a disadvantage as the government's successful claim of 'one ground' will necessarily prevail over appellants' many rebuttals.

The unfairness of the adjudication is particularly evident from the way in which the representatives of the association are treated. In 2012, Misbah-Ul-Islam and H.A. Siddiqui, the two applicants, deposed before the tribunal as "aggrieved members of public", as their counsel argued that S.6(2) of the Act purportedly allowed for "*any person aggrieved"*. This was immediately contested by the ASG on the ground that revocation of ban can only be argued by office bearers or members of the said association, as stated in S.4(3). Additionally, the ASG objected to their *locus-standi* as the applicants had denied "the alleged anti-national and secessionist activities

Another SIMI case results in acquittal

In February 2008, 17 men were arrested by the Karnataka police on charges of being part of a SIMI module and for conspiring to commence jehad throughout India. The case dragged on for seven years and it finally ended on 30 April 2015 when a Hubli court ordered their release.

"The 17 accused Muslim youths are a motley group of doctors, medical students, electricians, engineering students, auto drivers, workers of multinational corporations and alleged "top SIMI leaders" of varying ages. They were accused of being part of a hit squad of the banned Students Islamic Movement of India and arrested for allegedly planning a series of terror strikes across the nerve centres of Karnataka, including the Kaiga Nuclear plant, the Hubli airport, and "offices of major companies like Infosys, Dell, and IBM... The mainstream reporting of "seven long years of the trial", and "big setback to the police", conveys an entirely misleading picture. It wasn't, to use someone else's phrase, "a bumbling policeman, reminiscent almost of Jacques Clouseau, tripping over reams and strings of evidences, in an impossible attempt to build a watertight case against the villains". Nor was it a case of the benefit of the doubt because of the incredibly high standards of courts.

No. That image is a smokescreen for the inordinate delays that were introduced into the trial – never allowing it to start, leading to seven years of incarceration – all without evidence. The charges took a long time framing, the public prosecutor was not available and was frequently changed, judges retired or were frequently transferred, and most of all – the state of Gujarat refused to let the accused appear for trial.

In many ways, the case represents almost all the processes that make up terror trials in the country. The accused were arrested and "webbed" in several cases after the initial one and were taken to police stations and prisons across the country, consistently delaying trials.

In the Hubli conspiracy case, the trial got shelved for almost a year when the Gujarat government refused to let them out of Sabarmati Jail. It did so by issuing a notification on October 27, 2009, under section 268 of the Criminal Procedure Code, which restricted the removal of terror suspects from the prison in Gujarat. After that pause of one year, pressure mounted from the defence and the trial took place via video conferencing. Eventually, that broke down too. By 2013 only 130 of the 363 witnesses were examined....."

[The Real Story behind the fake Hubli Terror Conspiracy; Sharib Ali; *Scroll.in* May 13, 2015. http://scroll.in/article/725035/the-real-story-behind-the-fake-hubli-terror-conspiracy]

attributable to the Association and its members." He argued that they could be permitted to join the proceedings provided they accepted "continuity of the organization and its activities". He also stated that since the Act envisages the possibility of the continuance of the association, the applicants should lend themselves to appropriate cross examination while arguing for the revocation of the ban! The preposterousness of the ASG's argument was upheld by the judge who agreed that the clause, "any person aggrieved", is valid only in the context of "post-confirmation of notification by the tribunal"; for the rest, only office bearers and members can have legitimate 'locus' to respond to the show cause notice issued by the tribunal. Instead of agreeing with his predecessor who had offered a liberal interpretation of S.4(3) in order to provide opportunity to erstwhile members/office bearers the right to *contest* the claim of the government, the 2012 judge proceeded to argue a very disconcerting proposition. He resolved the impasse created by the contradictory clauses by arguing that the tone and tenor of the applicants, evident in their objections and in their cross examination, confirmed that they were representatives of the banned organization. He concluded by stating that they could be admitted in the tribunal on the principle of surrogacy, as "members of a continuing organization". Significantly, in 2010, the judge had hoped that the presence of the applicants in the tribunal should not become occasions for prosecution under S.10

or S.13 of the Act: "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". Unfortunately, for the 2012 judge, the very decision to respond to the show cause notice of the tribunal became an instance of guilt; an admission of being a member of continuing organization.

INQUISITION NOT ADJUDICATION

In his conclusion, the 2012 tribunal judge averred that the replies filed by the applicants regarding the non-existence of SIMI after the ban and its lack of criminal character, did not have "*an iota of evidence*". Additionally, he pointed out that the two did not agree to step into the witness box and submit themselves to cross-examination and they also did not adduce any supporting evidence. After weighing this lack of evidence against the materials produced by the Union of India which satisfied the principle of 'preponderance of probability', the judge concluded that "*there is 'sufficient cause' to declare SIMI as an unlawful association, as it is indulging in unlawful activities*." The judge's conclusion were based on the following inventory: 42 credible witnesses (out of 43) who provided valuable information on SIMI's "*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*"; confidential reports from 8 states; information on 52 front organizations including one which falsely challenged its inclusion in the tribunal; ban notifications and ratification between 2001 and 2012; and, a mass of literature which prove SIMI's anti-national character. The 2010 tribunal judge was led to a similar conclusion after judging the applicants' lack of evidence underscored by their refusal to enter the witness box, against the mass of evidence provided by the Union of India including: testimonies of witnesses, sealed information, email evidences on recurrent bomb blasts, arrest of key SIMI leaders and, printed literature. Arguably then, a plethora of information was examined on the basis of which the tribunals arrived at their reasoned judgement in favour of the ban.

However, as the section on evidence in this report show, most of the disclosures made by the witnesses were infirm and based on second-hand information and no attempt was made by the prosecution to establish the credibility of their evidence. If, in such a situation, the process of adjudication based on the principle of preponderance is satisfied so effortlessly by tribunal judges, then one fails to decipher a difference between adjudication and administrative review. It is important to remember that the judicial nature of the tribunal is emphasized by the fact that it is presided over by a sitting High Court judge unlike the Chairperson of the Review Committee envisaged for 'terrorist' organizations "who is or has been a High Court judge" and is "appointed by the Central Government" (S. 37 (3)). One of its stated objectives, as reiterated in the 2012 tribunal judgment, is "*not to act as a mere rubber stamp for certification of the action of the Union of India*". Nevertheless, despite its wide procedural powers, the tribunal cannot seek the authenticity of the documents presented or cross-question the evidence provided by the prosecution. Instead, veracity is established merely by the police officer claiming the commission of crimes and proffering supporting documents by way of proof. No effort is made, or can be made within the purview of the tribunal, to authenticate the processes by which arrests happen, FIRs are lodged, charges framed, bails given, or confessions extracted. In the absence of such cross-checking, old cases with slight modification are accepted as valuable information, overlapping testimonies are admitted as instances of serious offences committed by SIMI and, second-hand accounts are received as genuine instance of hearsay. Consequently, the tribunals overlook the large scale acquittals which indict the police investigation and confirm that they are nothing more than witch hunts. So, in actual fact the tribunal, while examining evidence, only *looks* at the material presented as its procedural powers

are confined to confirming the physical presence of witnesses and their supposed documents.

The problem of the tribunal is not restricted to the fact that it functions as a dressed up 'Advisory Board'; it extends to the manner in which it rehearses an inquisition on the applicants, on the banned organization and its members and sympathizers. In order to appreciate this, it is important to recall the ways in which the dilutions of safeguards work against the notified organization. If the government bans an organization and immediately cracks its executive whip on it, then much before the tribunal's ratification, the members and sympathizers are banned and damned. Many are put behind bars and the rest are fugitives from the Act. When some of them do decide to contest the notification, then the only form of participation available is as members of a continuing association, i.e., members of a banned organization. It needs to be noted that in accepting surrogacy, the 2012 tribunal agreed with the government that the representation was by criminals and on behalf of an unlawful association. Further, if the objective of the adjudication is limited to 'one ground', then, on the basis of the Act and procedural latitude, the prosecution can easily affirm that SIMI continues to exist clandestinely and is involved in numerous unlawful activities. Finally, if the judge's proclivities are passed off as 'reasons', then, there is a real need to worry about the agenda of the tribunal. The 2012 judge summarily stated that "*it has been brought on record that the sympathizers/ activists of this banned organization have supported the so called Jehad 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.*" The judge's comments do not require engagement as they show an alarming lack of knowledge and an overwhelming presence of bigotry. Unfortunately for the applicants and for sympathizers of SIMI, such comments which polarize the Muslim community into "good" and "bad" engulf the judgement and form a significant part of the judge's reasoning for the justification of the ban. It should also be noted that besides offering his verdict, the judge also makes some suggestions: a) that the period of the ban should be enhanced to 5 years under S.6(2) of the Act; b) that efforts be made to wean misguided members of the Muslim community away from SIMI's influence; c) that serious attempts be made to prevent the proliferation of front organizations; d) and, that there must be a crackdown on accused who use Hindu nicknames in a bid to confuse the people about their real intentions. Looking at the judge's rhetorical flourish and stereotyping finish, one can only echo, "After such knowledge, what forgiveness?"

The nature of adjudication, the apex court had stated in *Jamaat-e-Islami Hind*, is an objective inquiry, "a *lis* (lawsuit or dispute) between two parties, the outcome of which depends upon the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment." The question is, how can an adjudication be fair and just if it is commissioned under an Act which infringes upon the political freedoms guaranteed in the Constitution, which discriminates between sections of people in the name of 'unlawfulness' and, which grants sweeping powers to the executive in the name of lawfulness? Within the tribunal there is no level playing field between the two parties as one of them is banned and damned. It would not be incorrect to conclude that the tribunal acts only as a rubber stamp for the government, a judicial body which approves the actions of the government. Through the ratification of the ban the government seeks to not only muzzle political dissent but also to damn organizations, their members and sympathizers as well as their literature and ideology. The writ of the ban runs large as it can cover a gamut of actions and people who, ordinarily would not be convicted. For this political purpose, the tribunal's procedural laxity effectively colludes with the powers vested in the

government under the Act. Consequently, even if the government acts unconstitutionally in banning SIMI with 'immediate effect', its authority remains unchallenged in the tribunal as the applicants are none other than surrogate members of the banned organization. Additionally, the obvious contradiction between the verdict of the trial courts and that of tribunals does not undermine the power of the latter as its purpose is to advocate the efficacy of the ban and the Act, not scrutinize improper or inadmissible evidence gathered by overzealous police personnel. In short, the tribunal ensures the continuance of the Act.

4. The Politics of Banning

THE FUNCTIONING OF THE UAPA tribunals compels one to question the legitimacy of bans. Going by the chronology of the "terrorism" charge against SIMI, it is the ban that forced the movement underground, and the violent crimes allegedly carried out by SIMI began to occur, as per official narrative, after the ban. The link between the ban and violent acts are co-joined by the officials themselves without examining the direction of causality. This then allows the officials to practise 'guilt by association'. And indeed going by the quality of evidence procured by the Government, even the charge of terrorism is getting weaker by the frequency of acquittals by the trial courts. The mismatch between mere paper work and secret material to uphold ban and acquittal by trial courts dismissing the evidence procured and presented to the court brings out the perversion of Rule of Law. The law too is not innocent of violence if it is meant to arbitrarily suppress those the Government dislikes. This obliges us to critically analyse the laws.

The official argument that bans are necessary in order to curb ideologies which promote violent actions is not convincing either. The history of bans exhibit a disposition towards seeking out to target one such group while letting others professing similar ideologies go scot-free. Thus, the UAPA seeks to deprive a section of people of their fundamental political freedoms and equalities before law. It cannot be denied that attacks on civilians must be prevented; that there must be effective mechanisms to check bomb blasts and killings committed by groups or organizations. But, then should not the Government uniformly clamp down on all and not choose and pick some and let others enjoy immunity from prosecution? Are we going to say that the Hashimpura-Maliana massacre by the PAC in 1987, the Kunan-Poshpora gang rape in 1991, mass crimes in anti Sikh, anti Muslim carnages, rape and plunder in Mumbai 1992-93, in Gujarat in 2002, in Muzzafarnagar in 2014, to name a few, are not heinous or heinous enough crimes to attract the provisions of the UAPA because these have been carried out either by security forces or by Hindu fanatic groups? The absurdity of UAPA and duplicitous judicial practice that it fosters is laid bare by this actual reality of who gets proscribed and who does not. Thus, even crimes against humanity done by those in authority can be considered to have been done in "good faith" when the reality shows otherwise, and the organisations that are targeted can have even their speech and expression declared criminal. A bomb planted in a cinema hall by the champions of *Hindutwa* ideologies is not a terror crime but even the possession of a leaflet containing ideas or opinions close to SIMI becomes a terror crime!

The question then is, are bans legitimate decisions? In 1952, the Supreme Court had held in the *State of Madras vs. V.G. Row* that reasonable restrictions on Art. 19(1)(c) can be defended if the impugned Act is of a temporary nature, like the then East Punjab Public Safety Act. The court had held, "*What may be regarded as a reasonable restriction imposed under such a statute will not necessarily be considered reasonable under the impugned Act (Criminal Law Amendment Act), as the latter is a permanent measure, and any declaration made*

thereunder would continue in operation for an indefinite period until the Government should think fit to cancel it." So, unless the Act is of temporary nature, the provision of imposing a ban is not condoned by that judicial dictum. Even if one were to see some merit in the argument of temporary bans, as validated in the VG Row judgment, the post-2001 history has demonstrated how the temporary ban provision has been used permanently against SIMI for the last fourteen years. The recent extension, from two to five years, further confirms that the temporary ban provision is a convenient clause as the ban period can be lengthened at will in order to strengthen the permanence of proscription. While the present analysis is restricted to the working of the UAPA Tribunals related to "unlawful organizations", there is an even greater need to challenge and denounce the Review Committees meant for "terrorist organizations" under the Act. Review Committees are but a euphemism for Advisory Boards as they evade the judicial purview of the VG Row judgment which rejected them for being nothing more than stamping authorities for Executive notifications. In *Jamaat-e-Islami Hind* [1995: 1 SCC 428] the apex court pointed out the Union of India had claimed that UAPA was "in the nature of a preventive detention law" and that the Tribunal was like "an Advisory Board under the preventive detention law required to examine only the existence of material sufficient to sustain formulation of the opinion of the kind required for PD". The Court rejected this argument.

Earlier, in the VG Row case [1950], the Madras High Court had rejected the idea that persons affected by the ban are not entitled to be heard in person or through counsel before the Advisory Board. Or, that the government is the sole judge of what evidence it will produce and what it will withhold from the scrutiny of the Advisory Board, and the aggrieved have no right to test the evidence relied upon by the government or to lead evidence. It also frowned on the secrecy surrounding the Board and the confidentiality attached to its report. And, therefore, it held that the Advisory Board is fundamentally opposed to the "principles of justice and fair play". The Review Committee in UAPA, but for being a different name, is nothing but the Advisory Board of yore and therefore, on this ground alone, the provisions added since 2004 regarding banning of "Terrorist Organisations" falls foul of the VG Row judgement and is in contempt of judicial dictum laid down by that judgment. The perniciousness of the UAPA can be gathered from the fact that the same organisation can be both declared "unlawful" and "terrorist". The lifting of the ban, in such a situation, is left entirely to the discretion of the Government which can easily subvert the Constitution in the name of 'reasonable restrictions'.

Bans are therefore political decisions meant to target certain dissenting organizations in the name of national security. The present report tries to make evident the selective imposition of bans in the name of national security, which violates Article 14, the fundamental right of equality before law. The disconcerting fact is that this selective application finds a resonance even in the decisions of the 'judicial' UAPA Tribunals. While SIMI continues to be banned, other organizations which have carried out similar acts of terror and have engendered sectarian politics have not shared SIMI's fate. For instance, the RSS has been banned thrice but only on a temporary basis—in 1948, during the Emergency and, shortly after the demolition of the Babri masjid in December 1992. In the first instance, the ban was lifted unconditionally in less than twenty months' time and, in the last instance it was lifted in less than six months' time. During the Emergency, the RSS was banned as were many other organizations and it faced no extra hardship on account of the ban. In 1992, the Narasimha Rao government banned the RSS, the VHP, the Bajrang Dal after the demolition of the Babri Masjid, and, in a show of balance, also banned the Jamaat-e-Islami Hind and the ISS, though they had nothing to do with the demolition. While the ban on the RSS and Bajrang Dal was revoked by the 1993 UAPA tribunal headed by Justice P.K. Bahri of the Delhi High Court, those on the Jamaat and the ISS remained banned on grounds of their 'unlawful' character.

Ironically, the tribunal judge even while upholding the ban on the VHP could not prevent praising the VHP for its laudable pursuits. The ban on the Jamaat-e-Islami was re-imposed by the government in 1994 and it was only after the Jamaat challenged the decision in the Supreme Court that the ban was revoked. The Court had held that the UAPA tribunal had "*merely proceeded to accept the version of the Central Government*". Not only were the post-Babri Masjid tribunals biased in favour of the RSS and the Bajrang Dal, they ensured that the latter did not have to ever defend themselves, unlike the Jamaat. The Bahri tribunal also enabled the NDA led Central Government in 1999 to allow the Gujarat Government to lift the ban on government servants from participating in RSS activities. The fact that such favourable decisions have never been taken on behalf of the Jamaat, ISS, SIMI and a host of other organizations establish the partisan nature of tribunals and the misplaced trust placed on judicial review.

Sadly, ban provisions are not amenable to objective application. For, an argument to preserve the provision of bans through restraining its arbitrary and selective application could favour the uniform imposition of bans for all organisations indulging in anti-people activities. Such an argument suffers from a myopic understanding of the UAPA and its predecessor legislations that incorporate the provisions of banning. Firstly, if commission of a certain number of murders by members of an association were to make that association an eligible candidate for banning, then every 'respectable' political party that has been in power at the Centre or in any state of our country for any reasonable length of time, would head the candidate list. But then, the candidature for being eligible for ban is not decided in this manner. The laws related to banning derive their nature of arbitrariness and selective application from the new categories such as 'unlawful activities' and 'terrorist activities' that they define and designate as crimes. These new categories both overlap with crimes previously defined under other existing laws, and these also categorize as crimes, activities that are generally not regarded as crimes. If this degree of ambiguity were not enough, the new categories make the *intention* of the person indulging in the said activity the clinching characteristic to define the crime. Thus, if a government finds the activities of an organisation uncomfortable, its intentions can be considered inimical to public order or to the security and sovereignty of the nation. And once this is claimed, its criminal activities would be judged under a separate law and its legitimate and non-criminal activities would be treated as heinous crimes. But more importantly, the organisation as a whole and all its activities would suffer a ban. It is for this reason that any hope of a non-discriminatory banning provision is inherently misplaced. The demand for the revocation of ban provisions is

"Reasonable restrictions"

Article 19(1)(a) of the Constitution guarantees "freedom of speech and expression" to all; but, the clause, 'reasonable restrictions" adopted by the 1st Amendment in 1951 curbed this right on account of: a) security of state; b) friendly relations with foreign states; c) public order; d) decency or morality; e) in relation to contempt of court; f) defamation; g) incitement to an offence. Additionally, 'sovereignty and integrity of India', was added by the 16th Amendment, in 1963.

Art. 19(1)(b) which recognizes and guarantees the right "to assemble peaceably and without arms" and 1(c) which ensures the right to "form associations or unions"are not absolute rights as reasonable restrictions are written into them as far as "sovereignty and integrity of India or public order" are concerned.

While vague terms like "security of state", "public order" or the prejudiced curb like, "decency and morality" were debated and rejected in the Constituent Assembly, yet they found their way in the Constitution in 1951 and continue to survive in the public domain. "Sovereignty and integrity of India", has ensured the outlawing of any discussion on the issue of self-determination related to Kashmir; 'decency and morality' has helped preserve misogynistic and communal ideas; and, 'public order' has enabled the police to charge and attack protesters, such as in the Jyoti Singh (Nirbhaya) gang-rape protest in Delhi.

therefore not to condone those guilty of mass crimes. It is a demand that all the mass crimes be tried equally and that the right of people to live their lives according to their beliefs and politics be considered inalienable.

The imposition of the ban has consequences, more far-reaching than those new categories of crimes, because now a whole new set of people and a whole new set of activities are declared as criminal. Membership of, and all forms of association with a banned organisation, become criminal. Moreso, since the banning itself is based on the beliefs and intentions of the organisation, an unconnected person or organisation sharing any of the beliefs of the banned organisation can be labelled as a 'front organisation' or worse. The most routine charges levelled against the SIMI accused are those of membership and for participation in unlawful activities (S.10 and 13) and both carry punishment anywhere between two years till life imprisonment, including death penalty. Since most of the cases collapse during trial, the UAPA is clearly used as a preventive detention purpose and to punish without trial those the government chooses to persecute. The suppressive consequences of such detentions are self-evident. However, what is less recognized is the manner in which they entail unnecessary incarceration and the compulsion of litigation spanning several years. Importantly, the fallout of bans is that a veritable witch hunt ensues and suspects are branded as accused. Even before detention, the branded are subjected to intense surveillance, repeated police interrogations and harassment. Charges in multiple cases is a virtual norm and entails for those trapped additional time in jail and financial harassment. The family story of twenty-eight year old Mehboob, a 'gang' member of Abu Faisal, is instructive. Mehboob is accused of robbing banks, inciting communal violence and committing terror attacks and is wanted by several states especially after his daring jail escape in October 2013. While he remains on the run with eight cases against him in Madhya Pradesh alone, the thatched roofed house at the end of a dirty lane in Khandwa tells its own tale. Mehboob's father used to sell fruit, now he begs. His mother, Najma Bi, went missing a couple of months ago, shortly after the Bijnor blast in September 2014 and is now suspected of aiding and abetting terror activities of her son and his accomplices. Simply put, the magnitudes of social costs which families associated with terror cases have to bear have rarely been documented. Among the many casualties, the difficulty of finding employment is not a small one as it can cause the financial ruin of a family and also lead to social ostracism. Particularly since many of the accused who are either acquitted or are under the lens of suspicion are young men belonging to employable age groups, they often fail to find employment. What is noticeable is that they are denied job opportunities because of their double identity: of being Muslim and for being SIMI suspects. Hence, unless discussions on bans are contextual enough to include the social dimension of unemployment, poverty and ostracism of those affected, deliberations on 'jehadi' terror will remain demonstrable instances of Islamophobia, a phenomenon which defines the nationalist imagination in support of bans.

Bans are inherently undemocratic as they engender a culture of proscription. By invoking bans, an unnecessarily larger threat is created as the same ideas gain greater currency once they are pushed underground, a point well recognized by the tribunals and also by the Act. If the tribunal judgments are to be believed, greater problems were created by SIMI *after* the ban, not before. By denying the fundamental freedom of expression and association, bans exaggerate the importance of dissenting ideologies which proliferate through covert means. In short, bans are ineffective in contesting dissenting politics overtly and are directly responsible for clandestine politics produced as a result of proscription. Consequently, a more credible argument resides in challenging the idea of the ban and enabling organizations to freely profess their politics. Once the veil of 'national interest' is raised, a clearer and more objective account can be made of those beliefs and practices which are inimical to the functioning of

a democracy. If the ideology of SIMI is pernicious to some, then its perversity remains unaddressed by the imposition of ban. If such ideologies are not repressed but are allowed in the public domain, perpetrators of heinous crimes prosecuted, the possibility of engaging them with alternate politics, can emerge. Bans inherently prevent the enlargement of this necessary political space for dialogue, discussion and debate.

Bans function through the flouting of established norms and provisions of law. The functioning of the UAPA tribunals demonstrates how established norms and procedures are subverted in order to legitimize bans. The official argument is that safeguards, such as the tribunals, are created in order to check arbitrariness. The problem is that even if the UAPA safeguards mentioned in the report—specification of grounds, declaration of notification period and adoption of civil procedure code under the aegis of a High Court judge—are adhered to, they are loaded in favour of the notifying authority, the government. 'Grounds', as the apex court had observed in the 1952 judgment cited above, are meant to be '*amenable to objective determination', not anticipatory or based on suspicion*'. However, as is apparent from the tribunal's functioning, the 'grounds' proffered by the prosecution have fallen short of such standards, even though the recent ones are more substantial than those shown before 2008. If the tribunal is supposed to ensure that the government complies with the test of objectivity but is itself willing to accept less than believable 'grounds', then is not the tribunal no more than a rubber stamp for the government? Simultaneously, if the civil code procedure is meant to adjudicate, then, as the previous section has demonstrated, there is no level playing field between the two parties. The tribunal, like the UAPA law, is forever loaded in favour of the government. This report only underlines how the functioning of the tribunal is part and parcel of the UAPA and is meant to legitimise government's notification by giving it the veneer of judicial approval.

And yet, to argue against bans is not to leave unaddressed the question of wanton killings. It is one thing to define acts of mass murders as terror crimes, and bring perpetrators to justice through rigorous investigation and collection of evidence but quite another thing to proscribe an organization, its members and sympathizers without the commission of a crime. The protection of civilians and prevention of attacks is the duty of the state and it is empowered to take action against such cognizable offences within the existing codes. To demand the repeal of extraordinary or existing laws which legalise bans is not to endanger public peace and movement. Crimes and violent ones will decline with lifting of bans because the space for expression and association would be enabled. Violence occurs not in a vacuum but in a context where sections of people Muslims, Adivasis, Dalits, Naxalites/ Maoists, social activists are witch-hunted. The oft cited argument, that of the insufficiency of existing laws, is actually an occasion for the state to arrogate to itself the right to punish people in the name of fighting terror and cover up its shortcomings and gross lapses as evident in the 2008 Mumbai attack case, where a protracted live television drama of terrorists and their attacks conveniently shielded the state agencies from answering questions regarding their failure in every line of defence. And, while questions regarding the perpetrators of the Mumbai attacks and the slow prosecution by Pakistani authorities of perpetrators arouse fury in debating studios, no such concern is displayed over the investigation of Samjhauta Express (2007) in which 68 civilians, Indian and Pakistani, lost their lives. Typically, when the perpetrators are Hindutvawadis, as in the Samjhauta blasts case, then the state's argument easily dovetails with that of the majoritarian one. It is mark of double standards that the pain, pathos, grief, anger against say Samjhauta Express mass killing never rears its head in Parliament or TV studios. Instead of ensuring that Indian authorities bring the accused to trial, the single minded pursuit of what Pakistan has done or not done allows investigating and prosecuting authorities to virtually do or not do

anything, as they please. To, therefore, concede to the state's argument—of enhancing the power of the police to detain and arrest without valid reasons, of enumerable instances of concocting/ planting/ faking evidence by investigating agencies, of endorsing the malleable nature of tribunals, or of agreeing with the coercive political rhetoric that governments propagate— is tantamount to exonerating the state's culpability and inaction, displaying a majoritarian mind-set and, agreeing to the curtailments of political freedoms of some over others.

Freedoms enable people, especially for those fighting for equality and justice, an opportunity to mobilise and organise, to collectively express, promote, pursue and defend common political interests and concerns. They give common people, the right to express themselves through demonstrations and protests and for mobilization of public opinion through written, oral or visual means. It helps bring down political violence if justice is provided to those who have subjected people to heinous crimes, and freedoms of all respected. The preservation of these political rights has been under threat because the Indian State has, in keeping with colonial institutional memory, always looked upon the people as subjects who pose the biggest challenge to its own security and has, in the past, invoked various and varied reasons for seeking curtailment of rights. One wonders if this is also to distract attention from egregious crimes of the Government and its functionaries? To place a very large section of society under the ambit of a horrendous law in the name of 'unlawful' and 'terrorist' must be resisted at all costs. Free speech and right to form unions/ associations is intrinsic to a democratic polity. To fight against the continuance of bans is to fight for the democratic freedoms of equality, association, thought and expression for all. Real democracy thrives on justice and equality and freedom of speech and expression, individually or collectively. PUDR believes that in the final analysis it is better to err, if at all, on the side of freedoms than to get trapped into 'discrete charm' of security phobia which thrives on fear and falsification.

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