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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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नई दिल्ली, बुधवार, अगस्त 13, 2014/श्रावण 22, 1936

No. 1605]

NEW DELHI, WEDNESDAY, AUGUST 13, 2014/SRAVANA 22, 1936

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 12 अगस्त, 2014

का.आ. 2050(अ).— जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा जाएगा) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 1 फरवरी, 2014 की अधिसूचना संख्या का.आ. 299 (अ) (जिसे इसके बाद उक्त अधिसूचना कहा जाएगा) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 27 फरवरी, 2014 की अधिसूचना संख्या का.आ. 578 (अ) के तहत विधि विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश माननीय न्यायविद् श्री सुरेश कैंत थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या उक्त संगम को विधि विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 28 फरवरी, 2014 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 1 फरवरी, 2014 की अधिसूचना संख्या का.आ. 299 (अ) में की गई घोषणा की पुष्टि करते हुए दिनांक 30 जुलाई, 2014 को एक आदेश पारित किया था।

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

(अधिकरण का आदेश अंग्रेजी भाग में छपा है)

[फा.सं. 14017/12/2014-एन.आई.-III]

डा. आर. के. मित्रा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS**NOTIFICATION**

New Delhi, the 12th August, 2014

S.O. 2050 (E).— Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (herein after referred to as said Act), declared the Students Islamic Movement of India (SIMI) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 299 (E), dated the 1st February, 2014 herein (herein after referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 578 (E), dated 27th February, 2014, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice Suresh Kait, Judge of the High Court of Delhi;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on the 28th February, 2014 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 30th July, 2014, confirming the declaration made in the notification number S.O. 299 (E), dated the 1st February, 2014.

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

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL**NEW DELHI**Date of decision: 30th July, 2014

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

Gazette Notification No. S.O.299(E) dated 1st February, 2014 issued by the Central Government under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

IN THE MATTER OF:**UNION OF INDIA**

Through:

Ms. Pinki Anand, Sr. Advocate and Addl. Solicitor General of India, Mr. Rajeev Mehra, Senior Advocate, Mr. Sachin Datta and Mr. Ravinder Agarwal, Mr. Rajesh Ranjan and Mr. Balendu Shekhar, Advocates and Mr. Aditya Malhotra, Central Govt. Pleader along with Mr. U.C. Srivastava, Under Secretary, Mr. Manoj Kumar Singh, Investigator, Mr. H. Biswas, Research Officer and Mr. U.K. Das, Assistant from the Ministry of Home Affairs.

Versus

STUDENTS ISLAMIC MOVEMENT OF INDIA

Through:

Mr. Ashok Agrawal, Mr. Mobin Akhtar and Ms. Sridevi Panniker, Advocates for Mr. Humam Ahmed Siddiqui & Mr. Misbah-Ul-Islam, former members of SIMI.

CORAM:**HON'BLE MR. JUSTICE SURESH KAIT****ORDER**

1. This order will answer the reference made to this Tribunal under Section 4 of the Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) (hereinafter referred to as the 'Act').

2. The Central Government, in exercise of powers conferred by Section 3(1) of the Unlawful Activities (Prevention) Act, 1967, vide Notification No. S.O. 299(E) dated 1st February, 2014, declared the Students Islamic Movement of India [for short 'SIMI'] as an 'Unlawful Association' and directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette.

3. Therefore, the Central Government, in exercise of the powers conferred by Section 5(1) read with Section 4(1) of the Act, vide Notification No. S.O. 578(E) dated 27th February, 2014 constituted this Tribunal for the purpose of adjudicating whether or not there is 'sufficient cause' for declaring SIMI as an Unlawful Association, which has already been declared as such by the Central Government vide its notification No. S.O.299(E) dated 1st February, 2014. A reference was made to this Tribunal under the provisions of Section 4 of the Act, which was received by this Tribunal on 28th February, 2014.

4. Along with the aforesaid Notification, the Central Government furnished a background note on SIMI stating the objectives and the activities of SIMI before imposition of the first ban in the year 2001, till the imposition of this ban in the year 2014. As per the background note, the objectives of SIMI are as under:

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

5. The background note states the following activities of SIMI after February, 2012 and before imposition of seventh ban in February, 2014 as the grounds for continuation of the ban:-

- (a) Ex-SIMI leaders/activists have continued their activities in pursuance of SIMI's ideology of establishment of Dar-ul-Islam (land of Islam) through Jihad;
- (b) Holding meetings including secret meetings, making strategies to induct new members, discussing and raising funds and liaising with like-minded organizations like Popular Front of India and Hizb-ut-Tahrir;
- (c) Aimed at radicalizing Muslim youth and motivating them for Jihad, arousing in them a sense of being discriminated against, cultivating alienation from democratic institutions including the legislature, Judiciary, elections and security agencies of the country and cultivating ideas derogatory of other religions etc.;
- (d) Furthering the objectives of SIMI through cover organizations including Muslim Students Association/MSA, Wahadat-e-Islami/WEL, Minority Right Watch, Islamic Students Association, etc. to escape scrutiny;

6. The Central Government in their Gazette Notification dated 1st February, 2014 has summarized the cases involving SIMI, alleging that its activists were indulging in activities which are prejudicial to the integrity and security of the country. The cases have been summarized as under:-

- (a) Case Crime No. 126/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking and beating the victim, M. Siva Shankar Reddy, in connection with an incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (b) Case Crime No. 128/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking the Hindu leaders Bangari Prakash and others and damaging their vehicle when they were visiting the locality of Saidabad in connection with communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (c) Case Crime No. 130/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one Srinivas Reddy of Saidabad and damaging window panes of

his car in connection with the incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;

- (d) Case Crime No. 133/2012 has been registered at Saidabad Police Station, Hyderabad, Andhra Pradesh under sections 147, 148, 324 and 153(A) read with section 149 of the Indian Penal Code and section 7(1) of the Criminal Law (Amendment) Act, 1932 (23 of 1932) against the accused Javeed Khan and 17 others including 3 ex-SIMI cadres for attacking one D. Rahul Singh with stones near ACP Office, Malakpet in connection with an incident of communal flare up consequent to the alleged defiling of one Hanuman temple at Kurmaguda in Madannapet locality;
- (e) Case Crime No. 24/2013 has been registered at Ranip Police Station, Ahmedabad, Gujarat under Sections 224, 120B and 511 of Indian Penal Code read with section 45 of the Prisons act, 1894 (9 of 1894) against 14 accused persons, undertrials in the case of bomb blasts, for assembling and conspiring and trying to escape Sabarmati central Jail by digging the earth beneath the water tank and digging 10 to 12 feet long tunnel in prohibited area of judicial custody;
- (f) Case Crime No. 17/2013 has been registered at D.C.B. Police Station, Ahmedabad, Gujarat under sections 217, 218, 201 and 120(B) of the Indian Penal Code against 9 accused persons including jail officials for helping and shielding the prisoner who dug a tunnel in the Sabarmati Central Jail for escaping from the Jail;
- (g) Case Crime No. 209/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 124(A) of Indian Penal Code and section 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) against 1 accused person for inclusion of sections 124(A) and 295(A) of the Indian Penal Code and sections 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 in old Case Crime No. 237/2006 registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 153(A), 147, 452 and 336 of Indian Penal Code;
- (h) Case Crime No. 541/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under sections 395, 307, 353 and 332 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1st October, 2013;
- (i) Case Crime No. 542/2013 has been registered at Kotwali Police Station, Khandwa, Madhya Pradesh under section 224 of Indian Penal Code and additionally, sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967 against 6 accused persons who are ex-SIMI members and escaped from the Khandwa Jail, Madhya Pradesh on 1st October, 2013;
- (j) Case Crime No. 2/2012 has been registered at ATS Kalachowki Police Station, Mumbai, Maharashtra under sections 153(A), 120(B), 468 and 471 of the Indian Penal Code and sections 10, 13, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 read with sections 3 and 25 of the Arms Act, 1959 against 5 accused persons. The Aurangabad Unit of the anti Terrorist Squad, Maharashtra received information that one Abrar @ Munna @ Abdulla @ Ismail, an active member of the banned Students Islamic Movement of India (SIMI) and Indian Mujahiddin (IM) and an absconder in the Ahmedabad Serial Blast case of 2008, was likely to meet his associates in Aurangabad city for committing a terrorist act. The officers of Anti Terrorist Squad, Aurangabad Unit, laid a trap to arrest the absconding member of SIMI. During the operation, the suspect opened fire at the police party, who retaliated in self-defence and this ultimately resulted in the death of one of the suspect, namely, Khalil @ Azhar Qureshi and detention of two suspects, namely Mohd. Abrar Khan @ Munna Babu Khan and Shaker @ Khalil Akil Khilji. Pursuant to the incident of exchange of fire and arrest of suspects, a cognizable offence vide Begumpura P.S. CR No. 25/2012 under sections 307, 333, 335, 336, 338, 352, 353 and 34 of Indian Penal Code read with sections 3, 25 and 27 of the Arms Act, 1959 read with section 135 of the Bombay Police Act was registered;

Pursuant to the thorough questioning of the aforementioned accused persons, the Anti Terrorist Squad, Akola Unit further conducted raids on the 27th March, 2012 in Chikhali and Sailani village in Buldana District and detained Akhil Yusuf Khilji and Jaffer Hussain Iqbal Hussain Qureshi and during the raid and house search of these accused persons, 1 fire arm, 5 live cartridges, inflammatory literature belonging to the banned SIMI was seized;

- (k) Case Crime No. 47/2012 has been registered at Vashi railway Police Station, Mumbai, Maharashtra under sections 143, 147, 149, 327, 353 and 332 of the Indian Penal Code against 10 accused persons who were arrested out of which one accused namely, Iqbal @ Pappa Gulam Rasul Shaikh is a SIMI activist. The case is registered in an incident of rioting at Gowandi Railway Station wherein a Buddhist Monk was humiliated and assaulted by a mob going to participate in Azad Maidan agitation on 11th August, 2012. The Handy-Cam belonging to Police personnel was damaged by the mob. The police made arrest of above mentioned SIMI activist Iqbal @ Pappa Shaikh s/o Gulam Rasul Shaikh with his associates on 23rd August, 2012;

- (l) Case Crime No. 131/2012 has been registered at Nijampura Police Station, Thane City, Maharashtra under sections 307 and 120(B) of the Indian Penal Code and sections 3, 25 and 27 of the Arms Act, 1959 and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) read with section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967 against 5 accused persons (ex-SIMI activists) for attempt to murder;
- (m) Case Crime No. 120/2012 has been registered at Ramdas Peth Police Station, Akola, Maharashtra under sections 143, 147, 148, 149, 324 and 307 of the Indian Penal Code read with sections 4 and 25 of the Arms Act, 1959 against 10 accused persons including 2 SIMI activists for forming an unlawful assembly and attempting to murder by assaulting complainant and witnesses with deadly weapons;
- (n) Case Crime No. 15/2013 has been registered at Jalgaon Jamod Police Station, Buldana, Maharashtra under sections 324, 336 and 504 of the Indian Penal Code against 4 accused persons including 1 SIMI activist for assaulting the complainant with stone causing him head injury;
- (o) Two SIMI activists were sentenced to one year imprisonment and a fine of Rs.500/- was imposed on each accused by the Court of J.M.F.C., Shazapur in Case Crime No. 684/2001, registered at Police Station-Shazapur, Madhya Pradesh under sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967;
- (p) One SIMI activist was sentenced to one year imprisonment and a fine of Rs.500/- was imposed by the Court of J.M.F.C., Siwani in Case Crime No. 423/2001, registered at Police Station-Siwani, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (q) Ten SIMI activists were sentenced to three years imprisonment and a fine of Rs.500/- was imposed on each accused and two SIMI activists were sentenced to two years imprisonment and a fine of Rs.500/- was imposed on each accused by the Court of Third Addl. Sessions Judge, Khandwa in Case Crime No.256/2006, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 295 and 124(A) of the Indian Penal Code and sections 3, 10, 13 and 16 of the Unlawful Activities (Prevention) Act, 1967;
- (r) Two SIMI activists were sentenced to two years rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under sections 3 and 10 of the Unlawful Activities (Prevention) Act, 1967 and sentenced to five years' rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under section 3/13(2) of the Unlawful Activities (Prevention) Act, 1967 by the Court of A.S.J. Fourth, Khandwa in Case Crime No. 202/2008, registered at Police Station-Kotwali, Khandwa, Madhya Pradesh under sections 153(A), 420, 467, 468 and 469 of the Indian Penal code and sections 3, 10, 13 and 20 of the Unlawful Activities (Prevention) Act, 1967 as amended in 2004;
- (s) One SIMI activist was sentenced to one year rigorous imprisonment and a fine of Rs.1000/- was imposed by the Court of J.M.F.C., Bhopal in Case Crime No. 295/2001, registered at Police Station-Gautam Nagar, Bhopal, Madhya Pradesh under section 10 of the Unlawful Activities (Prevention) Act, 1967;
- (t) The Fast Track Court-II, Coimbatore has pronounced judgment on 29th February, 2012 convicting five SIMI activists and sentenced them to three years' rigorous imprisonment with a fine of Rs.5000/- under sections 124(A) and 153(B) of the Indian Penal Code in Case Crime No. 722/1999, registered at Police Station-Kattur, Coimbatore, Tamil Nadu;
- (u) The National Investigation Agency (NIA) Special Court, Kochi, Kerala has convicted thirteen (including two SIMI activists) accused persons and sentenced them to imprisonment for life and a fine of Rs.50,000/- was imposed on each accused in Case Crime No. RC-02/2010/NIA/DLI, registered under sections 120(B), 121, 121(A), 122, 123, 124(A), 212, 465 and 471 read with section 34 of the Indian Penal Code and section 3, read with sections 13(2), 16, 17, 18, 19, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 against twenty four accused persons;

7. On the afore-noted grounds, the Central Government formed the opinion that SIMI has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country. The Central Government is also of the opinion that having regard to the activities of the SIMI, it is necessary to declare the SIMI to be an unlawful association with immediate effect. The Central Government is also of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity to:

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;

- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country.

Thus, in exercise of powers conferred by sub-Sections (1) and (3) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, the Central Government declared the SIMI as an “unlawful association” with immediate effect, which was followed by the Notification under Section 4 of the Act, constituting the Unlawful Activities (Prevention) Tribunal, which was received on 28th February, 2014. This Tribunal listed the reference for preliminary hearing on 4th March, 2014.

8. On 4th March, 2014, on consideration of the material placed on record by the Central Government, this Tribunal was, *prima facie*, satisfied that a notice under Section 4(2) of the Act should be issued to SIMI to show cause as to why it be not declared as “Unlawful Association”. The notice was directed to be served upon SIMI in the following manner:

- I. By affixing a copy of the notification to some conspicuous part of the office(s), if any, of the Association;
- II. By serving a copy of the notification, wherever possible, on the principal office-bearers, if any, of the Association;
- III. The notice be also served by registered post/speed post/courier;
- IV. By proclaiming by beat of drums or by means of loudspeakers, the contents of the notification, in the area in which the activities of the Association are ordinarily carried on;
- V. By making an announcement over the radio from the local or nearest broadcasting station of the All India Radio;
- VI. By pasting the notification on the Notice Board of the office of the Deputy Commissioners at the Headquarters of each of the Districts in the States, where the activities of the Association are undertaken; and
- VII. By publication in two National Newspapers in English and in two vernacular newspapers of the respective States in which the activities of SIMI are ordinarily carried on.

9. Pursuant to the directions given by the Tribunal, the States of Kerala, Rajasthan, Karnataka, Gujarat, Andhra Pradesh, Bihar, Maharashtra, West Bengal, Uttarakhand, Uttar Pradesh, Tamil Nadu, Jharkhand, Chattisgarh, Madhya Pradesh, NCT of Delhi, UT of Puducherry and UT of Andaman & Nicobar Islands filed their respective affidavits of services, putting on record the factum of service of notice.

10. On 15th April, 2014, Mr. Ashok Agrwaal along with Ms. Sridevi Panikker, Advocates, entered appearance on behalf of two erstwhile members of SIMI, namely Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam. It was stated by learned counsel that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam got the knowledge of these proceedings through the public notice. It was further submitted that since the organization has been banned since 2001, it has not been in existence thereafter and there are no office bearers or members of the organization.

11. The appearance on behalf of the two erstwhile members of SIMI was objected to by Mr. Rajeev Mehra, Senior Advocate on behalf of the Central Government. By referring the opinion formed by the predecessor Tribunal, learned Senior Counsel submitted that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam in their individual capacity are not entitled to be represented in these proceedings since it is only the association, its office bearers or members who can object to the ban on the association. He further submitted that there is no appearance on behalf of the association or its office bearers or its members despite service of notice. After hearing the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam and the learned Additional Solicitor General, this Tribunal, without expressing any *prima facie* view, and having regard to the facts of the case and the observations made in the previous report, permitted Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to join and participate in the proceedings without prejudice to the submissions, which the respective sides may wish to make at the time of final arguments.

12. During the proceedings of the Tribunal at Bhopal on 7th July, 2014, Mr. Ashok Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam sought the permission of the Tribunal to file their reply/statement of objections to the notice issued under the Unlawful Activities (Prevention) Act, 1967. The said request was objected to by Mr. Rajeev Mehra, learned Senior Advocate on the ground that it is being filed very belatedly. Keeping in view the specific time period of 30 days mentioned in Section 4(2) of the Unlawful Activities (Prevention) Act, 1967 and the absence of any whisper of a request for grant of an extension of time, and in view of the examination-in-chief and cross-examination, this Tribunal was not inclined to take on record the reply/statement of objection being sought to be placed on record at this belated stage. Accordingly, the submission of Mr. Ashok Agrwaal to file the reply/statement of objection was rejected.

13. Mr. Ashok Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam had filed six interlocutory applications seeking, *inter-alia*, a direction to confine the proceedings of the Tribunal at Delhi; to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 along with notification dated 1st February, 2014 and to declare that the Tribunal shall not permit the production of any evidence, material, facts or grounds, in the form of oral testimony or documents or in any other form beyond the material forwarded to the Tribunal; seeking a direction to the Central Government to place on record and supply the applicant, with a complete list of witnesses the Central Government seeks to produce before this Tribunal and all the facts and documents such witnesses seek to prove; to discard from consideration cases filed under Sections 10-13 of the Unlawful Activities (Prevention) Act, 1967 where the case is based solely on allegation of membership of SIMI and/or innocuous activity; seeking a direction to the Central Government to file affidavits clearly stating the nature of each of the documents on which privilege is claimed and the grounds for seeking non-disclosure and that no claim of privilege made by the Central Government be allowed without adjudication upon such claim; and seeking a direction to the Central Government to place on record and supply the applicant with the legible, typed and English translated copies of the documents. The said interlocutory applications were heard and disposed of by this Tribunal vide order dated 21st April, 2014. Mr. Agrwaal, learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam had also filed an application before this Tribunal during the proceedings of the Tribunal at Mumbai, which was dismissed *in limine*. Mr. Ashok Agrwaal, Advocate has further moved three more applications, being IA 08/2010 seeking a direction that the Tribunal will disregard from consideration all cases filed under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 where the case based solely on allegation of membership of SIMI and/or innocuous activity; IA 09/2014 seeking a direction that no claim of privilege made by the Central Government shall be allowed without adjudication upon such a claim in accordance with law; and IA 10/2014 seeking a direction to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rule, 1968 along with notification dated 01.02.2014, which are dealt with in the later part of this opinion.

14. The Central Government, in their background note claimed that the activities of the banned organization are still continuing and the inputs were stated to have been received from the following State Governments/Union Territory Administration regarding the activities of SIMI/regarding ex-SIMI activists/ details of cases pending trial against ex-SIMI activists:

- (i) Andhra Pradesh,
- (ii) Bihar,
- (iii) Gujarat,
- (iv) Karnataka,
- (v) Kerala,
- (vi) Madhya Pradesh,
- (vii) Maharashtra,
- (viii) Rajasthan,
- (ix) Tamil Nadu,
- (x) Uttarakhand,
- (xi) Uttar Pradesh,
- (xii) West Bengal,
- (xiii) NCT of Delhi,
- (xiv) UT of Puducherry,
- (xv) UT of Andaman & Nicobar Islands, and
- (xvi) Chattisgarh

15. It was also claimed that after the imposition of the last ban on SIMI on 3rd February, 2012, 17 (seventeen) fresh cases have been registered against the SIMI in six States and 01 (one) case was registered by NIA, which are summarized as under:

A. Andhra Pradesh (04 cases)

- (i) FIR/Case Crime No. 126/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 324, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

- (ii) FIR/Case Crime No. 128/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 324, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.
- (iii) FIR/Case Crime No. 130/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 427, 153(A) of IPC read with 149 of IPC and Section 7(1) of CrI. Law Amendment Act.
- (iv) FIR/Case Crime No. 133/2012 dated 08.04.2012, PS-Saidabad, Hyderabad transferred to PS-SIT, Hyderabad under Sections 147, 148, 435, 153(A) of IPC read with Section 7(1) of CrI. Law Amendment Act.
- B. Chattisgarh (01 case)**
- (i) FIR/Case Crime No.740/2013 of PS-Civil Lines, Raipur under Sections 3, 7, 10, 11, 13, 15, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967.
- C. Gujarat (02 cases)**
- (i) FIR/Case Crime No. 24/2013 dated 11.02.2013, PS-Ranip, Ahmedabad under Sections 224, 120(B) and 511 of IPC read with Section 45 of the Prisons Act, 1894.
- (ii) FIR/Case Crime No.17/2013 dated 10.05.2013, PS-DCB, Ahmedabad under Sections 217, 218, 201 and 120(B) of IPC.
- D. Kerala (02 cases)**
- (i) FIR/Case Crime No.533/2013 dated 04.09.2013, PS-Nadakkavu, Kozhikkode under Section 153(A) of IPC.
- (ii) FIR/Case Crime No.697/2013 dated 31.10.2013, PS-Nadakkavu, Kozhikkode under Section 153(A), 153(B) of IPC.
- E. Madhya Pradesh (03 cases)**
- (i) FIR/Case Crime No. 209/2013 dated 29.03.2013, PS-Kotwali, Khandwa under Sections 124(A), 295(A) of IPC and Sections 3, 10, 13 of Unlawful Activities (Prevention) Act, 1967.
- (ii) FIR/Case Crime No. 541/2013 dated 01.10.2013, PS-Kotwali, Khandwa under Sections 395, 307, 353, 332 of IPC and Sections 3, 10, 13, 16 of Unlawful Activities (Prevention) Act, 1967.
- (iii) FIR/Case Crime No. 542/2013 dated 01.10.2013, PS-Kotwali, Khandwa under Section 224 of IPC and Sections 3, 10, 13, 16 of Unlawful Activities (Prevention) Act, 1967.
- F. Maharashtra (05 cases)**
- (i) FIR/Case Crime No.2/2012 of PS-ATS, Kalachowki, Mumbai under Sections 153(A), 120(B), 468, 471 of IPC and Sections 10, 13, 16 & 18 of the Unlawful Activities (Prevention) Act, 1967 read with Sections 3 & 25 of the Arms Act, 1959.
- (ii) FIR/Case Crime No.47/2012 dated 11.08.2012, PS-Vashi Railway Police Station, Mumbai under Sections 143, 147, 149, 327, 353 and 332 of IPC.
- (iii) FIR/Case Crime No.131/2012 of PS-Nijampura, Thane City under Sections 307 & 120(B) of IPC and Sections 3, 25 & 27 of Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 read with Section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967.
- (iv) FIR/Case Crime No. 120/2012 of PS-Ramdas Peth, Akola under Sections 143, 147, 148, 149, 324 and 307 of IPC read with Sections 4 & 25 of the Arms Act, 1959.
- (v) FIR/Case Crime No. 15/2013 of PS-Jalgaon Jamod, Buldana under Sections 324, 336 and 504 of IPC
- G. National Investigation Agency (NIA) (01 case)**
- (i) FIR/Case Crime No. RC-6/2012/NIA/DLI dated 10.09.2012 under Sections 17, 18, 18(B), 20 of Unlawful Activities (Prevention) Act, 1967 and Sections 121(A) & 123 of IPC.

16. Apart from 18 new cases noted above, the Union of India has placed reliance on: (i) certain old cases which, even though cited & considered by the previous Tribunal, have witnessed certain developments and progress after the report of the previous Tribunal, and (ii) cases which have earlier been cited and considered by the previous Tribunals to be referred to as and when considered necessary. It is stated that the relevance of the old cases in these proceedings is to show the continuity of activities by the banned organization and its members

17. With a view to invite public representation in support of or against the ban on SIMI, this Tribunal held its sittings at Trivandrum in Kerala; Udaipur in Rajasthan; Mysore in Karnataka; Hyderabad in Andhra Pradesh; Patna in Bihar; Ahmedabad in Gujarat; Mumbai and Aurangabad in Maharashtra; Jabalpur and Bhopal in Madhya Pradesh; Coonoor in Tamil Nadu; Lucknow in Uttar Pradesh and Port Blair in the UT of Andaman & Nicobar Islands for the purposes of recording of evidence on behalf of the respective States and/or from members of the public. The witnesses deposed before the Tribunal were cross-examined by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam.

18. **Proceeding to the evidence brought on record**

A brief summary of the evidence recorded in each of the States is as under:

D) At Trivandrum in Kerala:

At Trivandrum, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. P. Vikraman, Dy. Superintendent of Police, National Investigation Agency, Kochi, Kerala (PW-1);
- (ii) Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode City, Kerala (PW-2);
- (iii) Mr. G. Sreedharan, Superintendent of Police, SBCID Hqrs., Pattom, Thiruvananthapuram, Kerala (PW-3);
- (iv) Mr. C. Radhakrishna Pillai, Deputy Superintendent of Police, National Investigation Agency, Kochi Branch, Kerala (PW-4);

19. PW-1, Mr. P. Vikraman, Dy. Superintendent of Police, National Investigation Agency, Kochi, Kerala appeared and produced his affidavit exhibit PW-1/A. The said witness has deposed in respect of FIR No. 2/2010 [Ex. PW-1/1 (colly)] registered by NIA under Sections 3, 13(2), 16, 18, 19, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 and Sections 120(B), 121, 121(A), 122, 123, 124(A), 212, 465, 471 read with 34 of IPC.

20. The witness in his affidavit has stated that on 18.10.2008, SI of PS-Edakkad arrested Abdul Jaleel, who was aiding and assisting an organization banned by the Government of India and was a strong sympathizer of SIMI and consequently, a case was registered as Crime No. 356/2008 [Ex. PW-1/1 (colly)]. During the course of investigation, 23 persons were arraigned as accused out of which, 4 had been killed in an encounter with security forces while attending a camp for training in Kashmir. It is further stated in the affidavit that the investigation conducted disclosed that the accused persons entered into a criminal conspiracy under the leadership of Naseer, Shafaz, Ibrahim Moulavi and Shabir @ Ayoob with an intention to incite, facilitate and advocate terrorism and thereby wage war against Government of India. As a part of and in furtherance of common intention and knowledge they arranged and conducted classes to facilitate terrorism under the guise of Noorisha Thareekath, at different places at Kannur, Malappuram and Ernakulam Districts. A final meeting was held on 14.08.2008 at Neerchal in Kannur, where 5 persons were selected and it was decided to send them to J&K for training with LeT (Lashkar-e-Tayyeba) in handling of arms and Ammunition in order to commit terrorist activities. These persons reached J&K and joined LeT camp, collected arms and ammunitions and started indulging in terrorist acts thereby waging war against Government of India. The charge sheet in this case was filed before Addl. Chief Judicial Magistrate Court, Thalassery against 23 persons.

21. The case Crime No. 356/2008 was subsequently transferred to NIA, which re-registered the case as FIR No. 2/2010. During the investigation by NIA, 3 absconding accused were arrested and more evidence on role of each accused in the case was collected. On completion of investigation, an additional charge sheet was filed before the Special Court of NIA cases, Ernakulam against 24 accused which included 23 accused already charge sheeted. The witness has further stated that the investigation revealed that accused Sarfaraz Nawaz arrested during the course of investigation was a SIMI activist. In his confessional statement under Section 161 Cr.P.C., Sarfaraz Nawaz stated that he had held an official position in SIMI as Office Secretary at Delhi Office, attended meetings of SIMI both in India and abroad. It was further stated that thereafter he got associated with LeT and arranged funds for the training of accused at Jammu & Kashmir. He played an important role in the entire conspiracy and also assisted accused Naser and Shafas in escaping from India in Oct./Nov, 2008. Sarfaraz Nawaz also stated that Safdar Nagori after being appointed as the new Secretary General of SIMI wanted to transform SIMI into a full-fledged Jihadi group. A copy of the said statement under 161 Cr.P.C. is annexed with the affidavit [Ex.PW-1/A] as Annexure-III.

22. The witness has further stated that the NIA Special Court, Ernakulam, Kerala has delivered the judgment in respect of this case on 01.10.2013 in which it has categorically found that the evidence has sufficiently brought home the act of waging war against the Government of India defined and punishable under Section 121 IPC and commission of terrorist act defined in Section 15 of the Unlawful Activities (Prevention) Act. The certified copy of the said judgment is on record and exhibited as Ex. PW-1/3.

23. In his examination-in-chief, the witness has stated that vide the said judgment, the Hon'ble Special Court of NIA convicted 13 accused persons and acquitted 5 persons. Four persons named in the charge sheet were killed in an encounter in Kashmir while two persons remained absconding, out of which one was a Pakistani National. He has further stated that appeals against the said judgment and order of the Sessions Court is pending in the Hon'ble High Court of Kerala.

24. In his cross-examination, the witness has stated that the statement of Sarfaraz Nawaz was recorded when he was in judicial custody and no application was moved before the Court to take police remand. However, he volunteered that the statement was recorded with the permission of the concerned Magistrate. He further stated that the statement was recorded by the concerned investigating officer under Section 161 Cr.P.C. In reply to the question "was the statement of Sarfaraz Nawaz Inculpatory?", he replied no but stated that the accused disclosed lot of facts and his own role. He admitted that page 42 begins with an incomplete sentence and that there is no continuity in pages 41 and 42 but volunteered that the previous officer has omitted some portions of the statement for maintaining confidentiality and the said confidential portion has not been produced before the Tribunal. He also admitted that the said statement has not been proved before the Trial Court but volunteered that some of the disclosures made by the accused have been proved before the Special NIA court and the accused has been found guilty. He denied the suggestion that it was not even the case of the NIA before the Trial Court and that no evidence was led to show that any of the accused continued to be members of the SIMI after the ban on 27.09.2001 or that any of the activities for which the accused have been convicted had been carried out on behalf of SIMI and volunteered that they were charged under Section 13 of the UAP Act. He further denied the suggestion that the activities alleged against Sarfaraz Nawaz even if they happen to be true, after his links with SIMI have been severed, his subsequent activities are not relevant for justifying the ban against SIMI. He also denied the suggestion that none of the accused has continued as members of SIMI after the first ban on 27.09.2001.

25. PW-2, Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode city, Kerala appeared and produced his affidavit exhibit PW-2/A. The said witness has deposed in respect of two FIRs viz. FIR No. 533/2013 registered under Section 153(A) of IPC [Ex. PW-2/1] and FIR No. 697/2013 registered under Sections 153(A) & 153(B) of IPC [Ex. PW-2/2].

26. The witness in his affidavit has stated that a book "Dahvathum Jihadum" (which is a Malayalam translation of the book "Jahiliath Ke Khilaf Jung" written by Abdul Aleem Islahi, and translated by Usman Kadungoth) was published and exhibited at Thirurangadi Book Stall at Kozhikode for sale. The said book contained many sentences and ideas to promote enmity and hatred between different religions and questioning the secular values of India as a Nation, besides other matters inciting hatred towards certain communities and thus capable of creating communal disharmony and enmity among the people. In this regard, on the basis of a communication dated 4.9.2013 received from DSP, SBCID, Kozhikode city, the SHO, Nadakkavu registered the FIR No. 533/2013 under Section 153(A) of IPC. Certified copy of relevant portion of the book "Dahvathum Jihadum" is on record and exhibited as Ex. PW-2/3. There are four accused in the said FIR out of whom accused no. 3, P K. Abdurahiman was the former Ernakulam District President of SIMI. It is further stated in the affidavit that as part of investigation, a search was conducted at Thirurangadi Book Stall on 05.09.2013 and at Nanma Book Stall on 07.09.2013, which resulted in seizure of 19 and 4 copies of the above book respectively. Further, the statement of accused PK Abdurahiman was also recorded in which the accused had disclosed in detail about his association with SIMI, organizational structure of SIMI and ideology and activities of SIMI. He also disclosed about his publishing activities and distribution of books to incite Jihad. The said case is still under investigation and accused No. 1 Abdul Aleem Islahi is to be arrested in this case.

27. The case Crime No. 697/2013 was registered under Sections 153(A) and 153(B) of IPC on the basis of information that the publication and distribution of one book namely "Vazhiyadayaalangal" (English translation of the book "Mile Stone") was causing enmity among the people and designed to break the communal harmony and integrity of the nation, and was selling at Vachanam Book Stall, Noor Complex, Mavoor Road, Kozhikode. Certified copy of relevant portion of the book "Vazhiyadayaalangal" is on record and exhibited as Ex. PW-2/4. In his affidavit, the witness has stated that this book contains imputations and assertions promoting disharmony and feeling of enmity and hatred between different communities and different religions and questioning the secular values of India as a Nation. There are three accused in the said FIR out of which accused no. 2 PK Abdurahiman is also one of the accused in FIR No. 533/2013. The said case is still under investigation.

28. In his cross-examination, the witness has accepted that the statement of accused PK Abdurahiman was not recorded by him and that his statement was recorded in police custody. He stated that he took over the charge of these two cases on 7th March, 2014 from the previous IO. He also accepted that he neither prepared the seizure memos pertaining to these two cases nor had prepared any of the documents annexed with his affidavit except the English translation of the two books. He also accepted that these two books were not banned by the State Government of Kerala

but he volunteered that the process of banning these books is going on and the action to ban the books is likely to be taken by the government. He stated that he was neither aware of the date or year of the publication of Urdu Book ‘‘Jahiliath Ke Khilaf Jung’’ nor of the name or place of its publisher. He admitted that none of the accused in Crime No. 533/2013 and 697/2013 have been charged with being members of the banned organization SIMI but volunteered that it is noted in the case diary that accused Nos. 2 and 3 in case Crime No. 533/2013 are members of SIMI. He also admitted that ‘‘Minority Rights Watch’’; and ‘‘Islamic students Front Association’’; Popular Front of India’’ are not banned organizations. The witness denied the suggestions that the said two cases produced by him before the Tribunal have nothing to do with SIMI or do not show the activities undertaken by or on behalf of SIMI. He also denied the suggestion that he had deliberately filed the translation of only selected sentences from the Books in order to cause prejudice before this Tribunal.

29. PW-3, Mr. G. Sreedharan, Superintendent of Police, SBCID Hqrs., Pattom, Thiruvananthapuram, Kerala appeared before the Tribunal and his statement was recorded on oath. The witness was nominated as the Nodal Officer in the matters concerning the ban on SIMI vide order dated 07.04.2014. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

30. In his examination-in-chief, the witness has stated that despite the ban on SIMI for the last many years, the activities of its cadres in the State of Kerala are continuing. He further stated that they had received inputs from Intelligence Agencies which reveal that SIMI cadres are active and in a clandestine manner spreading anti-national and communal activities. He also placed on record a sealed envelope containing reports which are sensitive in nature and received from the Intelligence Agencies and the Field Staff of Kerala Special Branch. He prayed for continuance of ban on SIMI in view of the persistent anti-national activities of SIMI cadre.

31. PW-4, Mr. C. Radhakrishna Pillai, Dy. Superintendent of Police, NIA, Kochi, Kerala appeared and produced two affidavits exhibits PW-4/A and PW-4/B. The said witness has deposed in respect of two FIRs viz. FIR No. 3/2010 registered by NIA under Sections 120(B) & 124(A) of IPC read with Sections 10 & 13(i)(b) of Unlawful Activities (Prevention) Act [Ex. PW-4/A/1] and FIR No. 4/2010 registered by NIA under Sections 122, 124(A), 120(B), 153(A) of IPC, Sections 3, 5, 10 and 13 of Unlawful Activities (Prevention) Act, 1967 and Sections 25 & 27 of Arms Act [Ex. PW-4/B/1].

32. The witness in his affidavit has stated that on 15.08.2006, five members of banned SIMI organization conspired to wage war against Government of India by organizing a secret/meeting/discussion on the subject of the role of Muslims in the independence struggle. The meeting was also attended by other 13 persons. He further stated that the stated subject of the meeting was only a cover but in reality, these persons delivered seditious and inflammatory speeches for creating disaffection and hatred against Government of India. These persons also displayed provocative pamphlets and read out papers in support of militant jihadi terrorist activities in J&K for the freedom of Kashmir. The sum and substance of their meeting was to spread such disaffection amongst the persons who participated in the meeting so that they start taking part in the unlawful activities of SIMI against the Indian State, thereby causing disturbances having a deep impact on the security of the Indian State. On the basis of the above-mentioned information, on 15.08.2006, FIR No. 159/2006 was registered by PS Binanipuram, Aluva, Ernakulam Rural District, Kerala under Sections 120(B), 124(A) IPC and Sections 10 & 13(i)(b) of Unlawful Activities (Prevention) Act against five SIMI activists. All these accused were arrested by the police. This case was subsequently investigated by a Joint Investigation team, which arraigned other 13 persons, who attended the meeting.

33. The investigation of the said FIR was subsequently transferred to NIA, which re-registered the said case as FIR No. 3/2010. The NIA filed the charge sheet (Ex. PW4/A/2) in the said matter before the NIA Special Court, Kochi, Kerala. In his examination-in-chief, the witness has stated that the case is still pending and charges are yet to be framed.

34. The witness in his second affidavit (Ex. PW-4/B) has stated that from 10th to 12th December, 2007, accused P.A. Shaduly and 29 other activists/members of SIMI organization conducted a training camp at Thangalpara (Wagamon) within the limits of Mundakayam Police Station of Kottayam District of Kerala. Accordingly on 19.06.2008, on the basis of an intelligence report furnished by Sh. R.K. Krishnakumar, the then DSP (IS), Ernakulam Range, FIR No. 257/2008 was registered by PS Mundakayam, Kottayam District under Sections 120(B), 122, 124(A) and 153(A) of IPC, Sections 5, 10 & 13 of Unlawful Activities (Prevention) Act, 1967 and Sections 25 & 27 of the Arms Act against P.A. Shaduly and 29 others five SIMI activists.

35. The investigation of the said FIR was subsequently transferred to NIA, which re-registered the said case as FIR No. 4/2010. The investigations of NIA revealed that the three days secret training camp of SIMI was conducted in a professional manner with planning. The trainees were imparted vigorous physical training on activities such as rope climbing, swimming, use of fire arms, making of petrol bombs, riding motor cycles at great speed for VIP assassination, trekking in difficult terrain and methodologies for launching terrorist strikes. The training also included indoctrination in Jihadi ideology. Further investigation revealed that the secret training camp was conducted by the banned SIMI outfit with an intention to wage war against the nation. During the investigation, 35 accused were arrested. The NIA filed the charge sheet (Ex. PW-4/B/2) in the said matter before the NIA Special Court, Kochi, Kerala against 30 accused. A supplementary charge sheet (Ex. PW-4/B/3) was also filed against 6 accused. Further investigation against the remaining

accused is in progress. A Scorpio vehicle, which was used by the accused persons for transportation, was seized from Attingal, Thiruvananthapuram District on 11.11.2008. The samples collected from the vehicle were sent to FSL and the result of FSL showed that explosive substances like Potassium Chlorate, Aluminum powder and Sulphur were detected in the samples. The forensic evidence collected from the scene of crime confirms that explosives were used in the camp. Similarly, training on preparation of Petrol Bomb and its use was also established from the Material Objects (MO) collected from the scene. In his examination-in-chief, the witness has stated that in this case also the charges have not yet been framed by the Court.

36. In his cross-examination by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, the witness (PW-4) has accepted that the two cases viz. FIR No. 3/2010 and FIR No. 4/2010 registered by NIA do not form part of the grounds in the notification dated 01.02.2014. He further stated that he was a part of the investigating team of both the cases since their registration and also that these two cases were part of the cases presented before the previous Tribunals. He also accepted that one Rashid @ Rashid Maulvi, S/o Saithalvi, who is the complainant in the case FIR No. 156/2006 and was an accused in this case for more than 28 months after the original FIR was registered, has since been tendered pardoned by the NIA Special Court. He denied the suggestion that the sole basis of stating that the training camp at Wagmon was held on 10th to 12th December, 2007 is the confessional statement of accused No. 9, Ameel Parvez. He further stated that he does not know whether any public witness was associated at the time of seizure of the Scorpio vehicle but he denied the suggestion that the said vehicle was being used and operated as a commercial vehicle. He accepted that no action has been taken against the owner of the vehicle but volunteered that this vehicle was taken on rent by the organizers of the camp. He further stated that he was aware that two air guns were purchased in November, 2007 in the name of one of the accused but accepted that no license is required for purchasing and using an air gun in Kerala. He denied the suggestion that the case FIR Nos. 3/2010 and 4/2010 filed by NIA are false and fabricated and was registered and has been kept pending with the sole aim of bolstering the case for banning SIMI. He also denied the suggestion that he had no material basis for claiming that SIMI is still continuing its activities in any manner or the anti-national activities for prejudicing the national integrity, communal harmony, sovereignty and security of the State.

II) At Udaipur in Rajasthan:

At Udaipur, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

- (i) Mr. Janardan Sharma, Inspector General of Police, CID (Int.), Jaipur, Rajasthan (PW-5);

37. PW-5, Mr. Janardan Sharma, Inspector General of Police, CID (Int.), Jaipur, Rajasthan appeared and produced his affidavit exhibit PW-5/A. The witness was nominated as the Nodal Officer for the State of Rajasthan vide order dated 3rd February, 2014 (Ex. PW-5/1).

38. The witness (PW-5) in his affidavit has stated that one accused Mohd. Rashid Shekh, who was president of SIMI from Bikaner, was found indulging in unlawful activities of SIMI with the help of several other activists and SIMI pamphlets, signboard and literature of SIMI was recovered from his possession. One of the recovered posters had two guns crossing each other and torn flags of America, England and Israel and another poster had a picture of Babri Masjid with the words "revenge is due". Accordingly, FIR No. 111/2001 was registered under Section 10 of UAP Act. The second FIR viz. FIR No. 102/2001 was registered under Sections 10 & 13 of UAP Act pursuant to incident of pasting posters by Yunus, a member of SIMI, on the front wall of madarsa, containing objectionable material designed to spread communal disharmony. The third FIR No. 345/2001 was registered against accused Niyamat Ali who was found guilty of indulging in illegal SIMI activities.

39. The witness in his affidavit has also stated that due to objectionable activities SIMI has vitiated the communal harmony in the state many times and has become a threat to the public peace and tranquility that become evident from the pamphlets and posters distributed by SIMI, which have highly objectionable content. He has annexed with his affidavit (Ex. PW-5/A) the certified copies of two pamphlets and a poster circulated by members of SIMI organization, which are exhibited as Ex. PW-5/2, PW-5/3 and PW-5/4 respectively. The witness has also annexed with his affidavit the copy of charge sheet filed in the court of ACJM, Bikaner in respect of FIR No. 111/2001; charge sheet filed in the court of Chief Judicial Magistrate, Sangod in case FIR No. 102/2001 and a copy of judgment dated 18.12.2007 in FIR No. 354/2001. In his examination in chief, the witness has stated that the accused in FIR No. 354/2001 was convicted but was released on probation by giving benefit of Section 4 of Probation of Offenders Act. It is further stated that the trial in respect of FIR No. 111/2001 and 102/2001 is in progress and evidence is being recorded.

40. In his cross examination by Mr. Mobin Akhtar, Advocate representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, PW-5 denied the suggestion that these three cases referred to in his affidavit have been intentionally mentioned so as to prejudice the proceedings in the Tribunal. He stated that he was not aware whether the judgment in FIR No. 354/2001 was set aside and remanded back for retrial and denied the suggestion that he had deliberately concealed this fact from the Tribunal. He also stated that there might be cases that may have been registered in the state of Rajasthan against SIMI and its members which resulted in acquittal. He denied the suggestion that FIR Nos. 111/2001 and 102/2001 have been falsely registered against innocent people in order to justify the ban on SIMI and

that the witnesses produced by the prosecution in these two pending cases are stock witnesses. He also denied the suggestion that the pamphlets annexed with his affidavit were not seized at the time of sealing of the offices of SIMI and have been subsequently planted on the accused persons. He also denied the suggestion that after the ban imposed on SIMI in 2001, there have been no activities relating to SIMI in the State of Rajasthan.

III) At Mysore in Karnataka:

At Mysore, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Jayanth Vasudev Shetty, Deputy superintendent of Police, State Intelligence, Dakshina Kannada District, Karnataka (PW-6);
- (ii) Mr. N. Sadananda Shivaram Padolkar, Circle Police Inspector, Navalagund Circle, Dharwad District, Karnataka (PW-7);
- (iii) Mr. Simon C.A., Deputy Superintendent of Police, Special Enquiries Division, CID, Bangalore, Karnataka (PW-8);
- (iv) Mr. H.M. Omkaraiah, Assistant Commissioner of Police and Investigating Officer, J.C. Nagar Sub-Division, Bangalore (PW-9).

41. PW-6, Mr. Jayanth Vasudev Shetty, Deputy Superintendent of Police, State Intelligence, Dakshina Kannada District, Karnataka, appeared and produced his affidavit exhibit PW-6/A. The witness has deposed in respect of FIR No. 242/2008 registered by PS Ullal under Sections 120(B), 121(A), 122 153(A) IPC, Sections 5 & 6 of Explosive Substances Act, 1908 and Sections 10, 11, 13, 18 & 19 of Unlawful Activities (Prevention) Act, 1967 on the complaint filed by Mr. Venkatesh Prasanna, police inspector, District Crime Intelligence Bureau, Dakshina Kannada Distt., Mangalore.

42. In his affidavit the witness has stated that one Riyaz Bhatkal Shabandri, a wanted accused in bomb blasts in Mumbai, Delhi, Ahmedabad and Surat was taking shelter in the house of Mohd. Ali at Mukkacheri in Ullar, Mangalore. Accordingly, the house of Mohd. Ali was raided on 03.10.2008 at 10:30 am. During the search, Mohd. Ali disclosed that Riaz Bhatkal was the founder member of Indian Mujahiddin and an active member of SIMI. He further disclosed that Riaz Bhatkal was responsible for bomb blasts that took place in Delhi, Ahmedabad, Surat and Mumbai. On enquiry, Mohd. Ali along with his son Javed Ali admitted having given shelter to Riaz Bhatkal and that they participated in various meeting to discuss Jihad and activities of Indian Mujahiddin. On the basis of information received from Mohd. Ali and his son Javed Ali, the police conduct raid at various houses located at Chembugudde in Ullar Mangalore; and Subhas Nagar, Mangalore city and seized 5 live bombs, 10 mobile phones, a diary, a computer disk and some other documents related to Jihad etc. A car bearing No. KA 03N – 8812 was also seized which was used by accused Mudasar Yasin. After transfer of investigation on 04.10.2008 by PSI, Ullal Police Station, the police also conducted raid at various other houses and also recorded the statements of accused persons. Various incriminating materials have been seized from these houses. The witness has annexed the certified copies of various panchnamas and statements of the accused with his affidavit and same are exhibited as Ex. PW-6/1 to PW-6/17.

43. In his cross-examination, the witness has stated that since the filing of his affidavit in 2010 before the previous SIMI Tribunal, Yasin Bhatkal, who is accused No. 12 in the case has since been arrested by the NIA on 29.10.2013. He admitted that the statements of all the accused annexed with his affidavit were recorded in police custody. He also stated that the witnesses to many of the panchnamas are local people. He denied the suggestion that the sole basis for alleging that Indian Mujahhidin is a front organization of SIMI is the confessional statement of the accused Noushad and volunteered that after his arrest, certain documents and incriminating articles were seized which support their claim. He also stated that by the word 'among the other material', he had referred to live bombs that they seized. He also volunteered that on enquiry, Mohd. Ali and his son Javed Ali, disclosed that Riaz Bhatkal, who is one of the founder member of Indian Mujahhidin, visits their house and that he was an active member of SIMI and was involved in bomb blast, which took place in Delhi, Ahmedabad, Surat and Bombay regarding which Riaz Bhatkal discussed with them. He further stated that Riaz stayed in their house and his friends Noushad, Muddassar Yasin were supporting him in unlawful activities. He admitted that there is no mention of SIMI in FIR and only Indian Mujahhidin was mentioned in the FIR but he volunteered that Mr. Venkatesh Prasanna, who is the complainant in this case, mentioned about involvement of SIMI and Indian Mujahhidin. He also admitted that except for the confessional statement of Mohd. Noushad, none of the confessional statements recorded in this case make any mention of SIMI but denied the suggestion that immediately upon becoming IO of this case, he introduced the name of SIMI through the alleged confessional statement of Mohd. Noushad.

44. He further stated that in his statement Syed Mohd. Noushad had stated that in the get together, which was arranged by Parhan and Riza Bhatkal, 18 persons participated. In that meeting, Mohd. Ali Mukkechery and Shabir Bhatkal had explained about the 'Jihad' functionary and Riza Bhatkal, Iqbal Bhatkal and Ahammad Yasin had explained the location for bombing, how to prepare the bomb, how to explode, how to disappear clues, purchasing of mobile phone sim cards under the fake name etc. He denied the suggestion that he had deliberately interpolated SIMI's name into the alleged confessional statement of Noushad in order to falsely and malafidely to support the Central Government's case

against SIMI. He also denied the suggestion that there is no basis for his statement that the accused are member of SIMI and that the case detailed in his affidavit has no relevance for the purposes of the present proceedings as it is an old case and the same has been deliberately kept pending to support the continuance of a ban on SIMI.

45. PW-7, Mr. N. Sadananda Shivaram Padolkar, Circle Police Inspector, Navalagund Circle, Dharwad District, Karnataka appeared and produced his affidavit exhibit PW-7/A. The witness has deposed in respect of four FIRs (Ex. PW-7/1), viz. FIR No. 260/2008 registered at PS Golgumbuz; FIR No. 101/2008 registered at PS Adarshanagar; FIR No. 359/2008 registered at PS Gandhi chowk; and FIR No. 360/2008 registered at PS Gandhi chowk.

46. In his affidavit, the witness PW-7 has stated that all fifteen accused persons were arrested in these cases and various incriminating materials were seized from these accused. Investigation of these cases revealed the involvement of SIMI activists. The witness has annexed with his affidavit the certified copies of the statement of various accused; certified copy of the provocative pamphlets dated 04.12.2008 affixed at various places at Bijapur Town containing slogans and statements; certified copy of panchnama and certified copies of charge sheets filed in the aforesaid four FIRs. The same are exhibited as Ex. PW-2 to PW-14.

47. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-7 has stated that in FIR No. 260/2008, many of the witnesses have been examined except for a few panch witnesses whereas in other cases, no witnesses have been examined till date. He denied the suggestion that one incident was turned into four different cases and stated that the posters were pasted in separate jurisdiction of three different police stations and that is why different cases were registered. He also denied the suggestion that the decision to register four FIRs with respect to one alleged incident is also part of the conspiracy to falsely implicate SIMI. Although he accepted that the sole basis for saying that the alleged pasting of posters was done as SIMI activity is the confessional statement of accused-1, Shan-e-Karim but he denied the suggestion that the SIMI connection of the other accused is based only upon the said confessional statement and volunteered that the accused have independently stated in their confessional statements that they were participating in the activity for and on behalf of SIMI.

48. He also denied the suggestion that the posters/pamphlets on the basis of which this case has been registered does not mention anywhere that it has not been published by SIMI or that it is connected to SIMI and volunteered that the posters mentions "IBT", which stands for expression "Islamic Book Treasure" and on enquiry it was discovered that IBT is having connections with SIMI. He also stated that Shan-e-Karim's collection of books is called IBT and that is why, he can say that the pamphlet seized had a SIMI connection. He accepted that the connection of Shan-e-Karim to SIMI is made by the police on the basis of his confessional statement but volunteered that as per confessional statement, some CDs were seized from his house which contain some provocative material and that material makes reference to SIMI. He denied the suggestion that none of the accused had admitted their membership of SIMI after the first ban imposed on SIMI in September, 2001. He also denied the suggestion that the cases detailed in his affidavit have no relevance for the purposes of the present enquiry as they are old case.

49. PW-8, Mr. Simon C.A., Deputy Superintendent of Police, Special Enquiries Division, CID, Bangalore, Karnataka appeared and produced his affidavit exhibit PW-8/A. The witness has deposed in respect of FIR No. 14/2008 registered at PS Gokul Road, Hubli.

50. The witness (PW-8) in his affidavit has stated that on 30.01.2008, one Mohd. Asif D. was stopped near Airport cross, Hubli city for riding a motorcycle at very high speed. On verification, it was found that he did not have documents of the motorcycle. Hence P.I. Gokul Road PS seized the vehicle under a seizure panchnama and lodged a complaint against him and a case being FIR No. 14/2008 was registered under Sections 102 Cr.P.C. read with Section 379 IPC. During the course of investigation of the case, it was revealed that Mohd. Arif D. was a SIMI activist. He also disclosed the names of other SIMI activists. In all 21 persons were accused of whom 19 were arrested. The investigation of the case further revealed the complicity of the said accused persons in the unlawful activities of SIMI. During the investigation, the statements of several witnesses were recorded. Two witnesses namely Niyaz Ahmad and Mohd. Ismail revealed about the conspiracy meetings organized by the accused persons. They informed that Mohd. Arif D., Alla Bhaksh and Mirza Ahmad Baig used to conduct discourses wherein the massacre of muslims and the demolition of Babri Masjid were discussed in detail. Further, it was deliberated that in order to establish Islamic Government, important installations in India have to be destroyed, the Indian Economy has to be uprooted and blood shed will be caused by explosion in crowded areas. In order to achieve these objectives, more muslim youths should be brought into the SIMI organization. Further investigation revealed that the accused persons, who were active members of SIMI, were carrying out unlawful activities aimed at waging a war against India and disturbing communal harmony. The witness in his affidavit has also stated that it is learnt from the sources during investigation of Yasin Bhatkal (IM co-founder) that SIMI members have joined with IM to take shelter in different banner to continue their anti-national activities in spite of the imposition of ban on this organization by the Central Government. After completion of investigation, charge sheet was filed under Sections 120(B), 121, 121A, 122, 124A, 153A, 153B, 379, 116, 465, 468, 471, 201, 511 of IPC, Sections 4 & 5 of the Explosive Substances Act, 1908 and Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967. The witness has annexed the certified copies of various seizure panchnama, certified copies of charge sheet, certified copies of panchnama and certified copies of statements of accused persons, which are exhibited as Ex. PW-8/2 to PW-8/37.

51. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-8 has stated that the trial in FIR No. 14/2008 is going on day-to-day basis and out of 353 witnesses, 267 have been examined. He also stated that none of the statements of witnesses has been recorded under Section 164 Cr.P.C. He further stated that he does not know whether the documents/books seized in this case are banned by the State Government under Section 95 Cr.P.C. and accepted that there is no mention of any such ban in the records of the case. He denied the suggestion that the ban on SIMI was coming to an end in February, 2008 and just before the ban was to expire the case was fabricated. He also denied the suggestion that the name of SIMI has been interpolated in the voluntary statements in order to illegally and unjustifiably support the ban on SIMI. He also denied the suggestion that none of the accused has admitted their association or membership of SIMI.

52. PW-9, Mr. H.M. Omkaraiah, Assistant Commissioner of Police, J.C. Nagar, Sub-Division, Bangalore City, Karnataka appeared and produced his affidavit Ex. PW-9/A. The witness has deposed in respect of 9 cases viz. Crime Nos. 483/2008, 217/2008, 297/2008, 260/2008, 261/2008, 92/2008, 314/2008, 315/2008 & 177/2008 registered at PS-Madivala, Adugod, Koramangala, Ashokanagar, Sampangiramanagar, Bytarayanapura and Kengeri respectively.

53. In his affidavit (Ex. PW-9/A) the witness has stated that on 25.07.2008, a series of Bomb Blasts occurred in Bangalore city between 13:15 hrs. to 13:40 hrs. These blasts led to the tragic loss of human life and severe injuries to a number of persons besides causing damage to a lot of public and private property. In all nine cases were registered in the various police stations at Bangalore. He further stated that the Madivala PS Crime No. 483/2008 is the prime case and all the accused and the witnesses are common to all the other eight matters pending trial before 34th Special Additional Sessions Court, Parappan Agrahara, Bangalore. During the investigation of the cases the involvement of key SIMI activists has come to light and various charges were leveled against each accused.

54. During the course of investigation and the information provided by A-1 Naseer, the books (i) Malim-Fi-I-Tarriq (Miles stone); (ii) Al-Jihad-Ul-Islam (Abu-ul-modudi); (iii) Biography of Hasan-Ul-Bannah; and (iv) Allahu-Theunnathu (What allah seek) were seized and also a chart of SIMI which has words written on it "AYODHYA TO JERUSALEM, THE JIHAD WILL GO ON" published by SIMI was also seized in the house of A-14 Fayis who died in encounter at J&K by the military forces. Investigation further revealed that during the month of March, 2008, accused 1 and 3 while going to Bengaluru to identify the prime localities for bomb blasts, had visited the rented house at A-1, Naseer, where discussion was held between accused 1 and 3 regarding the conspiracy to carry out serial bomb blast at Bengaluru city, to wage war against India, to damage the economic fabric of the country, to take revenge against Hindus, to avenge the Gujarat riots and the demolition of Babri Masjid. In furtherance of the said conspiracy, accused 3, approached the accused No. 22 (Wali @ Rehan @ Rasheed Obedulla), who was an LeT Commander with accused 23 and 25 for waging war against India by indulging in unlawful activities, to cause damage to the economic fabric of the country by using explosive substance causing loss of life of citizens and damage to the property of the nation for which the accused No. 22, 23 and 25 agreed to help monetarily.

55. After completion of the investigation, charge sheets were filed in each of the cases. Additional reports have also been filed in all the above mentioned cases pertaining to bomb blasts in Bangalore city against the accused No. 27 to 32 as contemplated under Section 173(8) Cr.P.C. Further, on 04.10.2013, the NIA court, Ernakulam convicted life sentence to 11 accused who were involved in Bangalore Serial Bomb cases-2008. The witness had filed the certified copies of statements of witnesses; panchnamas; charge statement of A-1 and the certified copy of the charge sheet, which are exhibited as Ex.PW-9/1 (colly) to PW-9/5 (colly).

56. In his cross-examination by Mr. Ashok Agrwaal, Advocate for Mr. Humam Ahmed Siddqui and Mr. Misbah-Ul-Islam, the witness PW-9 has stated that in the main case, which is Crime No. 483/2008, PS-Modivala, 173 witnesses have been examined by the Trial Court. He further stated that the statement of none of the witnesses in these cases has been recorded under Section 164 Cr.P.C. and these statements were recorded during the police remand of the accused. In response to the Tribunal's question, the witness replied that there was recovery in these cases. The cross-examination of the witness was deferred on the request of Mr. Ashok Agrwaal.

IV) At Delhi:

At Delhi, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Sanjeev Kumar Yadav, Deputy Commissioner of Police, Special Cell, Delhi (PW-10);
- (ii) Mr. Rakesh Bhatt, C.S.P., Civil Lines, Raipur, Chattisgarh (PW-23);
- (iii) Mr. Jyoti Narayan, DIG, NIA, New Delhi (PW-29); and
- (iv) Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India, New Delhi (PW-30)

57. PW-10, Mr. Sanjeev Kumar Yadav, Deputy Commissioner of Police, Special Cell, Delhi appeared and produced his affidavit Ex. PW-10/A. The witness has deposed in respect of FIR No. 54/2011 at PS- Special Cell, Delhi under Sections 471, 489-B, 489-C of IPC, Section 12 of Passport Act and Section 25 of Arms Act.

58. The witness in his affidavit has stated that on the night intervening 21/22.11.2011, on the basis of specific information, one Mohd. Quateel Siddiqi @ Sajan @ Siraj @ Vivek Mishra, suspected to be a member of Indian Mujahiddin was apprehended from near Anand Vihar Inter State Bus Terminal, Delhi. On his cursory search, one 9 mm loaded pistol made in Brazil containing 7 live cartridges in its magazine was recovered from his possession. On the search of his bag, besides other articles, Fake Indian Currency Notes worth Rs.2 lacs; One loaded magazine of 9 mm pistol containing 7 live cartridges and one envelope containing two Indian passports one in the name of Seraj Ahmad but bearing the photograph of Quateel @ Sajjan and the other passport in the name of Ahmad Zeauddin and one driving license in the name of Vivek Mishra but bearing photograph of Quateel @ Sajjan were recovered. Accordingly, FIR 54/2011 was registered by PS Special Cell, Delhi.

59. Investigation of the case revealed that Quateel Siddiqui is a member of the banned terrorist outfit Indian Mujahiddin and has been involved in several terrorist activities in India. Accordingly, provisions of Section 120B IPC and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act were added in the said FIR. During the course of investigation, 24 accused persons (including Quateel Siddiqui), all members of the terrorist outfit Indian Mujahiddin have so far been arrested and a huge quantity of explosive material, IEDs, arms & ammunition has been recovered from their possession/at their instances from their hideouts. However, fourteen accused, who have indulged in terrorist activities are still wanted in this case and were absconding. The witness has further stated that during the course of investigation of the said FIR, an arms and ammunition manufacturing factory, established by this module of Indian Mujahiddin for fabrication/assembly of arms & ammunition for carrying out terrorist activities in Delhi & other parts of India was also discovered and seized at Nangloi, Delhi. A huge quantity of explosive material, arms & ammunition and apparatus for manufacture/fabrication of the same were recovered from there. It is further stated that this included the 9 mm pistol, which was used by accused persons for firing on foreign nationals on 19.09.2010 near Jama Masjid regarding which FIR No. 65/2010 was registered and is pending trial.

60. The witness has further stated in his affidavit that one of the accused namely Tarique Anjum Ahsan, while he was a student in 1997, had attended a seminar of SIMI which was held in Patna, Bihar. In that conference, one of the speakers by the name of Hashim Raja had talked of Jihad and the activities of SIMI, which had a profound effect on him. He also made a statement in his affidavit that "since SIMI had been banned in the year 2001, Tarique Anjum Ahsan along with other SIMI activists in the year 2003, at Bhatkal, Karnataka, had regrouped and floated a new organization namely Indian Mujahiddin to carry on Jihad" (Mark 'A'). It is further stated that the investigation further revealed that another accused Mohd. Bashir Hassan Talha had in 1997 met various SIMI activists and started participating in the activities of SIMI. He was also part of the module in Bhatkal, Karnataka where SIMI cadres had regrouped and Indian Mujahiddin was formed. The investigation of said FIR further revealed that the activists of SIMI/Indian Mujahiddin especially Iqbal Bhatkal, Riyaz Bhatkal are still continuing with their unlawful activities and the acts of terrorism were committed at the instance of Ahmad Siddibappa @ Imran @ Shahrukh @ Asif @ Shoeb @ Yasin Bhatkal @ Ahmad, who got directions from Iqbal Bhatkal, Riyaz Bhatkal and Amir Raza Khan (Chief of Indian Mujahiddin) based in Karachi, Pakistan. Ahmad Siddibappa in his statement has admitted that he along with Riaz Bhatkal and Iqbal Bhatkal planned to carry out terrorist activities around Chinnaswamy Stadium, Bangalore in which IPL matches were being conducted and in July, 2010, he and Riaz Bhatkal had further planned a terrorist attack in Delhi in order to defeat Commonwealth Games. He further disclosed that he had planned to attack a German Bakery in Paharganj, Karolbagh, Connaught Place and other places. The witness has annexed the certified copies of statements of Tarique Anjum Ahsan (Ex. PW-10/4), Bashir Hasan (Ex.PW-10/5), Fasih Mehmooh (Ex.PW-10/6), Ahmad Siddidappa (Ex.PW-10/7), Assadullah Akthar (Ex.PW-10/8) as also the certified copies of four supplementary charge sheets filed in FIR No. 54/2011. The same are exhibited as Ex.PW-10/9 to PW-10/12.

61. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that he does not have any photograph or any other document to establish that Tariq Anjum Ahsan attended a Seminar of SIMI held in 1997 at Patna and volunteer that it is disclosed in his disclosure statement. He also admitted that except the disclosure statement, there is no documentary or photographic evidence to establish that such a meeting was even held. He also admitted that neither of these meetings/Seminars/Conference was banned by the State Government or Central Government. He stated that the basis for saying that Tariq Anjum Ahsan was a member of SIMI prior to its first ban in September, 2001 is his disclosure statement and the disclosure statements of others who have been arrested in this case. However, he denied the suggestion that the so-called confessional statements of Tariq Anjum Ahsan recorded in this case are false and concocted. He further accepted that Tariq Anjum Ahsan has not stated but has implied in his confessional statement dated 08.02.2012 that the 'new moniker' of SIMI is 'Indian Mujahiddin'. The confessional statements of other accused also say that the new name of SIMI is Indian Mujahiddin. He also accepted that by the statement made in para 8 of his affidavit (Mark 'A'), he is stating that Indian Mujahiddin was a new organization started in 2003 by former SIMI activists after SIMI was banned in 2001. He admitted that it is not stated anywhere in the charge sheet (Ex.PW-10/2) annexed to his affidavit that Indian Mujahiddin is the new name of SIMI but volunteered that it is mentioned in the disclosure statements of the arrested

accused Tariq Ahmed Ahsan, Bashir Ahmed Siddibappa and Farih Mehmood. He, however, denied the suggestion that no such statement has been made by the accused persons in their disclosure statements that Indian Mujahiddin is a front organization of SIMI or that it is the new name of SIMI. He also denied the suggestion that the activities of Mohd. Bashir Hasan Talah and Tariq Ahmed Ahsan after the ban on SIMI in September, 2001, if any, were done in their individual capacities and had no connection with SIMI. He further denied the suggestion that the name of SIMI has been interpolated in the confessional statements of the accused persons annexed with his affidavit to support the ban on SIMI.

62. PW-23, Mr. Rakesh Bhatt, C.S.P., Civil Lines, Raipur (Chhatisgarh) appeared and produced his affidavit Ex. PW-23/A. The witness has deposed in respect of FIR No. 740/2013 (Ex.PW-23/1) registered at PS-Civil Lines, District Raipur under Sections 3, 7, 10, 11, 13, 15, 16 & 18 of the Unlawful Activities (Prevention) Act, 1967, Sections 121, 124A, 153A of IPC, Sections 25 & 27 of Arms Act and Sections 3 & 4 of Explosive Act. The witness is the investigation officer of the said case since 14.11.2013.

63. The witness in his affidavit has stated that on 14.01.2013, the Incharge Police Officer Civil Lines, received information through an informer about one Umer Siddiqui a suspicious activist of SIMI, used to give shelter to various members of the banned organization SIMI and Indian Mujahiddin terrorist organization from the year 1999. On the basis of the said information, crime branch team caught Umer Siddiqui at Nurani Chowk, who informed the police that he has been Ansar of Raipur in SIMI since the year 1999. He further stated that he and his group organized a camp of SIMI in forest of Barnawapara and the purpose of the meeting was to strengthen the organization SIMI and collect funds for aiding the terrorist of Indian Mujahiddin and SIMI. Accordingly, FIR No. 740/2013 was registered by PS Civil Lines, Raipur.

64. During the course of investigation, Abdul Wahid, accused no.2, was taken into custody and during the search of his house blank membership form of SIMI organization, some cash and 315 Bor cartridge were recovered. The investigation further revealed that Umer Siddiqui, accused no. 1, was involved in planning of the bomb blast in Body Gaya as well as in Patna Rally of Sh. Narendra Modi and further also revealed that they did a reiki of Ambikapur, Nagpur and Delhi as the rallies of Sh. Narendra Modi was to be carried out in all these cities. On the basis of the revealed information, left out explosives after the blasts in Patna and Bodhgaya were found with Azhar, 32 Bor revolver with Azizullah i.e. accused no. 3 were discovered and seized. Umer Siddiqui also revealed that Hyder Abdullah in his speeches stated that the Indian government is "Kafir" and further said that the Muslims were not treated well in India. The confessional statements of three witnesses were recorded before the First Class Judicial Magistrate wherein they clearly stated that they all were known to Umer Siddiqui who was teaching them to collect funds and prepare bombs and explosives and practice Jihad in the country. The witness has annexed the certified copies of memo under Section 27 of the Evidence Act of the accused persons along with the confessional statements of three witnesses namely Mohd. Faizan, Abdul Mohsin Khan and Mohd. Abdul Rizyan and certified copy of challan, which were exhibited as Ex.PW-23/2 to PW-23/11.

65. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that the story in the FIR is false or that there is no informer and that Umer Siddiqui was not arrested in the manner described in the FIR. He accepted that the address of SIMI was not mentioned in the blank membership form seized from the accused but denied the suggestion that the form was fabricated and printed by the police. He also accepted that all the accused were granted bail in this case under Section 167(2) Cr.P.C. on the ground of delay in filing the charge sheet. He also accepted that all the three persons whose confessional statements have been recorded are the witnesses and not the accused. The witness denied the suggestion that this case has nothing to do with SIMI and further denied that the 'Camp' at Barnawapara was actually a family outing in which the wives and children of the people were also present and volunteered that the camp was organized by Umer Siddiqui and these persons participated in the same. Umer Siddiqui and Haider Abdullah made speeches in the camp. He further stated that on 26.11.2003, Umer Siddiqui further revealed that Azhar's laptop had Lashkare Toiba and Hizbul Mujahiddin's video of Training Camp, Maulvi's anti national provoking speeches and also some objectionable speeches against Hindu Gods etc. which were used to motivate them. He further denied the suggestion that he had withheld the material evidence pertaining to the case detailed in his affidavit from this Tribunal.

66. PW-29, Mr. Jyoti Narayan, DIG, NIA, New Delhi appeared and produced his affidavit Ex. PW-29/A. The witness has deposed in respect of two FIRs viz. FIR No. 361/2013 of PS GRP Patna registered under Sections 307, 326, 121, 121(A), 120(B) & 34 IPC, Section 3 & 5 of Explosive Substances Act, Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act and Sections 151 & 153 of Railway Act, and FIR No. 451/2013 of PS Gandhi Maidan, Patna registered under Sections 324, 326, 307, 302, 120B, 121, 121A of IPC, Sections 3, 4 & 5 of Explosive Substances Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act.

67. In his affidavit the witness has stated that he is the Supervisory Officer of FIR No. 361/2013 and FIR No. 451/2013, which are related to the bomb blasts in Patna on 27.10.2013 in the rally of Sh. Narendra Modi. The cases were initially registered by the local police but subsequently the investigation of the said cases was transferred to NIA, which re-registered the cases as RC 10/13/NIA/DLI (Ex. PW-29/1) and RC 11/13/NIA/DLI (Ex.PW-29/2) in NIA PS New Delhi. He further stated that investigation of cases RC 10/13 and RC 11/13 shows the involvement of SIMI and its

activists in illegal and anti-national activities in the State of Bihar, Jharkhand and Chattisgarh. During investigation, the involvement of 16 accused persons in both the cases came into light.

68. The witness has further stated that during further investigation, it is revealed that the accused Umer Siddique and Azharuddin are members of SIMI. In his confessional statement, Umer Siddique stated that he has been associated with SIMI since 1997 and even after the ban on SIMI, he continued to organize meetings and programmes of SIMI in Raipur. He also provided shelter to absconding accused in RC 10/13 & RC 11/13 in Raipur. Azharuddin in his confessional statement has stated that he has been associated with SIMI for the last two years and knew Umer, who organizes programmes of SIMI in Raipur. The witness in his affidavit has further stated that Mohd. Faizan Latif, one of the witnesses in RC 10/13 & RC 11/13 in his statement under Section 161 Cr.P.C. has stated that Azhar had taken him to the meeting of SIMI in 2012 where Umer and Haider were saying about bringing Islamic government in India and for Jihad in India. They were asking to collect funds of Jihadis and for making bombs. He also revealed that Azhar told him that he will explode bomb at public place and run to Afghanistan. Another witness Mujammil Shadab in his statement has stated that the accused Haider had taken him to a SIMI programme in Hazaribagh, where Haider asked them to be prepared for Jihad and to do Naxal arms training. The witness has annexed the certified copy of the statements of aforesaid persons which are exhibited as Ex.PW-29/4 to PW-29/8.

69. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question whether the investigation revealed the connection of 16 accused persons with SIMI, stated that they had sufficient oral and documentary evidence and even laptop and digital evidence to show their connection with SIMI but denied to reveal the said information. Further, in reply to the question whether, as per investigation, he feel SIMI is still existing, the witness stated that they had sufficient evidence and that as per the independent witnesses, intercepts on calls, analysis of laptop and other evidence, CCTV clippings, it is clear that SIMI is still active. He further stated that not only they are active, they have their regular training sessions, collecting sufficient funds, arranging programmes, motivating people and creating modules all over the country. He denied the suggestion that no statements of accused under Section 161 Cr.P.C. were recorded. He further denied the suggestion that NIA has no basis for alleging that SIMI has been active in India after it was first banned on 27th September, 2001.

70. PW-30, Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India appeared and produced her affidavit Ex. PW-30/A. The witness has also placed before the Tribunal sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

71. The witness in her affidavit has stated that as per the information received after 3rd February, 2012 from various intelligence agencies, National Investigation Agency and the State Governments, despite the ban, SIMI and its members have continued to carry on their unlawful activities under the garb of various names/banners/cover organizations. They have indulged in radicalizing and brainwashing the minds, and indoctrination of Muslim youth by jihadi propaganda and through provocative taqreers, CDs etc. She has further stated that SIMI has been carrying on its activities, including terrorist and organizational activities, undertaking clandestine training and raising funds through illegal means. SIMI has also been making efforts to establish links with terrorist outfits, to expand its network and to carry out violent actions. She further stated that the object of SIMI, as per its own constitution, is contrary to the basic fabric of the Indian Constitution.

72. In her cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question whether the issue of reasonableness of the restrictions upon SIMI come up during the preparation of the Note before the Cabinet, the witness stated that all the factors were taken into account including the inputs received from the States and Intelligence Agencies. When the witness was asked to name the Central Agencies from which the inputs were received, the witness replied that they had their intelligence agencies apart from NIA. She denied the suggestion that the alleged States inputs have been manipulated to mislead the Cabinet as well as this Tribunal to illegally and unjustifiably support the ban on SIMI. When the witness was asked to point out which part of the SIMI's constitution is contrary to the basic fabric of the Indian Constitution, she replied that she was talking about the Oath of Allegiance for Ansar. She denied the suggestion that the allegation against the constitution of SIMI being contrary to the basic fabric of the Indian Constitution is not contained in any of the previous Notifications banning SIMI. She further denied the suggestion that the present ban on SIMI is arbitrary and unjustified and it is a result of non-application of mind. She also denied the suggestion that the Background Note is a result of manipulation and that it conceals material facts and is factually incorrect. She also denied the suggestion that the Background Note has no basis in law.

(V) At Hyderabad in Andhra Pradesh:

At Hyderabad, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. N. Madhusudhana Reddy, Deputy Inspector General of Police, Counter Intelligence Cell, Intelligence Department, Hyderabad, Andhra Pradesh (PW-11);

- (ii) Mr. B. Koteshwar Rao, Inspector of Police, Special Investigating Team, Hyderabad City, Andhra Pradesh (PW-12);

73. PW-11, Mr. N. Madhusudhana Reddy, IPS, Deputy Inspector General of Police, Counter Intelligence Cell, Intelligence Department, Hyderabad, Andhra Pradesh appeared and produced his affidavit as Exh. PW-11/A. The witness has been appointed as the Nodal Officer for the State of Andhra Pradesh for SIMI related matters. He has stated that in spite of the ban imposed by the Central Government in the past on the SIMI, as per the reports of the Intelligence Agencies and the investigations conducted in the various cases, it has been revealed that members of SIMI are still persistently involved in carrying out the unlawful activities of SIMI in a clandestine manner thereby disrupting communal harmony and indulging in anti-national activities and actions which are detrimental to the sovereignty and integrity of India. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

74. The witness has given a brief summary of cases registered against the SIMI cadres in the State of Andhra Pradesh viz., CR No. 1/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 302, 307, 436, 121A and 153A of IPC, Sections 3 & 5 of Explosive Substances Act, 1908, Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967 and Section 4 of Prevention of Damage to Public Property (PDPP) Act, 1984; CR No. 2/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 307, 436, 121A and 153A of IPC, Sections 4 & 5 of Explosive Substances Act, 1908 and Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967; CR No. 3/2008 of CI Cell PS, Hyderabad registered under Section 120(B), 302, 307, 436, 121A and 153A of IPC, Sections 3 & 5 of Explosive Substances Act, 1908, Sections 13(1)(a)(b), 16, 18, 19, & 20 of Unlawful Activities (Prevention) Act, 1967 and Section 4 of Prevention of Damage to Public Property (PDPP) Act, 1984; CR No. 02/2009 under Sections 120(B), 302, 307, 121, 121(A), 122, 124(A) IPC and Sections 25 & 27 of the Arms Act, 1959 read with Section 34 of IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967; FIR No. 287/2011 registered by Central Crime Station CCS/SIT, Hyderabad under Sections 120B, 121A, 125, 126 of IPC and Sections 10, 13 & 3 of Unlawful Activities (Prevention) Act, 1967; FIR No. 380/2011 registered by PS Begumpet, Hyderabad under Sections 420, 468, 120B of IPC; Crime No. 274/2011 registered under Section 420, 468, 120(B) of IPC; and Crime No. 245/2011 registered at PS Narayanaguda under Section 177 & 419 of IPC. The witness has annexed the certified copies of charge sheets filed in the aforesaid cases as well as the certified copy of the confessional statement of accused Afak Iqbal.

75. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that the confessional statement of Afak Iqbal was recorded in Ahmedabad and stated that he was not present when the statement was recorded. He also stated that to the best of his knowledge Darsgah-e-jehad-o-Shahadath (DJS) of A.P., T.G.I. (Tahareek-e-Galba-Islam), WeI (WAhadat-e-Islami); TTSI (Tahreek-Tahafuuz-Shair-e-Islam); Al-Umma and Tanzeem Islahum Muslimeen are not banned either by the State Government or the Central Government and volunteered that all these organizations are interlinked. The persons working with WeI and TTSI are members of other organizations also. Although, he denied revealing further information since the information is secret and confidential. He denied the suggestion that Tanzeem Islahum Muslimeen is a non-existent or fictitious organization. He also stated that he does not know whether SIMI has been mentioned in FIR and volunteered that it is mentioned in charge sheet. He denied the suggestion that they had not verified from any other documents that the accused persons are members of SIMI and volunteered that the information is based on secret documents, which cannot be disclosed. He also denied the suggestion that after the ban on SIMI in September, 2001, it ceased to exist and has not conducted any activity thereafter.

76. PW-12, Mr. B. Koteshwar Rao, Inspector of Police, Special Investigation Team, Hyderabad City, Andhra Pradesh, appeared and produced his affidavit as Exh. PW-12/A. The witness has deposed in respect of four FIRs viz. FIR No. 126/2012 registered at PS Saidabad under Sections 147, 148, 324, 153A and 149 IPC; 128/2012 registered at PS Saidabad under Sections 147, 148, 324, 427, 153A and 149 IPC, 130/2012 registered at PS Saidabad under Sections 147, 148, 427, 153A and 149 IPC and 133/2012 registered at PS Saidabad under Sections 147, 148, 435, 153A and 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

77. FIR 126/2012 was registered pursuant to a complaint lodged by Sh. Mahesh Reddy at Saidabad Police Station that on 08.04.2012 when he and his brother were proceeding to Saidabad on their motorcycle, they were beaten up by some unknown persons indulging in sloganeering and rioting. FIR 128/2012 was registered pursuant to a complaint lodged by Sh. Bangari Prakash, Corporator, BJP, Mahidipatnam at Saidabad Police Station that on 08.04.2012 when he along with others were going to Madannapet to bring confidence among the people of the locality after Hanuman temple was maligned by some miscreants, 40 – 50 local people attacked them with lethal weapons and started pelting stones at Saidabad ACP office.

78. FIR 130/2012 was registered pursuant to a complaint lodged by Sh. Srinivas Reddy, at Saidabad Police Station on 09.04.2012 that when he along with his wife was going to hospital in his car, some unknown culprits pelted stones on his car in Saidabad colony, due to which the front glass, back glass and right side glasses of the car were broken. FIR 133/2012 was registered pursuant to a complaint lodged by Sh. D. Rahul Singh, that on 08.04.2012 he along with his wife was coming from Balanagar on his motor cycle and when they reached near ACP Office, Malkpet, about 50-100 members started pelting stones towards them due to which he received injury on his back.

79. Investigation of the all the aforesaid cases were transferred to SIT on 13.04.2012. During the course of investigation, seventeen persons were identified who indulged in rioting and were arrayed as accused 1 to 17. After completion of investigation, charge sheets were filed against the accused in the court of XIV Addl. Chief Metropolitan Magistrate, Nampally, Hyderabad. Investigation of the said cases revealed that a mob of over 100 persons had formed an unlawful assembly on the main road near ACP Office, Malakpet, Saidabad, purportedly to protest against the incident of some Hindu youth attacking pushcart vendors belonging to Muslim community. The purported attack on the pushcart vendors was in protest against the alleged defiling, by throwing of cow-flesh, in Hanuman Temple, Kurmaguda, Madannapet. The alleged defiling of the Hanuman Temple was aimed at creating communal tensions between the two communities. The witness has further said that his investigation further revealed that SIMI activists actively participated in the above noted incidents and provoked the mob to commit unlawful activities and rioting. They are acting like sleeper cells and helping to create communal disturbances and causing breach of peace in the society.

80. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that none of the accused in the four cases produced by him before the Tribunal have been charged for membership of any unlawful organization and also that UAP Act has not been applied in these cases. He also accepted that an organization called the Hindu Vahini has been charged with defiling the said Temple. When the witness was shown a copy of the newspaper report published in the English edition of the Times of India dated 14.04.2012 (Mark PW-12/DA) titled 'Saffron Extremists desecrated temple to trigger riots: Cops', he accepted the said report as correct but stated that he was not aware whether this report is based on a press conference held by the Police Commissioner. He also accepted that the incident of defiling of temple was done by Hindu boys to provoke a riot, however, he denied the suggestion that the sequence of events started with the defilement of the Hindu temple by some Hindu boys who falsely attributed it to the Muslims. On that basis, Hindus were aroused and attacked Muslim residences and establishments. Thereafter, the members of the Muslim community retaliated by stone pelting. He admitted that he had not mentioned about the stone pelting by both communities. He, however, denied the suggestion that he had produced these four cases before the Tribunal to malafidely and falsely support the ban on SIMI.

(VI) At Patna in Bihar:

At Patna, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Dr. Paresh Saxena, Inspector General of Police, ATS, Bihar (**PW-13**);
- (ii) Mr. Baliram Kumar Choudhari, Additional Superintendent of Police (Town), Patna District, Patna, Bihar (**PW-14**);

81. PW-13, Dr. Paresh Saxena, Inspector General of Police, ATS, Bihar appeared and produced his affidavit Ex.PW 13/A. The witness has been appointed as the Nodal Officer for SIMI related matters in the State of Bihar. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

82. The witness in his affidavit has stated that intelligence reports received from different agencies clearly show that many SIMI members have joined Indian Mujahiddin. As per reports, SIMI is supporting militant outfits like Indian Mujahiddin, Lashkar-e-Toiba, Tehrik-e-Taliban, Jaish-e-Mohammed etc. and SIMI and IM have stepped up their activities and are planning to target right wing political leaders. Serial blasts in Patna on 27th October, 2013 in a political rally show their persistent resolve to indulge into terrorist activities. Further, the members of SIMI have started operating under a new name Student Islamic Organization of India. Intelligence reports further revealed that in October, 2013, members of SIMI had a clandestine meeting with the 'Islamic Sangh Nepal' where it was decided to assassinate Sh. Narendra Modi. Intelligence reports further revealed that Mohd. Hasib Raza, a known SIMI activist, has been continuously been involved in carrying out terrorist plans and activities.

83. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that activities by former SIMI members cannot be attributed to SIMI. He also denied the suggestion that his statement that members of SIMI had started operating under a new name, i.e. Students Islamic Organization of India is false to his knowledge. On being asked, had his affidavit been actually based on intelligence reports, he would never have said that SIO had any link with SIMI, he replied that the intelligence reports corroborate the fact that despite ban there has been continuous activities of SIMI. It has been enrolling students and youth, holding elections and raising new cadres besides organizing meetings under covers of organizations such as SIO and MSF and the intelligence reports also indicate that these active SIMI members, whenever apprehended, have posted to be members of SIO or MSF and they are involved in anti-national and terrorist activities. Although he stated that to his knowledge, no action has been initiated against SIO or MSF for illegal activities. He denied the suggestion that paras 9 to 11 of his affidavit are designed to prejudice the Tribunal against SIMI and further denied that the facts pertaining to SIMI stated in his affidavit are false and concocted and he had no material basis to show that SIMI continues to exist.

84. PW-14, Sh. Baliram Kumar Choudhary, Additional Superintendent of Police, Patna Town, Patna appeared and produced his affidavit Ex.PW 14/A. The witness in his affidavit has deposed about FIR No. 466/2013 registered at PS Gandhi Maidan under Sections 121(A) & 123 of IPC and Sections 17, 18, 18B and 20 of Unlawful Activities (Prevention) Act.

85. The witness in his affidavit has stated that on 13.11.2013, on the basis of secret inputs, SI Rajbindu Prasad lodged a complaint at PS Gandhi Maidan stating that active members of Indian Mujahiddin, on instructions from their bosses in Pakistan and on the basis of financial and other logistical support provided by them, are waiting to spread terrorism in the State of Bihar by conducting bomb blasts at various places. It was also stated that IM was recruiting fresh members to further carry out their unlawful activities. Names of Mohd. Haider and Monu @ Tehsin Akhtar @ Hasan is specifically mentioned in the complaint. Accordingly on 13.11.2013, FIR No. 466/2013 was registered at PS Gandhi Maidan. It is further stated that Umar Siddiqui in his statement recorded under Section 164 Cr.P.C. in NIA case RC No. 07/2013/NID/DLI which pertains to bomb blast at Bodh Gaya stated that he had met the accused in FIR No. 466/2013 namely Mohd. Haider at Raipur and that Mohd. Haider was a member of SIMI and that Haider had on three occasions met the members of Indian Mujahiddin. He also named the other accused in FIR No. 466/2013 namely Monu @ Tahsin and stated that Monu @ Tahsin had demanded explosives from him and has also told Haider to work with them as they wanted to use SIMI members. He further stated that Mohd. Haider was the master mind commander of serial blast occurred at Patna and Bodh Gaya. He also stated that Mohd. Haider is holding post of 'Amir' of Bihar and Jharkhand state in SIMI organization and on his instruction serial blasts have been done in the township of Patna on 27.10.2013 by the members of SIMI organization. The witness has stated that the investigation of FIR No. 466/2013 is still going on.

86. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he had not arrested the two accused namely Mohd. Haider and Monu @ Tehsil Akhtar in FIR No. 466/2013 and that the statements of the accused persons were also not recorded by him. He admitted that there is no mention of SIMI in the FIR and that the statements of these two witnesses were recorded soon after the registration of FIR. He also admitted that the statements of the two accused in NIA case No. RC-07/2013/NID/DLI recorded under Section 164 Cr.P.C. by a 1st Class Judicial Magistrate do not mention that any questions were put to them by the recording Magistrate in order to ascertain their willingness to record their confession, but he denied the suggestion that the statements were not voluntarily or that they were coerced to make statements. He also denied the suggestion that the case produced by him has no connection with SIMI and that the investigation conducted by him does not reveal that the accused are in any manner connected with SIMI. He also denied the suggestion that the case deposed by him has been registered with the sole object of malafide supporting the Central Government's decision to further extend the ban on SIMI.

(VII) At Ahmedabad in Gujarat:

At Ahmedabad, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

(i) Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat (PW-15);

87. PW-15, Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat appeared and produced his affidavit Ex.PW-15/A. He has deposed in respect of FIR No. (CR No.) 24/2013 (Ex.PW-15/2) registered at PS-Ranip under Sections 130, 224, 120(b) of IPC and under Sections 42 and 45 of the Prisons Act.

88. The witness in his affidavit has stated that the accused persons in FIR no. 24/2013 hatched a conspiracy with each other and tried to escape from the prison by digging a tunnel. On 10.02.2013, the accused persons were caught red handed while digging the tunnel and accordingly FIR No. 24/2013 was registered. During the course of investigation it was revealed that accused No. 1, Hafiz Hussain @ Adnam Jaid tajuddin Gaus Mohit Dul Mulla, who was lodged in barrack No. 4/2 of Chhotachakkar of the jail premises procured some books from the jail library and after thorough study of these books he hatched a conspiracy with the other co-accused to escape from the prison and regroup. It was further revealed that all the accused persons also procured prohibited items like haxo blade, screw driver, compass, level pipe etc. The accused persons started digging tunnel from barrack no. 4/2 wherein there was a water tank between the toilet and bathroom outside the barrack and no guard or other jail officials would be able to notice their movement. The accused persons were successful in digging a tunnel which was 16.5 feet deep and 213 feet long. The end of the tunnel was stretched out of the jail premises. Initially 14 persons were arrayed as accused, however, during investigation involvement of further 10 accused persons came to light. The charge sheet (Ex.PW-15/4) was filed against all the 24 accused persons before the competent court. The witness has also annexed the certified copy of the seizure memo (Ex.PW-15/3) of the articles seized in the said FIR.

89. The witness in his affidavit has further stated that the accused persons in FIR No. 24/2013 are also the accused in the offence bearing CR No. 236/2008 registered at PS-Shahibaug under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967, and which is commonly called as the serial bomb blast case wherein the city of Ahmedabad and Surat were subject to bomb blasts on 26th July, 2008. The investigation of the serial bomb blast case revealed that all the accused persons in CR No. 236/2008 are members of SIMI and SIMI's new form Indian Mujahiddin.

All the 58 accused persons of the serial bomb blast cases were kept in the yards 4/1, 4/2, 4/3, 5/1 & 5/2. The State Government of Gujarat invoked Section 268 Cr.P.C. w.e.f. 27.10.2009 directing all the accused persons in CR No. 236/2008 not to be removed from the Ahmedabad Central Jail, Sabarmati, Ahmedabad.

90. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the 24 accused named in FIR No. 24/3013 were first arrested in the Ahmedabad and Surat serial Bomb Blast cases. He admitted that the police investigation does not suggest that the accused persons got assistance from outside in digging the tunnel from which they attempted to escape. He further stated that as per police estimates based on investigation, it took about 3 months to dig the tunnel. The accused in this case used gardening tools such as spades and Tasla (Basket) to dig the tunnel. He also stated that the Jail Authorities did not conduct any investigation into the attempted jail break. He further stated that he was not aware that DIG (Jails), Mr. Amit Vishwakarma prepared a report on the attempted Jail Break case which held the Guards, Jailors and the Superintendent of Jail guilty of negligence and dereliction of duty. He stated that he did not find any involvement of Jail officials in CR No. 24/2013 and therefore no jail official has been made accused in this case. However, he accepted that another case FIR No. 17/2013 has been registered in connection with the attempted jail break against 9 accused out of which five are jail officials. The witness has stated that during investigation, he found the accused in FIR No. 17/2013 were involved to reduce the length of the tunnel, therefore, he made complaint to PS-DCB, which is having jurisdiction of all the police stations falling under Ahmedabad and thus, FIR No. 17/2013 was registered at PS-DCB.

91. The witness has accepted that during the course of recording the statements of jail officials, the jail staffs informed him that accused persons used to threaten them that they would lodge complaint against the jail staffs and used to keep the jail staffs engaged in such threats and dialogues and hence prevented them from completing their petrol. He also accepted that the basis to say that the accused were members of SIMI in the present case are the same as the basis that is stated in the charge sheet of the serial bomb blast cases. He denied the suggestion that the jail break attempt case has nothing to do with SIMI and stated that it is incorrect for the reason that the accused persons mentioned in FIR No. 24/2013, who are members of SIMI, hatched a conspiracy and acted in furtherance of the said conspiracy to escape from the prison and re-group. It is thus clear that despite ban, SIMI members are still active and are still indulging in subversive anti-national activities aimed at destroying the unity and sovereignty of India. In response to the Tribunal's question, which are the documents, which form the basis of the aforesaid statement, the witness replied that the accused persons have made confessional statements during investigation in police custody and disclosed the aforesaid facts. The witness denied the suggestion that he had no basis for saying that the SIMI members are still active and are still indulging in subversive and anti-national activities. He further denied the suggestion that there is nothing in his investigation to show that the accused tried to break out of prison in furtherance of the activities of SIMI or in order to carry on the activities for SIMI.

(VIII) At Mumbai in Maharashtra:

At Mumbai, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

(i) Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit (PW-16).

92. PW-16, Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit, Maharashtra appeared and produced his affidavit Ex.PW-16/A. He has deposed in respect of FIR No.25/2012 (Ex.PW-16/1) registered at PS-Begampura, Aurangabad City under Sections 307, 333, 335, 336, 338, 352, 353 and 34 of IPC and Sections 3, 25 and 27 of Indian Arms Act.

93. The witness in his affidavit has stated that on 26.03.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information received by their informant that one person namely Abrar @ Ismail, who was absconding accused in 2008 Ahmedabad case and an active hardcore member of Indian Mujahiddin and SIMI, was coming to meet his accomplices at about 12:00 noon at Aurangabad. Accordingly, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation firing one persons namely Abrar @ Ismail and Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police head constable was also injured due to firing by accused. After incident of firing, local police was informed immediately and FIR No. 25/2012 was registered. During interrogation of the accused Abrar @ Ismail and Shakir @ Khalil Khilji, they disclosed that they and other members of SIMI namely Abu Fazal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, Madhya Pradesh in the year 2006. In the said meeting they urged the members to carry on jehad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. Abrar also disclosed that in 2011 he committed dacoities in Gujarat and Madhya Pradesh to generate funds for Jihad and had also planned to loot trucks of copper scrap for the said purpose.

94. During investigation it was further revealed that one more accused namely Anwar Hussain was also involved in the crime. He assisted the other accused persons by driving them from Indore to Aurangabad on the date of incident. His statement was also recorded by the witness. He revealed that he is a member of SIMI. Investigation further revealed that one Jafar Hussain had assisted the accused persons by providing the SIM card at the time of incident. He also revealed that he is a member of SIMI and took part in various activities. He further disclosed that even after the imposition of ban

on SIMI, he continued to recruit members and took meetings at the house of Akil Khilji. A copy each of the statement of Abrar @ Ismail, Anwar Hussain and Jafar Hussain along with English translation has been placed on record and exhibited as Ex. PW-16/2, PW-16/4 and PW-16/6 respectively.

95. The witness has further submitted that after investigation, first charge sheet (Ex.PW-16/3) was filed against two accused namely Abrar @ Ismail and Shakir @ Khalil Khilji. Thereafter, two additional charge sheets (Ex.PW-16/5 & PW-16/7) were filed against Anwar Hussain and Jafar Hussain. Certified copies of each of the charge sheets were placed on record.

96. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the investigation of the said case was done by the local police for the first three days and after that he took over the investigation and remained incharge till the filing of the third charge sheet. Although he was not aware whether the investigation was handed over to the CID because doubts were expressed by members of the public regarding the genuineness of the encounter in which the accused persons are stated to have been arrested. He denied the suggestion that the statements of the accused annexed with his affidavit are false and that the accused did not make any such statement. He also denied the suggestion that this is the reason why no steps were taken to get their statements recorded under Section 164 Cr.P.C. In response to the question whether he verified the alleged membership of SIMI of the accused from any independent documentary source other than the statement under Section 161 Cr.P.C., he replied that there is a case pending against Khalil Khilji in PS-Khandwa, Madhya Pradesh under Section 153 IPC, Sections 3, 10, & 13 of Unlawful Activities (Prevention) Act and Sections 25 and 27 of the Arms Act. He further replied that for the other accused, he is solely relying upon the confessional statements of the accused persons to assert that they are members of SIMI.

(X) At Jabalpur in Madhya Pradesh:

At Jabalpur, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh **(PW-17)**;
- (ii) Mr. Ajay Kaithwas, Deputy Superintendent of Police, ATS Indore, Madhya Pradesh **(PW-18)**;
- (iii) Mr. Brijest Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh **(PW-19)**;
- (iv) Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh **(PW-20)**;

97. PW-17, Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh appeared and produced his affidavit Ex.PW-17/A. He has deposed in respect of FIR No.22/2013 (Ex.PW-17/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307 and 34 of IPC and Sections 25 and 27 of Indian Arms Act.

98. The witness in his affidavit has stated that there were confidential reports that terrorists of SIMI namely Abu Faisal, Amjad, Aslam, Mehboob and Ajajuddin after escaping from Khandwa jail on October 1, 2013 would sneak into border districts of Madhya Pradesh and Maharashtra. On the basis of intelligence reports, separate teams of ATS and CTG (Counter Terrorism Group) arrived at Kharkiya rest house under Sendhwa police station of Barwani district on December 18, 2013. At around 2:15 am on 24.12.2013, when ATS personnel located three suspects and started chasing them, the suspects opened fire at ATS and CTG personnel on which CTG party fired back. After the police encounter, three SIMI activists/terrorists were caught namely Abu Faisal, Khalid and Irfan Nagori with three weapons country made 0.32 pistols, cash and fake ID's. In this regard, FIR was lodged with Sendhwa police station which was later transferred to STF/ATS for further investigation. The forensic report of handwash of aforesaid three accused found to have traces of Nitrate present implying the use of firearms by the three accused.

99. The witness has further stated that Abu Faizal in his voluntary statement described his organization's name as SIMI and that after escaping from Khandwa jail, he had stayed at the residence of Khalid, took money from him and chalked out plans for arranging arms and explosives and having used false identity in the name of Sushil and Ibrahim. He also described about targeting Narendra Modi, create blast at Muzaffarnagar, kidnap American citizens, targeting judges who gave judgment in Babri Masjid demolition, targeting owner of Diamond Comics and also targeting the then home minister Sushil Kumar Shinde. Accused Irfan Nagori in his voluntary statement had disclosed that he met Khalid Muchale at Guddus place in Mahidpur who told him to bring bombs and weapons to Solapur. Sajid @ Guddu prepared the bag containing pistol and another bag containing Detonator, Gelatin and three bombs. They handed over the bag of pistols to Ismail and that of explosives to Khalid Muchale who gave it to Umer. He further stated that their main target was Narendra Modi. Accused Khalid Ahmed Muchale in his voluntary statement has stated that earlier in 2008 he had been arrested along with SIMI members and had been awarded a punishment of five years. He met Abu Faizal in Bhopal jail where he conspired with Abul Faizal to escape from Bhopal Jail and made arrangement of explosive material, pistol, cartridges etc. for Abu Faizal. He also informed about targeting Narendra Modi, Praveen Togadia and Sushil Kumar Shinde. Copies of statements of the three accused along with English translation are annexed with the affidavit of PW-17.

100. On the basis of information from the three accused, one SIMI activist namely Sadique was arrested by ATS on 24.12.2013. On the basis of information revealed by him, three computer processing units, printers, scanners, pen drives, hard disc, SD cards, foreign currency etc. were seized from his residence cum shop. The pen drives were found to have incriminating files stored including Al Quaida Mouth “Piece” Inspire, Forged ID’s of accused Abu Faizal, AK 47 operational manual, training material about software programe, photographs of absconding and other SIMI activists etc. The computer files contained material glorifying and provoking suicide attacks, explaining ways and means to causing road accidents by blocking roads with trees, how to spread fire in forest, how to use capsule lens as bomb igniter, manufacturing process about Action Peroxide explosives etc. The witness has annexed the true copies of the a CFSL reports along with his affidavit.

101. Further interrogation of accused Sadiq led to arrest of Umer Dandoti who was found trying to flee carrying a bag containing three bombs each containing twelve Gelatin stick, three circuits of twelve detonator, thirty five Gelatin stick loose, two bundles of 24 and 48 detonators loose and one 9 mm pistol with 7 live rounds. Examination of the said material by forensic lab and bomb disposal squad revealed that explosive seized were high explosives. On information provided by Irfan Nagori, ATS arrested Adil, Aziz @ Ajju, Wahid and Javed Nagori on 01.01.2014 and 800 gelatin rods, 12 primed gelatin rods, 54 detonators and pipe bomb were seized from their possession. In this regard a separate case in PS STF/ATS Bhopal No. 1/2014 under Sections 307, 34 of IPC and Sections 3 & 5 of Explosive Act was registered. The witness in his affidavit has further stated that during investigation it is proved that accused being members of banned organization SIMI hatched criminal conspiracy and in order to realize their criminal conspiracy raised funds, collected arms and explosives, fixed targets, made fake identity cards, developed bombs through explosives and executed their plans with utmost confidentiality. Still others were helping the absconding SIMI terrorist by providing shelter, money etc. After completion of investigation against accused Abu Faisal, Khalid, Irfan Nagori, Sadique Lunje, Umer DAndoti, Ismail Mashalkar, Irfan Muchale, Amaan and Gulrej, challan was submitted in CJM Court, Bhopal on 22.05.2014.

102. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness, in reply to the question that the provisions of Unlawful Activities (Prevention) Act were added subsequently in these FIRs, had replied that FIRs were registered as per the incidents and sections of Unlawful Activities (Prevention) Act were included after the facts of the case came to light during the investigation. He further stated that after thorough investigation they found out that SIMI activists collectively committed these crimes to generate money and for target killing and other illegal activities. He denied the suggestion that cases attributed to accused Abu Faisal vide paragraph 10 of his affidavit are on the basis of confessional statements recorded in police custody except Crime Nos. 198/2006 and 542/2013 and volunteered that they had concrete evidence like seizure of explosive material, weapons, incriminating documents, jihadi literature, which form basis of the outcome of the investigation. He also denied the suggestion that the attribution of these crimes to SIMI and its activists is solely based upon confessions made in the police custody and that SIMI had nothing to do with the crimes alleged to have been committed by the accused. He stated that he had not got recorded the statement of any of these accused under Section 164 Cr.P.C. but volunteered that there was no use of getting the statement recorded under Section 164 Cr.P.C. as sufficient evidence was available against these accused. He denied the suggestion that no material has been recovered that would show the involvement of SIMI in the case deposed by him and that he had no basis for connecting this case or any of the accused to SIMI.

103. PW-18, Mr. Ajay Kaithwas, Dy. Superintendent of Police, ATS Indore, Madhya Pradesh appeared and produced his affidavit Ex.PW-18/A. He has deposed in respect of FIR No.1/2014 (Ex.PW-18/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307, 34 of IPC, Sections 25 & 27 of Arms Act, Sections 3 & 5 of Explosive Substance Act and Section 13 of Unlawful Activities (Prevention) Act.

104. The witness in his affidavit has stated that on information provided by Irfan Nagori accused in CR No. 22/2013, raids were conducted on 01.01.2014 and accused Javed Nagori, Ajij @ Ajju, Wahid, and Adil Nagori were arrested from Mahidpur and cache of ammunition were seized from the possession of the accused including one pipe bomb, one primed bomb, 800 super power Gelatin rods, 11 Primed Bomb, 540 live detonators, one 12 bore live cartridge. During investigation, it was revealed that SIMI activists Khalid Ahmed, Abu Faisal, Irfan Nagori, Sadiq and Umer, who were accused and already been arrested in CR No. 22/2013, were also involved in the same case. Other accused/SIMI activists namely Abdul Majid and Sajid involved in the same crime surrendered before the CJM Court, Bhopal on 22.01.2014 & 30.01.2014 respectively.

105. Abdul Majid in his voluntary statement has stated that he is an active member of SIMI. He also revealed information about manufacture and testing of bomb/s to eliminate targets. He also stated that he along with Sajid, Irfan Nagori, Khalid Ahmed went for testing of explosive near village Delchi Khurd, but in the meantime police patrolling party passed from nearby road, so they could not test the explosive and after hiding the bomb in one hollow pipe, they ran away from the spot. Accused Sajid in his voluntary statement has stated that he is an active member of SIMI and in spite of ban he was running the SIMI organization actively. He used to hold SIMI meeting in his room with absconder Saliq and accused Abu Faisal and Khalid Ahmed. Accused Khalid Ahmed in his voluntary statement has stated that he himself, as also Abu Faisal are “Ameer” in SIMI organization; Adil Nagori is the “Ameer” of Ujjain; Javed and Sajid are the head of Mahidpur SIMI organization. He further stated that to take revenge of Gujarat and Muzzaffarnagar communal

incident(s), he managed to brain wash other SIMI members, namely Wahid, Ajj, Majid, Sajid and Juber for the purpose of target killings in Sholapur, Maharashtra. He also convinced Irfan Nagori and Sajid Nagori to come to Solapur with arms and ammunition for this purpose.

106. Accused Javed Nagori in his voluntary statement has stated that he is an active member and head of SIMI organization in Mahidpur. He used to organize meetings of SIMI organization under his control and direction. He collected funds to run the organization, and stored arms and ammunitions to achieve nefarious objectives of the SIMI organization. Further investigations revealed that accused Abdul Wahid and Abdul Aziz were found to be involved in continuous meetings with other co-accused persons for the purpose of SIMI activities and they were involved in providing transport facilities to accused Abu Faizal. The witness in his affidavit has stated that Investigation in the case and the video statement transcripts of each of the accused reveal that the activities of SIMI include hatching criminal conspiracy for plotting murders, including conspiracy to murder/assassinate judges and prominent politicians and ATS officers, carrying out bomb explosions at public places. The witness has annexed the certified copies of the memos of Section 27 of Evidence Act, seizure memos, Statements of accused persons, memo of verification and confirmation, FSL and BDDS report and charge sheets etc. The same on record and exhibited as Ex. PW-18/1 to PW-18/28.

107. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness denied the suggestion that SIMI has no connection with the accused arrested in FIR Nos. 22/2013 and 1/2014. He also denied the suggestion that the basis for saying that the accused arrested in FIR Nos. 22/2013 and 1/2014 connected with SIMI are the confessions made by the said accused to the police. He further denied the suggestion that the confessions recorded in police custody are false and fabricated and that is why the statements of these accused were not got recorded under Section 164 Cr.P.C. before the Magistrate. He further denied the suggestion that he had no material basis to make the statement pertaining to SIMI contained in his affidavit and that the name of SIMI has been interpolated in this case on instructions from his superior officers merely to support the case of Central Government to extend the ban on SIMI.

108. PW-19, Mr. Brijesh Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh appeared and produced his affidavit Ex.PW-19/A. He has deposed in respect of FIR No. 424/2014 registered at PS-Maharana Pratap Nagar, Bhopal, Madhya Pradesh under Sections 295A, 153B and 34 of IPC.

109. The witness in his affidavit has stated that on 17.05.2014, certain members of SIMI, being accused and under trial in some pending cases including accused in FIR No. 01/2014, was to be taken from Central Jail to District Court, Bhopal. These members of SIMI after being produced before the District Court, Bhopal started shouting anti-national slogans. English translation of the slogan is "*Taliban zindabad, Islam zindabad, Pakistan zindabad, Palestine se lekar Afghanistan tak hamara raj hoga, ab Modi ki bari hai*". Accordingly, FIR No. 424/2014 was registered. The witness in his affidavit has stated that the action of the accused SIMI members is demonstrative of the divisive nature of the ideology propagated by SIMI and its members. He further stated that the accused persons in FIR No. 1/2014 registered by ATS Bhopal, who were also part of the incident enumerated above, have revealed the existence of a very wide and active SIMI network not only in the State of Madhya Pradesh but also all over India.

110. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that the case is still under investigation and the charge sheet has not yet been filed in the case. He stated that out of 18 people produced on that date, 12 of them are accused in CR No. 1/2014, PS ATS, Bhopal. He admitted that no slogan was shouted about SIMI or in favour of SIMI on that date. He also stated that he was not aware whether S.P, Bhopal had stated to the media that the episode was not a planned one; that the accused wanted media's attention and that he did not think that there was a conspiracy behind this incident. In reply to the question whether he had verified from independent documentary source that the accused were members of SIMI, he replied that FIRs mentioned the accused as being members of SIMI, therefore, he had mentioned in his affidavit that they are members of SIMI. He denied the suggestion that the facts pertaining to SIMI stated in his affidavit are false and concocted.

111. PW-20, Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-20/A. The witness has been appointed as the Nodal Officer for SIMI related matters. He has deposed in respect of three FIRs viz. FIR No. 541/2013, 542/2013 and 209/2013.

112. The witness in his affidavit has stated that the accused persons namely Abu Faisal, Ajajuddin, Guddu @ Mehboob, Aslam, Jakir, Amjad & Mirza Abid Beg made a hole in wall of toilet of ward no. 2 of District Jail, Khandwa and escaped by jumping across the safety wall. While they were fleeing and passing through Siddhapuram & Warco City near Bhandariya Road, they were stopped by a patrolling party, with which the accused persons had a scuffle. The constable/patrolling party was attacked by the accused persons with the intention of causing death which resulted in grievous injuries to Constable Lokesh Hirwea and Sainik Suresh Tiwari. Their government rifles were snatched and the accused persons fled in the motorcycle belonging to these constables. Accordingly, on the report of Constable Lokesh Hirwea, FIR No. 541/2013 was registered at PS-Kotwali Khandwa under Sections 395, 307, 353 & 332 of IPC. During primary investigations the details about the jailbreak emerged and FIR No. 542/2013 was also registered by PS-Kotwali under Section 224 of IPC. After further investigation, Sections 3, 10, 13 & 16 of Unlawful Activities (Prevention) Act

and Sections 120(B) and 75 of IPC were also added in the said FIRs. The witness has further stated that from investigations of the cases, it is revealed that the accused persons in FIR No. 541/2013 & 542/2013 are the members of banned organization SIMI. The cases are still under trial.

113. The witness in his affidavit has further stated that in April, 2006, an incident took place on the occasion of Mahavir Jayanti when a procession organized by some people from the Jain community was attacked by some miscreants who also indulged in vandalism. During the course of investigation, SIMI activists were found to be involved in this incident and accordingly FIR No. 236/2006 was registered at PS-Kotwali. During the course of trial, the concerned Magistrate passed an order dated 10.01.2013 directing that a separate case be registered against Mohd. Khalil in view of the complicity of the said accused in activities relating to SIMI. Accordingly, FIR No. 209/2013 was registered and Mohd. Khalil was arrested on 22.08.2013. On completion of investigation, Final Report was forwarded to Chief Judicial Magistrate. The case is presently under trial.

114. The witness has also annexed the certified copies of order dated 23.08.2013 in Sessions Case No. 180/2006 (Ex. PW-20/2) passed by Mr. Sanjeev Shrivastava, Third Upper Sessions Judge, East Nimad, Khandwa, Madhya Pradesh; order dated 30.04.2013 in Sessions Case No. 203/2008 (Ex. PW-20/3) passed by Mr. Ramesh Mavi, Addl. Fourth Upper Sessions Judge, Khandwa, Madhya Pradesh; order dated 10.01.2013 in Criminal Review Case No. 116/2012 (Ex. PW-20/4) passed by Mr. G.S. Dubey, Addl. First Upper Session Judge, Khandwa Madhya Pradesh and certified copies of Final Report of Crime Nos. 209/2013, 541/2013 & 542/2013 (Ex. PW-20/5 and PW-20/6). He stated that in the judgment passed in SC No. 180/2006, ten SIMI activists were sentenced to three years imprisonment and a fine of Rs. 500 was imposed on each accused. In SC No. 203/2008, two SIMI activists were sentenced to two years rigorous imprisonment and a fine of Rs. 5000 was imposed on each accused under Section 3 and 10 of the Unlawful Activities (Prevention) Act and sentenced to five years rigorous imprisonment and a fine of Rs.5000/- was imposed on each accused under Section 3/13(2) of the UAP Act.

115. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he cannot say as to what was the basis for separating the trial of Mohd. Khalil and for the directions to add the Section 124A IPC and Sections 3, 10 & 13 of Unlawful Activities (Prevention) Act as passed by Addl. District and Sessions Judge in his order dated 10.01.2013. He admitted that Addl. District and Sessions Judge did not specifically direct to register a case under the said Sections and volunteer that the CJM, Khandwa wrote a letter dated 17.01.2013 to SP, East Nimad, District Khandwa and SHO, PS City Kotwali, Khandwa and it was in pursuance to the said order, case was registered against Mohd. Khalil under Section 124A IPC and Sections 3, 10 & 13 of Unlawful Activities (Prevention) Act. When Mr. Ashok Agrwaal confronted the witness with the certified copy of the appeal bearing No. 643/2013 (Ex.DW-20/1) against the order dated 02.02.2013 passed in SC No. 180/2006, the witness has submitted that though he was not aware of the appeal filed by the accused persons, however, it seems that the appeal has been filed by the five accused, who were convicted by the Sessions Court vide judgment dated 02.02.2013 in Trial Case No. 180/2006. Although, he was not aware whether the persons convicted pursuant to the trial in Crime No. 202/2008 have filed any appeal against the order of conviction. He admitted that some accused in both these cases were acquitted by the Trial Court vide aforesaid judgments. He admitted that the FIR No. 209/2013 does not mention the name SIMI and that the magazine Tehrik-e-Millat recovered from the accused was published by SIMI. However, he denied the suggestion that the magazine Tehrik-e-Millat has nothing to do with SIMI and that the said magazine was never published by SIMI.

X) At Coonoor in Tamil Nadu:

At Coonoor, the Central Government, in support of the Notification banning SIMI, examined the following witness:-

- (i) Ara. Arularasu, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu (PW-21).

116. PW-21, Ara Arularasu, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu appeared before the Tribunal and produced his affidavit Ex. PW-21/A. The witness has been appointed as the Nodal Officer for SIMI related matters in the State of Tamil Nadu. The witness has annexed the certified copy of judgment dated 29.02.2012 in S.C. No. 459/2011 (Ex.PW-21/1) passed by the court of Additional District and Sessions Judge – Fast Track Court No. II, Coimbatore. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

117. The witness in his affidavit has stated that on 25.6.1999 at about 1615 hours at 100 feet road near Fourth Cross Junction Mosque, Gandhipura, B-3, Kattor PS Limits, Coimbatore city, the accused persons were seen distributing May and June, 1999 issues of the SIMI magazines titled 'Seithi Madal', containing articles which were seditious in nature knowing that said articles will bring hatred and excite disaffection towards the Government establishment by law and are prejudicial to communal harmony between Muslims and other religions. According, a case was registered being CR No. 722/1999 at PS B-3 Katoor. The Additional District and Sessions Judge, Fast Track Court No. 2, Coimbatore vide judgment dated 29.02.2012 convicted five accused persons, who are members of SIMI, under Section 124(A) and 153(B)

inter-alia for treating/portraying the Indian Army and Indian Government as their enemy and thereby promoting hatred and ill-will, besides inciting communal passion against the Indian Government in their publications.

118. The witness in his affidavit has further stated that intelligence reports reveal that SIMI activists are regrouping themselves in the State of Tamil Nadu under the banner of Wahadat-e-Islami Hind (WeIH). The activists of SIMI are using the platform of WeIH to expand their militant outreach among Muslim youth under the guise of spreading Islamic ideology. SIMI activists under the guise of WeIH continue to hold meetings, classes, symposium, seminars etc. to spread their anti-national ideology. One such copy of invitation of WeIH of the Conference held in Madurai district on 13.1.2013 was enclosed by the witness along with his affidavit.

119. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that Wahadat-e-Islami Hindi was in existence for few years. He accepted that the meeting held on 13.01.2013 was not illegal or unlawful. It was not banned. He also accepted that no criminal case has been registered for holding the meetings. He stated that since he was not the IO of CR No. 722/1999, he was not aware whether the allegedly incriminating articles that are the subject matter of CR No. 722/1999 are substantial translations of articles published in the Hindu and the New Indian Express in March, 1999. He also showed his unawareness that the content of these articles has been reported by International Organizations like Amnesty International and by the London Times. He accepted that the first judgment of the Trial Court dated 05.01.2004 was appealed before the High Court, which set aside the said judgment vide order dated 08.03.2011 while directing the retrial of the case. However, he was not aware whether an appeal has been filed against the judgment in retrial dated 29.02.2012.

120. Mr. Agrwaal, learned Advocate has submitted a photocopy of the said Criminal Appeal, which is taken on record and marked 'Mark-A'. The witness has accepted that the material seized in CR No. 722/1999 was not banned by the Government. In reply to the question that he had no material basis to make the statement that SIMI activists are regrouping themselves under the banner of WeIH and that the unlawful activities of SIMI and its members are still going in a clandestine manner, he stated that they had intelligence reports regarding regrouping of the SIMI Cadre in the garb of Wahadat-e-Islami Hindi and to act against the Indian Government. The witness denied the suggestion that the cases detailed in his affidavit have no relevance for the purpose of the present trial.

XI) At Aurangabad in Maharashtra:

At Aurangabad, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

(i) Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra (PW-22).

121. PW-22, Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra appeared before the Tribunal and produced his affidavit Ex. PW-22/A. The witness has deposed in respect of FIR No. 131/2012 (Ex. PW-22/1) registered by PS Nizampura Bhiwandi under Section 307 and 120(b) of IPC. The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres.

122. The witness in his affidavit has stated that on 03.08.2012, while the complainant Manoj Raicha was travelling by his car, with his armed police bodyguard Police Constable Acharekar, three shots were fired at him from a fire arm. One bullet grazed his right upper arm. Thereafter, the complainant lodged a complaint with the police about the threat to his life extended at the hands of accused Saquib Nachan on 6th July, 2011. Accordingly, on the basis of which, FIR No. 131/2012 was registered. It is stated that the motive behind the offence which is alleged against Saquib Abdul Hameed Nachan and his co-accused is to create a rift between Hindus and Muslims and to cause communal riots and with this motive only the said accused Saquib Abdul Hameed Nachan hatched the conspiracy to eliminate the first informant Sh. Manoj Raicha, Advocate, who is an active member of the Vishwa Hindu Parishad and Govansh Saurakshan Samiti. On 04.08.2012, supplementary statement of the complainant was recorded. It was stated in the supplementary statement that his police bodyguard Acharekar has seen one person running away from the lane by the side of Masjid after the incident, who was later identified as accused No. 2 Guddu @ Mohd. Hafeez Khan and that he has seen him prior to the incident at about 10:00 p.m. on red colour Pulser Motorcycle along with another person. During the investigation, the shirt of the complainant bearing blood stains and black spot of bullet were seized under seizure panch-nama.

123. It is further stated in the affidavit that accused No. 2 Guddu gave a memorandum statement leading to discovery of a country made pistol and 6 live cartridges from the house of absconding accused Abu Bakar. Further, a read colour Pulser Motorcycle was also recovered from the place near public toilet near a mosque. It is further stated that the accused No. 1 in his statement revealed that he has been a member of SIMI from the year 1982. He further revealed that Saquib Nachan still clandestinely continues to work for SIMI and still a strong sympathizer of the organization. During the investigation, the confessional statements of witnesses A, B, C & D under Section 164 Cr.P.C. were recorded in which witness A & B have given the evidence regarding the conspiracy hatched by the accused persons whereas witness C & D have given the evidence with regard to the conversation which took place between the accused No. 2 Guddu and absconding accused Abu Bakar after the incident and the consequential displeasure shown by the accused No. 3 Shamil Nachan on their failure to successfully execute the plan. After completion of the investigation, charge sheet and

supplementary charge sheet were filed in the matter and the case is pending trial in the court of Special Judge, MCOCA, Thane, Maharashtra.

124. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has accepted that the accused No. 3 is on bail but volunteered that against the bail granted by the High Court, they had filed a petition for cancellation of the bail in the Supreme Court. However, Supreme Court has not granted any stay in the case. He also admitted that two empty cartridges were recovered from the spot of the incident but denied the suggestion that the seizure is fraudulent and the items stated to be recovered are fraudulent. He also admitted that the complainant changed his story in his supplementary statement that was recorded on 04.08.2012. He also admitted that the complainant, in his original complaint, had stated that Saquib Nachan had threatened him in September, 2011 at the time when he was produced before the Court in connection with the Lalit Jain murder case but in the supplementary statement recorded on 04.08.2012, he modified his earlier statement and stated that the threat was held out to him on 06.07.2011. He admitted that the threat by Saquib Nachan to Mr. Raicha was made in the court premises. He also admitted that he did not question Mr. Raicha, complainant or sought his explanation for the contradictions in material particulars between his original complaint and supplementary statement. He further admitted that the first statement of witness 'A' recorded on 07.11.2012 did not support the case of the prosecution in any manner. However, he denied the suggestion that the witness was coerced to give second statement under Section 164 Cr.P.C. on 09.11.2012 for this reason. He further denied the suggestion that there are marked differences between the statement under Section 164 Cr.P.C. of witness 'A' and his statement under Section 161 Cr.P.C. recorded by the police. However, he admitted that the High Court has recorded in its order while granting bail to accused Nos. 3 & 4 that there is significant differences between the second statement of witness 'A' recorded under Section 164 Cr.P.C. and his statement recorded under Section 161 Cr.P.C. He also accepted that while granting bail to accused Nos. 3 & 4, High Court has noted that the call date record do not support the theory of conspiracy being hatched at the Restaurant "Oye Punjabi Dhaba" as stated by the prosecution. He denied the suggestion that he had no basis for saying that the accused persons undertook any of the acts stated in his affidavit on behalf of SIMI or in furtherance of its objectives and volunteered that the accused have confessed to their acting on behalf of SIMI in their confessional statements made before the police.

(XII) At Bhopal in Madhya Pradesh:

At Bhopal, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Shailendra Singh Chauhan, Addl. S.P. (Crime), Bhopal, Madhya Pradesh (**PW-24**);
- (ii) Mr. R. C. Rajput, DSP (Crime), District Indore, Madhya Pradesh (**PW-25**);
- (iii) Mr. Suhas Dravid, S.D.O.P., Shajapur District, Madhya Pradesh (**PW-26**);

125. PW-24, Mr. Shailendra Singh Chauhan, Addl. S.P. (Crime), Bhopal, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-24/A. The witness was nominated as the Nodal Officer in respect of cases relating to SIMI in Bhopal District, Madhya Pradesh. The witness has annexed the certified copies of various judgments passed in cases relating to SIMI along with their English Translation. The said judgments are collectively marked as Ex.PW-24/1 (colly).

126. In his affidavit the witness (PW-24) has stated that for the last many years the entire State of Madhya Pradesh and particularly Bhopal District has witnessed activities of SIMI despite the ban imposed initially in 2001 resultantly various cases have been registered against/related to SIMI members/SIMI activists which are still pending adjudication. He has also stated that cases being CR No. 574/2001, PS Shahjanabad; CR No. 295/2001, PS Gautam Nagar; CR No. 482/2001, PS Talaiya; and CR No. 584/2001, PS Aish Bagh have culminated in judgments against the accused SIMI members. He has also stated that upholding of the ban imposed by the Central Government vide notification dated 01.02.2014 is necessary to prevent/curtail the illegal and unlawful activities of SIMI.

127. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that no case has been registered against SIMI in the district of Bhopal between 04.02.2014 to 01.02.2014. He accepted that the four cases for which he had produced judgments along with his affidavit were all registered within 5 to 6 weeks of first ban on SIMI in September, 2001. He further stated that to the best of his knowledge, apart from the four cases mentioned above, only 9 cases pertaining to SIMI are pending in the district of Bhopal. The witness has stated that he was not aware that some of the cases registered in the district of Bhopal resulted in acquittal. He was also not aware that the conviction in CR No. 295/2001 has been set aside by the Appellate Court. But he denied the suggestion that he had not produced any material before this Tribunal to show that SIMI continues to be active.

128. PW-25, Mr. R. C. Rajput, DSP (Crime), District Indore, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-25/A. The witness was nominated as the Nodal Officer of District Indore in respect of cases relating to SIMI. The witness has annexed the certified copies of various judgments passed in cases relating to SIMI along with their English Translation. The said judgments are collectively marked as Ex.PW-25/1 (colly).

129. In his affidavit the witness (PW-25) has stated that the activities of SIMI and SIMI activists in Indore District, Madhya Pradesh have been relentless and unabated despite the ban on SIMI which resulted in registration of various cases against SIMI and its activists, which are still pending adjudication. He has also stated that recent judgments have been passed by various trial courts in cases being CR No. 479/2001, PS Aerodrome; CR No. 288/2001, PS Chhoti Gwaltoli; CR No. 266/2001, PS Chhoti Gwaltoli; CR No. 251/2001, PS Chhoti Gwaltoli and CR No. 459/2006 PS Khajrana resulting in conviction of accused persons. He further stated that it is imperative to continue the ban against SIMI to maintain the public law and order and in the interests of communal harmony and security of the State.

130. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that charges have been framed in all the 13 cases mentioned in his affidavit which are still pending adjudication. He accepted that four out of the five cases listed by him under the heading of 'decided cases' in his affidavit (Ex.PW-25/A) were registered within a month of first ban on SIMI in September, 2001. He also accepted that in case FIR No. 459/2006, the accused has been convicted under Section 153(A) of IPC and not under the provisions of UAP Act and that the State Government had declined to grant sanction for prosecution under the UAP Act in this case. But he denied the suggestion that he had no basis for saying that SIMI continues to be active.

131. PW-26, Mr. Suhas Dravid, S.D.O.P., Shajapur District, Madhya Pradesh appeared before the Tribunal and produced his affidavit Ex. PW-26/A. The witness was nominated as the Nodal Officer of District Shajapur in respect of cases relating to SIMI. The witness has annexed the certified copies of judgments dated 02.05.2013 passed in Criminal Case No. 688/2007 (Ex.PW-26/1); dated 14.02.2014 passed in Criminal Appeal No. 206/2013 (Ex.PW-26/2); and dated 14.02.2014 passed in Criminal Appeal No. 210/2013 (Ex.PW-26/3) along with their English Translation.

132. In his affidavit the witness (PW-26) has stated that he was deposing in respect of Crime No. 686/2001 registered under Sections 10 & 13 of the UAP Act which has culminated in judgments passed by the Court of Second Additional Sessions Judge, Shazapur, and which establish the deep tentacles of SIMI in Shajapur. He further stated that on 7.11.2001, Sh. Dalip Singh Chaudhury, SI, PS Kotwali, Shazapur district received information that two accused were standing near Mahupura Pull and were propagating/ advertising about the activities of SIMI. During the raid in the area, it was discovered from the site that two accused were talking to 2-3 other persons and showing them the magazine, which is the September edition of a magazine titled 'Islamic Movement'. The accused No. 2 stated that he is the General Secretary of SIMI, Shajapur. Accordingly, FIR No. 686/2001 was lodged on the same day. Accused No. 1 also surrendered himself during the pendency of investigation. The witness further stated that on 02.05.2013, the Judicial Magistrate First Class in his verdict held that the two accused had committed offences against society and sentenced them rigorous imprisonment for 1 year each along with a fine of Rs.500/- each. The accused went into first appeal, which was dismissed by the Second Additional Sessions Judge, Shajapur on 14.02.2014 confirming the sentence imposed by the trial court. Criminal Revision Petitions filed by the accused against the judgment is pending in the High Court of Madhya Pradesh.

133. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has stated that he was not aware that the State Government had not issued an order banning the issue of 'Islamic Movement' under Section 95 Cr.P.C. but he denied the suggestion that holding a copy of such a magazine is not an offence even today and volunteered that it is an offence to propagate the cause of SIMI. He also denied the suggestion that the police took out the documents seized in this case from the office of the SIMI that was sealed on 27th September, 2001 and subsequently planted the same upon the accused to fabricate a case against them. He also denied the suggestion that the statement "establishes the deep tentacles of SIMI in Shajapur" in para 5 of his affidavit is a deliberate lie designed to mislead the Tribunal. He also denied the suggestion that this case is a false case registered with the purpose of supporting the ban imposed by the Central Government on SIMI on 27th September, 2001.

(XIII) At Port Blair in Andaman & Nicobar Islands:

At Port Blair, the Central Government, in support of the Notification banning SIMI, examined the following witnesses:-

- (i) Mr. Vishal Garg, Addl. Superintendent of Police, CIB-II, NIA, New Delhi (PW-27);
- (ii) Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi (PW-28);

134. PW-27, Mr. Vishal Garg, Addl. Superintendent of Police, NIA, New Delhi appeared before the Tribunal and produced his affidavit Ex. PW-27/A. He has deposed in respect of the three cases registered by NIA viz. 07/2013/NIA/DLI, 08/2013/NIA/DLI & 09/2013/NIA/DLI under Sections 153A, 324, 307, 427 & 452 of IPC, Sections 3 & 4 of Explosive Substances Act, Section 17 of Criminal Law Amendment Act and Sections 16, 18, 20 and 23 of Unlawful Activities (Prevention) Act, which are related to serial bomb blasts at Bodh Gaya, Bihar on 07.07.2013.

135. The witness in his affidavit has stated that with a view to terrorize the Indian citizens and international tourists, total thirteen bombs were planted at different places of Bodh Gaya including the main temple complex out of which ten bombs were exploded and three live bombs were recovered which were defused later on. The blast caused extensive

damage to the secular image of the country. During the investigation, role of five planters of the bombs along with other key conspirators namely Haider @ Abdullah @ Salim Ansari @ Black Beauty, Mujibullah @ Mujib, Taufiq Ansari, Fariq (since dead), Imtiyaz, Numan, Umer Siddiqui and Azharuddin Qureshi had emerged. The witness has further stated that he personally interrogated the arrested accused persons who made disclosure about the activities of SIMI and the conspiracy hatched by SIMI members. The statements of accused Umer Siddiqui and Azharuddin Qureshi, recorded under Section 164 Cr.P.C. is enclosed with the affidavit. It is further stated that during the investigation of accused Ahmed Sidibappa @ Yasin Bhatkal (arrested by NIA in RC 06/2012), it was found that Yasin Bhatkal used to chat with IM Chief Riyaz Bhatkal (reportedly present in Pakistan) on internet, in which they also discussed about targeting Bodhgaya. The role of the SIMI members has also been mentioned in detail in the internet chat of Mohd. Ahmed Siddibappa @ Yasin Bhatkal and Riyaz Bhatkal.

136. The witness has further stated that the statement of several witnesses/accused were recorded under Sections 161 Cr.P.C. and also under Section 164 Cr.P.C. which further established the activities of SIMI in Ranchi/Raipur and their intention to terrorize the people of India and that SIMI operatives contacted several local persons at Raipur and Ranchi to obtain their assistance, support and providing infrastructural support for operations to carry out attack at religious place Bodh Gaya to avenge the alleged atrocities on Rohngiyas Muslims in Myanmar. The investigation also revealed that Umer Siddiqui was one of the principal conspirator in the conspiracy of SIMI and had personally motivated several persons including Haider Ali, Azharuddin and other activists on religious lines to wage war against other communities in India. It was also revealed that in pursuance of the conspiracy, the Indian Mujahiddin accused Asadullah Akhtar made efforts to some SIMI operatives out of India, for further sending them to Pakistan to get trained in terrorist activities, which clearly establishes that the SIMI has been continuously receiving assistance by the IM operatives based at Pakistan. The charge sheet has been filed in the aforesaid cases.

137. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the charge sheet was filed against Umer Siddiqui, Azharuddin Qureshi and Imtiaz Ansari. In reply to the question that the Magistrate has not put any question to the accused persons (Umer Siddiqui and Azharuddin Qureshi) to ascertain whether the confession was made voluntary, he stated that no question was put as to the voluntariness of the statement of the accused under Section 164 Cr.P.C. but volunteered that the Magistrate has given certificate under Section 164(4) Cr.P.C. and it is also noted that he has explained to both the accused persons that they are not bound to make a confession and if they do so that may be used as evidence against them. He denied the suggestion that the statements of the accused under Section 164 Cr.P.C. were not made voluntarily and that the accused were threatened and coerced to make these statements. He also denied the suggestion that the recording Magistrate has mechanically put a certificate at the end of the said statements. He also denied the suggestion that the witnesses were threatened that if they did not depose as told to do, they would be implicated in false cases. He further denied the suggestion that NIA's allegations about the SIMI's association with Indian Mujahiddin are baseless and false. He also denied the suggestion that the meaning attributed to the internet chats is arbitrary and baseless and that the implication of SIMI via these alleged chats is baseless and false to the knowledge of NIA.

138. PW-28, Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi appeared before the Tribunal and produced his affidavit Ex. PW-28/A. He has deposed in respect of the case No. RC 06/2012/NIA/DLI registered under Sections 120B, 121A and 122 of IPC and Sections 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which relates to an ongoing criminal conspiracy by the operatives of the Indian Mujahiddin, a terrorist organization, to commit terrorist acts by attacking various public places in India.

139. The witness in his affidavit has stated that on 29.08.2013, on reliable source information, two of the accused persons named in the FIR and who were terrorists of Indian Mujahiddin i.e Mohd. Siddibappa @ Yasin Bhatkal and Asadullah Akhtar @ Haddi were arrested at India-Nepal border town. During subsequent investigation, the role of some SIMI operatives including Manzer Imam, Ozair Ahmed and Haider Ali @ Abdullah was established as having sheltered and actually assisted the IM operatives including Tahseen Akhtar @ Monu, for the commission of terrorist acts. The statements of several witnesses were recorded under Sections 161 and 164 of Cr.P.C. at Ranchi, which further established the activities of SIMI in Ranchi in furthering the terrorist conspiracy of the Indian Mujahiddin. Investigation of the case further revealed that in pursuance of the conspiracy, the IM operatives contacted several SIMI operatives in order to obtain their assistance at a national level. An option of providing infrastructural support for operations of the IM was suggested, and efforts were being made to contact senior SIMI operatives like Safdar Nagori.

140. The witness has further stated that during investigation it has been established that the Muslim Student Federation (MSF) was formed in the states of Jharkhand and Bihar only to serve as a frontal organization of SIMI and to organize and radicalize youth on religious fundamentalism. The activities of MSF/SIMI in Ranchi resulted in the radicalization of several individuals including Haider Ali and Ozair Ahmed, and provided the fertile ground for the furtherance of the conspiracy hatched by the IM operatives. He has further stated that during the examination of one Hedayatullah, it emerged that the accused Manzer Imam had indicated to him that the MSF or the SIMI had split into two groups – a small one consisting of 20-25 operatives which had ideologically joined the activities of the IM and the other which was still continuing with the earlier activities of SIMI. The statement of Hedayatullah recorded under Section 164 Cr.P.C. has been annexed with the affidavit of the witness. The witness has further stated that the investigation has also

revealed that the conspiracy of Indian Mujahiddin, to commit terrorist in India, is still being continued with active support and guidance from its senior leadership, hiding in Pakistan. The emails exchanged amongst the co-conspirators reveal that there is an ongoing conspiracy to commit various terrorist act in India and the threat to National security and the safety of its citizens and property from the operative of the SIMI persists. The charge sheet and the supplementary charge sheet has been filed in the aforesaid case.

141. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the FIR No. RC 06/2012/NIA/DLI makes no mention of SIMI. He also admitted that the first charge sheet dated 17.07.2013 does not allege that any of the five accused were members of SIMI but volunteered that on receiving the information the matter was further investigated, and in the supplementary charge sheet there were specific allegations against the accused persons belonging to SIMI. In the supplementary charge sheet, two out of the four accused were found to be involved in the activities of SIMI. He also admitted that he was not present during the recording of statements under Sections 161 & 164 Cr.P.C. but volunteered that the statements have been recorded by the investigating team of which he is the supervisor and chief. He denied the suggestion that the statements recorded under Section 164(4) Cr.P.C. of the witnesses were not voluntary and that these statements were coerced from the said witnesses by holding out various kinds of threats and inducements and further that these persons were told that if they do not depose as they were told to do by the NIA, they would be implicated in false cases. In reply to the question about the results of the investigation so far, the witness has stated that they had already charge sheeted two accused persons namely Manzar Imam and Uzair Ahmed for their part in the conspiracy of the Indian Mujahiddin, who were earlier SIMI operatives and that another SIMI operative Haider Ali has also been arrested in the instant case. He further stated that total number of accused persons are 33 and at present 9 have already been charge sheeted. Earlier some of them were SIMI/IM operatives.

142. He denied the suggestion that in the first charge sheet it is stated that the Indian Mujahiddin is a break away group of former SIMI activists whereas in the supplementary charge sheet it is stated that Indian Mujahiddin was formed independently in the early 2004 and volunteered that there is no contradiction between the two statements since IM was constituted towards the end of 2003 and early 2004 and the operatives who initially formed the Indian Mujahiddin had a SIMI background as they were earlier associated with SIMI activities. He accepted the Mohd. Ahmed Siddibappa, in his statement under Section 164 Cr.P.C., has stated that he knows SIMI, but he is not a member of SIMI and he had no interaction with SIMI people. However, he denied the suggestion that Mohd. Ahmed Siddibappa was never a member of SIMI. In reply to the Tribunal's question, whether as per investigation, it is established that SIMI is still existing and their activities are still going on, the witness answered in affirmative and stated that not only they are holding meetings and keeping contact with each other, but the decisions are taken only after consulting the senior operatives of SIMI. He further stated that Riyaz Bhatkal has mentioned in internet chat to Yasin Bhatkal that decisions can only be conveyed after consulting with seniors.

143. In reply to the question how the Section 164 statement of Manzar Imam recorded in case No. SC 2/11 related to the case presented by the witness i.e. Case No. 06/2012, the witness replied that the statement of Manzar Imam is relevant to the instant case since it proves that Manzar Imam was an active member of SIMI and that he was working towards achieving aims of the conspiracy, which was same as that hatched by the IM operatives, i.e. of waging Jihad. He admitted that Section 164 statement of Manzar Imam makes no mention of Riaz Bhatkal, Iqbal Ahmed, Mohd. Ahmed Siddibappa, Uzair Ahmed and Haider Ali but volunteered that it is a general tactic used by terrorists to not reveal parts of ongoing active conspiracy, which can result in future attacks. This is precisely the reason why during his earlier Section 164 statement, the accused Manzar Imam did not make any mention of ongoing association with operatives of Indian Mujahiddin. The same was confirmed through investigation. He denied the suggestion that Manzar Imam being alleged to be a part of SIMI is a fabrication of the Central Government and of some of the State Governments of India.

144. He admitted that the Section 164 statement of accused Asadullah Akhtar makes no mention of SIMI and also no mention of Manzar Imam, Uzair Ahmed and Haider Ali but denied the suggestion that Asadullah Akhtar has never been associated with SIMI. He volunteered that Asadullah Akhtar has not been claimed in the charge sheet to be a SIMI member. However, investigation has clearly brought out that Asadullah Akhtar was making efforts to send some SIMI operatives to Pakistan for getting trained in order to joint he activities of Indian Mujahiddin. He further stated that the same has emerged in an internet chat between IM operatives Mirza Shadab Baig based in Pakistan and the accused Asadullah Akhtar and the name of SIMI has been mentioned in the form of 'CIMI'. He further stated that it must be understood that terrorists generally use understandable codes or solely misspell them to abbreviate them in order to avoid detection by any legally intercepting agency. In reply to the question whether he had annexed any statutory certificate before this Tribunal to prove the authenticity of the alleged chat extracts, the witness answered no but volunteered that certificate has been filed along with the charge sheet before the Trial Court and that the Certificate proves the internet chat has been taken from Yahoo i.e the service provider. He denied the suggestion that the meaning attributed to he chats is arbitrary and baseless and that the implication of SIMI via these chats is baseless and false to the knowledge of NIA.

145. The witness has stated that MSF was formed after the first ban on SIMI in September, 2001. It was based in Ranchi and it had approximately 40-50 members in that area. In response to question whether any case has been registered against MSF, he stated that no case has been registered against MSF. However, cases are registered against

members of SIMI and MSF is same as SIMI. Further, in reply to question whether MSF is a banned organization, he stated that since MSF is a frontal organization of SIMI, there is no question of it not been banned, and that no separate order is required to ban MSF. However, he denied the suggestion that MSF has no connection with SIMI and never had any connection with it. He also denied the suggestion that he had no basis for ascertaining that MSF is a front organization of SIMI.

146. In addition to the above prosecution witnesses, the following four public witnesses have also appeared to depose before the Tribunal and filed their affidavits:

- (i) Mr. M. Karthick, S/o V. Mohan, Hindu Munnani, Coonoor Thaluk Secretary, Coonoor (GPW-1);
- (ii) Mr. Akhtar Sayeed Siddiqui, S/o Abdul Kalam Sahab, Bhopal (GPW-2);
- (iii) Mr. Azizuddin, S/o Saifuddin, Bhopal (GPW-3); and
- (iv) Mohd. Mahir, S/o Mohd. Zakir, Bhopal (GPW-4).

The statements of the aforesaid four public witnesses were recorded on oath.

147. GPW-1, Mr. M. Karthick, in his examination-in-chief, has stated that Hindu Munnani, of which he is the Coonoor Thaluk Secretary, is an organization of Hindus and its aims and objectives are to protect the interests of the Hindus and conducting 'Vinayak Chaturthi festivals'. He further stated that he came to depose before the Tribunal because he wants the ban on SIMI to continue. He further stated that despite the ban on SIMI in the year 2001, its members are functioning clandestinely under various organizations and if they are not banned it would be a threat to the Indian Constitution and the Indian Nation.

148. In his cross-examination by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, he stated that he had no personal knowledge of the contents of his affidavit or of his deposition before this Tribunal and volunteered that all the annexures annexed with his affidavit are downloaded from the internet. However, he denied the suggestion that he was a put up witness or that he was not deposing of his own volition.

149. GPW-2, Mr. Akhtar Sayeed Siddiqui, in his statement, has stated that the people who have been arrested for SIMI activities or who otherwise indulged in unlawful activities should not be left unpunished. However, those who are innocent should not be implicated in false cases and should not be kept in custody for long and be released quickly. He requested that such cases should be decided quickly in a time-bound manner so that innocent people are not arrested.

150. It is pertinent to mention here that an opportunity was given to learned counsel for the parties to cross-examine the said witness, however, they refused to cross-examine the witness.

151. GPW-3, Mr. Azizuddin, in his statement, has stated that after the ban on SIMI for the last 14 years, not even one member of SIMI has been convicted or punished by the courts and if any lower court had convicted any person, he has been acquitted by the Sessions Court. He further stated that there is media propaganda against SIMI and prayed that the ban on SIMI should be removed.

152. In his cross-examination by Mr. Rajeev Mehra, Sr. Advocate for the Central Government, he admitted that three cases were registered against his son Izazuddin in the year 2009 and he was arrested, and is facing trial in those cases. He also admitted that several other cases were also registered against his son in the year 2011 and 2013. He further admitted that his son was lodged in Central Jail, Bhopal in cases related to SIMI activities. He further stated that the cases he referred to in his statement means only the cases registered in Bhopal.

153. GPW-4, Mohammad Mahir, in his statement, has stated he is a member of the Indian National Congress and a social activist. He further stated that SIMI was a social organization for the welfare of the community members and that due to the negative propaganda made by media against SIMI, till date 111 false cases have been registered against various persons of Muslim community in the last 14 years. Out of these 111 cases, in 97 cases, the accused have been acquitted either by the Trial Court or by the Appellate Court. Remaining 14 cases are pending trial.

154. In his cross-examination by Mr. Rajeev Mehra, Sr. Advocate for the Central Government, he stated that he was not aware of the full form of SIMI and that he had not read the constitution or the objectives of SIMI. He also stated that he was not aware of the ideology of SIMI. He further stated that the basis of his deposition in his affidavit is based on information derived from newspaper reports. He further stated that he was not aware that many active members have been convicted for being members of SIMI and volunteered that if they have been convicted, they have been rightly convicted.

155. Before proceeding to consider the legal issues and appreciation of evidence brought on record, it is considered appropriate and in the fitness of things to briefly discuss the guidelines for holding an enquiry of this nature. Even though the provisions of the Act are clear and unambiguous, the observation of the Hon'ble Supreme Court in *Jamaat-e-Islami Hind Vs. Union of India (1995) 1 SCC 428*, which are extensively relied upon by learned counsel for both the parties, deserve to be noticed in sufficient detail to examine the issue of sufficiency of cause available with the Central Government to ban SIMI. The Hon'ble Supreme Court in this case examined, in detail, the nature of enquiry

contemplated under the Act and as to what are the principles which govern the holding of such an enquiry. The said pronouncement by the Supreme Court has examined in detail the manner of conduct of the enquiry for the purposes of adjudicating the sufficiency of cause to ban SIMI. It would also be appropriate to reproduce some of the observations made in the said judgment. On the nature of enquiry as contemplated under the Act, the Hon'ble Supreme Court in paragraph 11 has observed as under:

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

156. Again in para 17, the Hon'ble Supreme Court has observed that “the materials on which the adjudication is to be made with opportunity to show cause given to the association, must be substantially in consonance with the materials required to support a judicial determination”.

157. On the issue of appreciation of the material based on which the Central Government decided to ban the organization, the Hon'ble Supreme Court, in para 19, has observed as under:

“The test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, 1967, is equally applicable in accordance with the decision in *V.G. Row*. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the expression ‘adjudication’.”

158. On the issue of the procedure to be followed by the Tribunal in holding the inquiry to test the sufficiency of cause, the Hon'ble Supreme Court, in paragraphs 21 & 22, has observed as under:

“.... The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility on conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence or material in respect of which the Central Government claims non-disclosure on the grounds of public interest.”

“..... the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest.....”

159. In para 26 of the said pronouncement, the Hon'ble Supreme Court has further observed as under:

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

160. Thus, summarily, the Hon'ble Supreme Court in *Jamaat-e-Islami Hind (supra)* held that there should be an objective determination of factual existence of grounds which can withstand the test of credibility. The procedure adopted must also withstand the test of applicability of the principles of natural justice.

161. Keeping the aforesaid guidelines in view, it would be appropriate at this stage to consider the legal issues raised by the parties during the course of the proceedings, which may be summarized as under:

1. The issue of *Locus Standi* of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to participate in these proceedings;
2. The claim of Privilege by the Central Government in respect of certain documents placed before the Tribunal in a sealed cover;
3. The reliance on the voluntary/confessional statements made by the accused persons while in police custody and hearsay evidence.

Locus-Standi of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam:

162. Mr. Rajeev Mehra, learned Senior Advocate raised the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to participate in these proceedings on the ground that they neither admit to be the office bearers of a continuing SIMI organization nor do they claim to be its members. It is submitted that the Tribunal issued a notice to the banned organization under Section 4(2) of the Act calling upon the banned association affected by the Notice, in writing, to show cause, within 30 days from the date of service of such notice as to why the association should not be declared unlawful. Referring to Section 4(3) it is argued that the said section provides that after considering the cause, if any, **shown “by the association” or “the office bearers” or “members thereof” the Tribunal shall hold an enquiry on sufficiency of the cause.** While referring to Section 41 of the Act, it is submitted that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam claim that SIMI as an organization ceased to exist after the first ban in September, 2001 even though in terms of Section 41 of the Act, an association is not deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but it is deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. It is submitted that there is nothing which prevents Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam from admitting that they are the office bearers or members of the continuing SIMI organization and are legally entitled to participate in these proceedings. However, in the absence of such an admission they cannot be permitted to participate in these proceedings and cross-examine the witnesses whose evidence is being brought on record by the Central Government in support of the Notification banning SIMI.

163. Learned senior counsel attempted to draw a distinction between the different terms used in Section 4 and Section 6 of the Act. By referring to sub-section (2) of Section 4, learned senior counsel submitted that the said sub-section restricts issuance of the show cause notice to the association, while sub-section (3) of the said Section 4 widens the scope of notice to include, apart from the association, the office bearers or the members of the said association. It is further submitted that the term “any person aggrieved” used in sub-section (2) of Section 6 are restrictive in character to be used only to represent for cancellation of notification and not for issuance of notice by this Tribunal for responding thereto or for participating in the proceedings of the Tribunal. Relying on the decision of the Hon'ble Supreme Court in *Oriental Insurance Company Limited Vs. Hansraj Bhai V. Kodala (2001) 5 SCC 175*, learned senior counsel contended that “when the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature, unless context otherwise requires. However, in relation to the same subject matter, if words of different import are used in the same statute, there is a presumption that they are not used in the same sense”.

164. Learned senior counsel also referred to the judgment of the Hon'ble Supreme Court in *Harbhajan Singh Vs. Press Council of India & Ors., (2002) 3 SCC 722* to contend that the basic rules of interpretation of statutes is to adopt a literal meaning of the words used and that grammatical and full meaning is to be assigned to the words used while interpreting the provision to honour the rule. It is, thus, submitted that the intent of Section 4(3) of the Act restricts the right of participation in these proceedings to the Association or its office bearers or members and since Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam do not fall in this category, therefore, their participation in these proceedings and the cross-examination conducted on their behalf is liable to be ignored.

165. Mr. Ashok Agrwal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, on the other hand submits that Mr. Humam Ahmed Siddiqui being the erstwhile President of Uttar Pradesh Zone and Mr. Misbah-Ul-Islam being a former member of SIMI, are entitled to participate in these proceedings, cross-examine the witnesses being examined by the Central Government in support of the Notification banning SIMI and contest the ban on SIMI. He referred to sub-section (2) of Section 6 of the Act to submit that “any person aggrieved” “at any time” may seek cancellation of the Notification issued under Section 3 of the Act, whether or not the declaration made therein has been confirmed by the Tribunal. Learned counsel argued that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam are aggrieved by the ban imposed on SIMI and, hence, being “aggrieved persons” and are within their right to oppose confirmation of the ban by the Tribunal. He further submits that SIMI was banned for the first time in September, 2001

and since then the ban has been continued by successive Notifications which have been confirmed by respective Tribunals, except by the Tribunal constituted in the year 2008. The organization as such has thereafter ceased to exist since September, 2001 and Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam be not expected to invite prosecution and punishment under Sections 10 & 13 of the Act by continuing to represent themselves as office bearers or members of a banned organization. It is further claimed that while SIMI was in existence, it was known for doing philanthropic work and Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam having been office bearers and members of the organization are aggrieved party in that sense and are entitled to participate in these proceedings and object to confirmation of the ban by the Tribunal. Learned counsel also relies on the principles of natural justice to claim participation in these proceedings.

166. Mr. Ashok Agrwal also referred to the public notices issued at each of the places of the sitting of the Tribunal in different States on different dates to contend that the Tribunal invited public participation for or against the continuation of the ban on SIMI and if such public participation is being invited by calling upon the general public to appear and tender evidence, it cannot deny the right of the former office bearers, whether in the capacity as the “aggrieved persons”, or even in their capacity as “independent public witnesses” to participate in these proceedings and cross-examine the witnesses being produced by the Central Government in support of the Notification banning SIMI.

167. Learned counsel further submitted that the words used in the Act must be construed so as to support a construction which is purposive and which should meet the basic principles of natural justice and constitutionalism involved therein. He further submitted that the Tribunal should not adopt an interpretation of the Statute which would lead to absurdity of denying an opportunity to the affected parties to participate in these proceedings. It is submitted that a wider interpretation of the Statute is called for as it takes away the fundamental right of the respondents to form an association. Learned counsel referred to the judgments of the Hon’ble Supreme Court in *Indian Handicrafts Emporium & Ors. Vs. Union of India & Ors.* (2003) 7 SCC 589; *Tahsildar Singh & Anr. Vs. State of U.P.*, AIR 1959 SC 1012; *New India Assurance Company Ltd. Vs. Nusli Neville Wadia & Anr.*, (2008) 3 SCC 279; *S. Sundaram Pillai & Ors. Vs. V.R. Pattabiraman & Ors.* (1985) 1 SCC 591; *Oriental Insurance Co. Ltd. Vs. Hansrajhai V. Kodala & Ors.* (2001) 5 SCC 175; and *Harbhajan Singh Vs. Press Council of India & Ors.*, (2002) 3 SCC 722 to submit that the Tribunal should look at the scheme of the Act and liberally interpret the words used by the legislature to arrive at the decision on the issue of the *locus standi* of the respondents to participate in these proceedings.

168. The fact that ban on SIMI has continued since 27th September, 2001 is not disputed. It has ceased to exist and operate, on ground, is also not disputed, even though the Central Government claims that SIMI, as an organization, is continuing to exist and indulge in activities which are prejudicial to national integrity and a threat to the secular democratic setup of India. However, any person, with the intent to assist the Tribunal in forming a fair opinion in the matter of sufficiency of cause, especially when public participation is invited from all across the States where the activities of SIMI are stated to be continuing, does make out a case that Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam should be allowed to participate in these proceedings.

169. It cannot be disputed that the ban on any organization takes away from them their fundamental right to association as guaranteed by the Constitution. An Act is primarily an offshoot of the Constitution and is intended to fulfill, in letter and spirit, the purpose and vision of the Constitution. The legislature must legislate within the four-walls of the Constitution. It can never be the intent of the legislature, while banning an unlawful Association, to deprive its members, the basic right of representation against such ban. Such right of representation by the Association, office-bearers, members or any aggrieved person, even though it may not withstand any test of logic or reasoning, is a fundamental right of any democratic society governed by a constitutional government. Thus, even if the language of the Statute is flawed, the principles of natural justice and equity must enlighten the interpretation of the words used in the Statute. The words “Association”, “Office-bearers” and “members” appearing in Section 4(3) of the Act must, therefore, be liberally interpreted keeping in view the object and purpose of the Act, which cannot be anything other than to afford a fair opportunity to the aggrieved persons to contest the ban and the words of the Statute must be interpreted to include the office bearers and members of the Association at the time when the Association was banned for the first time and/or any aggrieved person. I also find substance in the argument advanced by the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam that an admission of their being the office bearers or members of a banned organization does expose them to the perils of prosecution under Section 10 & 13 of the Act and, therefore, while deciding the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam, Tribunal has to be conscious of the possible impact of such admissions. Even otherwise, principles of natural justice in an enquiry of this nature must get precedence over legal technicalities.

170. Accordingly, in view of the aforesaid discussion, the objection raised on behalf of the Central Government to the locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam, to participate in these proceedings and cross-examine the witnesses being examined by the Central Government in support of the Notification banning SIMI, is rejected and it is held that Mr. Humam Ahmed Siddiqui and Mr. Misbah-UI-Islam are entitled to participate in these proceedings and cross-examine the witnesses produced by the Central Government, not only in their capacity as former members of SIMI but also as individuals aggrieved by the notification banning SIMI.

Claims of Privilege by the Central Government

171. During the course of recording of evidence of the witnesses, a witness each from the States of Kerala, Andhra Pradesh, Bihar, Tamil Nadu and Maharashtra handed over to the Tribunal a set of documents each in sealed envelopes, claiming their contents to be confidential and, thus, claiming privilege on disclosure of these documents to the respondents on the ground of public interest in terms of proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968.

172. Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam objected to the said claim of privilege as also the manner of claiming privilege by the Central Government in respect of documents submitted to the Tribunal at different places during its sittings in different States in sealed envelopes. It was contended that non-disclosure of the contents of the envelope to Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam severely prejudice their right to resist the ban on SIMI and also their right to object to the contents of the sealed envelopes. It is submitted that such non-disclosure jeopardizes their right of representation against the contents of the sealed envelopes being submitted by the senior officers from the State Governments during the recording of their evidence. He, thus, submits that all such evidence brought before the Tribunal in sealed envelopes is liable to be discarded and ignored altogether while examining the sufficiency of evidence before the government while banning SIMI organization. It is also submitted that non-disclosure of the documents and information placed before the Tribunal in sealed cover is violative of the principles of natural justice and impinges upon their right to defend the SIMI organization. It is contended that the ground of 'public interest' espoused by the Central Government to deny disclosure of information to the intervenors affects their right to effectively resist the ban on SIMI. It is further submitted that the Supreme Court in its various pronouncements have categorically laid down the process and manner of claiming privilege and each such claim must be clearly explained on affidavit indicating the nature of a document and the reasons for seeking privilege and non-disclosure of the document to the other side. He submits that the Central Government must follow the said process in *letter and spirit* and must file an affidavit detailing the grounds on which privilege is sought in respect of each document with respect to which privilege is claimed before this Tribunal.

173. Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam referred to Section 123 of the Indian Evidence Act, 1872 to contend that the mode prescribed in the said section must be followed to support their plea of claiming privilege. He submitted that in terms of Section 123 of the Indian Evidence Act, 1872, no officer is authorized to give any evidence derived from unpublished official records relating to any affairs of the State, except with the permission of the officer at the Head of the Department concerned, who is authorized to give or withhold such permission as he thinks fit. It is contended that the envelopes submitted before the Tribunal by the senior offices of the State Government during the recording of evidence in different States, apparently, do not comply with the mandate of Section 123 of the Indian Evidence Act, 1872 and, thus, the Tribunal should discard all such material which has been placed before the Tribunal in sealed envelopes stated to be containing confidential documents.

174. In support of his contentions, learned counsel refer to the decision of the Supreme Court in *Sudhir Kumar Vs. State of Punjab (AIR 1961 SC 493)*; *R.K. Jain Vs. Union of India & Ors. (AIR 1993 SC 1769)* and *S.P. Gupta Vs. Union of India & Ors. (AIR 1982 SC 149)*. He repeatedly made a reference to the following observations made by the Hon'ble Supreme Court in *R.K. Jain's case (supra)*:

“..... It is now settled law that the initial claim for public interest immunity to produce unpublished official records (for short 'State documents') should be made through an affidavit generally by the Minister concerned, in his absence by the Secretary of the department or head of the department. In the latter case the court requires an affidavit of the Minister himself to be filed. The affidavit should indicate that the documents in question have been carefully read and considered and the deponent has been satisfied, supported by reasons or grounds valid and germane, as to why it is apprehended that public interest would be injured by disclosure of the document summoned or called for.....”

175. While referring to the judgment of the Hon'ble Supreme Court in *S.P. Gupta's case (supra)*, the learned counsel laid emphasis on the following observations:-

“Now obviously the weight of the likely injury to the cause of justice will vary according to the nature of the proceeding in which the disclosure is sought, the relevance of the document and the degree of likelihood that the document will be of importance in the litigation. The particular nature of the proceeding and the importance of the document in the determination of the issues arising in it are vital considerations to be taken into account in determining what are the relevant aspects of public interest which are to be weighed and what is the outcome of that weighing process. Perhaps the most striking example of the way in which the nature of the case will bear upon the judicial process of weighing aspects of public interest is afforded by the well recognized rule that where a document is necessary to support the defence of an accused person whose liberty is at stake in a criminal trial, it must be disclosed whatever be the nature of the document.”

176. Sub-Rule (2) of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968 (hereinafter referred to as 'Rules') obligates the Tribunal to not make such books of accounts or other 'documents' a part of the record of the proceedings before it, which are claimed by the Central Government to be of a confidential nature. The said Rule reads as under:-

3. Tribunal and District Judge to follow rules of evidence.—

(1) -----

[(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—

(a) make such books of account or other documents a part of the records of the proceedings before it; or

(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.]

177. Further, the 'proviso' to Rule 5 of the Rules, which provides for which documents should accompany a reference to the Tribunal, provides that the Central Government is not obliged to disclose any fact to the Tribunal which it considers is against 'public interest' to disclose. The said proviso to Rule 5 of the Rules read as under:

"Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose"

178. Learned ASG, relying on *S.P. Gupta's case* drew attention to the observations made by the Hon'ble Supreme Court in para 69 of the judgment where it has been observed that, "it does appear that cabinet papers, minutes of discussions of heads of departments, and high level documents relating to the inner working of the government machine or concerned with the farming of government policies belong to this class which in the public interest must be regarded as protected against disclosure." Learned ASG submits that the documents submitted before the Tribunal are high level documents relating to the inner working of the government machinery and also are concerned with framing of government policies and their non-disclosure to the respondents is in public interest.

179. Even though the aforesaid Rules empower the Government to claim the privilege of confidentiality of a document in public interest, however, any such claim of confidentiality or privilege by the Central Government cannot be accepted on its face value, which would be to the detriment to the contesting respondents. Every such claim has to be examined, as held in *S.P. Gupta's case*, on the test of character of the document and if on objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document which is identified on an act of balancing public interest against the interest of the individual, an office bearer or the association which has been banned. However, if the document fails the test of character as being confidential or if it emerges that its disclosure to the other side does not result in injury to 'public interest', certainly its disclosure cannot be denied to the contesting respondents.

180. To satisfy myself 'objectively' on the issue of 'public interest', claimed by the Central Government while claiming privilege in respect of certain documents, the Joint Secretary (Home) of the Central Government, who is an officer of a very senior rank in the government, was examined in camera in respect of each of the documents submitted in the sealed envelopes in the five States as well as by the Central Government. The said witness took me through all the documents explaining in detail the source and character of the documents and how its disclosure to the respondents would injure public interest and how the disclosure of these documents to the other side would jeopardize not only the interest and safety of certain individuals but would also expose the affairs of the State which cannot be permitted to be brought in public domain. I have objectively assessed each of the documents submitted in the sealed envelopes and also carefully considered the contents of the documents, the statement and reasoning explained by the Joint Secretary (Home) during her examination in camera and I am convinced that the documents submitted by the witnesses in sealed envelopes are sensitive and of such a character that their disclosure will injure public interest and therefore, the same cannot be disclosed to the respondents.

181. Since a senior office of the Central Government has been examined in-camera on the contents of each of the documents submitted in sealed envelopes, the requirements of Section 123 of the Indian Evidence Act, 1872 also get substantially complied with even though the said section is not applicable *stricto sensu* to these proceedings. Accordingly, the contention raised by the respondents on the issue of claim of privilege by the Central Government is rejected.

Confessional Statements before Police Authorities

182. The next issue raised by Mr. Ashok Agrwaal, learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, that the cases which have been cited by the Central Government as, *inter alia*, the basis for the ban on SIMI are primarily based on statements recorded under Section 161 of Cr.P.C. by the police authorities or the so-called confessional statements recorded while the accused were in police custody. He submits that these statements may be in relation to crimes committed by individuals but they cannot be read so as to form the basis for banning SIMI. It is submitted that the so-called confessional statements are inadmissible under Section 25 of the Evidence Act and, hence, they cannot be used to form the foundation for banning SIMI. Relying on ***Emperor Vs. Harisingh Ganpat Singh, 1910 Bombay Law Reporter (Vol. XII) 899***, learned counsel argued that a confession that is inadmissible against the maker is “a fortiori” inadmissible against another person who is implicated by it and behind whose back it was made. Learned counsel then referred to sub-rule (1) of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968 to contend that the Tribunal is obliged to follow, “as far as practicable”, the rules of evidence laid down in the Indian Evidence Act, 1872. The said rule reads as under:-

3. Tribunal and District Judge to follow rules of evidence – (1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).”

.....

183. Mr. Ashok Agrwaal, learned counsel argued that the use of the term “as far as practicable” as noted above, should not be interpreted so as to restrict, in any manner, its applicability to these proceedings. He submits that Rules of Evidence contained in the Indian Evidence Act have to be strictly followed, except with respect to confidential material.

184. Learned counsel then referred to Section 25 of the Indian Evidence Act to submit that the said section makes a confessional statement made by an accused before a police office, while in his custody, inadmissible whereas in the present proceedings the Central Government is seeking to use such confessional statements to ban the respondent organization. Relying on ***Khatri Vs. State of Bihar, (1981) 2 SCC 493***, he submitted that statements made under Section 161/162 Cr.P.C. may be admissible in a subsequent/ other proceedings such as the present proceedings before this Tribunal, “provided that it is otherwise relevant under the Indian Evidence Act”. Learned counsel also referred the judgment of the Hon’ble Supreme Court delivered in the case of ***Vinay D. Nagar Vs. State of Rajasthan, (2009) 5 SCC 597***, to submit that mere lifting of the bar imposed by Section 162 Cr.P.C. is not by itself sufficient to make a statement recorded by the police admissible evidence. Such a statement can be admitted in evidence only by virtue of any of the provisions contained in the Indian Evidence Act. It is argued that confessions and other statements to the police under Section 161/162 Cr.P.C. will not become admissible unless they show the provision of the Evidence Act under which these statements are admissible.

185. Learned ASG, on the other hand, argued that confessional statements recorded by the police under Section 161 Cr.P.C. are admissible, even against third parties so long as they are not sought to be used in the “inquiry or trial in respect of any offence under investigation at the time when such statement was made”. Relying on ***Mahanta Singh Natha Singh Vs. Het Ram Pakhar, AIR 1954 Punjab 27***, the learned ASG submitted that Section 25 does not forbid the use of a statement made by a thief or a robber in a case in which the thief or robber is not being tried for having committed the robbery or an allied offence. Learned ASG laid emphasis on the following observations in the said case:-

“Section 25 merely forbids the use of a confession made to a police officer in a trial of the accused person for having committed an offence. This Section does not forbid the use of a statement made by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like.”

186. Learned ASG also referred to the judgment in ***Suman Vs. State of Tamil Nadu & Anr., AIR 1986 Madras 318***, in support of the aforesaid proposition. Learned ASG also submitted that the bar of Section 162 would not be attracted in respect of an offence other than which was under investigation at the time when such statement was made. In support of this argument, learned ASG relied on the observations made by the Hon’ble Supreme Court in Para 5 of Khatri’s case, which read as under:-

“.... It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but by the express terms of Section, this bar is applicable only where such statement is sought to be used ‘at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in course of an investigation under Chapter XII is sought to be used in any proceedings other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted.”

187. I have carefully gone through the judgments cited at the Bar. I have also been taken through the reports of the previous Tribunals on the subject.

188. The relevant Sections 25 & 26 of the Indian Evidence Act read as under:

25. Confessions to police officer not to be proved. – No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him - No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

189. The import of the aforesaid two sections is unambiguous. Confession made by an accused before police officers are inadmissible in evidence, which cannot be brought on record by prosecution “to obtain conviction”. So far as their applicability to the present proceedings is concerned, it is very obvious that these proceedings are not a trial “to obtain conviction” of any accused. Even otherwise, the Rules of Evidence as contained in the Indian Evidence Act are not stricto sensu applicable to these proceedings. Their applicability is confined by use of the term “as far as practicable”.

190. The term ‘as far as practicable’ in Rule 3(1) of the Rules has to be interpreted in the context of the purpose & object of the Act, which is to ‘prevent’ unlawful activities by imposing reasonable restrictions on freedom of speech & expression; right to assemble peacefully and without arms; and right to form association or unions. Thus, the object is preventive in character by restricting certain freedoms, which are otherwise available to individuals and associations. The process of restricting of certain freedoms will entail a restrictive interpretation of concerned Acts and Statutes, which regulate such freedoms. Thus, when the Legislature used the terms ‘as far as practicable’ in sub-rule (1) of Rule 3 of the Rules, the intent cannot be read of widening the scope of applicability of the Indian Evidence Act. It can only be interpreted to mean restrictive applicability of the Indian Evidence Act.

191. Furthermore, under Section 25 of the Evidence Act, the restriction is limited to the use of the confessional statement by the prosecution to obtain conviction. As noted above, the proceedings before the Tribunal are not in the nature of a trial of any accused to secure conviction. Even the Hon’ble Supreme Court in *Jamaat-e-Islami Hind (supra)* has observed, in para 22, that the materials need not be confined only to legal evidences in the strict sense. The confessions recorded under Sections 161 and 164 of Cr.P.C. may not stand the test of a judicial scrutiny and may ultimately result in the acquittal of the accused but so far as their relevance for the purposes of reliance by the Tribunal or the Central Government at the time of imposing the ban, they are important indicators of the activities and cadres of the banned organization and, thus, cannot be ignored or brushed aside.

192. Accordingly, in view of the discussion above, the plea for discarding or disregarding the evidence adduced by way of confessional statements recorded under Section 161 Cr.P.C. by the police officer while the accused were in police custody, is rejected.

193. Now I will consider the evidence which has been produced by the Central Government. During the period from 3rd February, 2012 till the issue of the Notification dated 1st February, 2014 banning SIMI, eighteen fresh cases have been registered in different parts of the country against members of SIMI, who are stated to be continuing their anti-national activities despite the continuous ban since 27th September, 2001. Four new cases are registered in the State of Andhra Pradesh; one case in Chhatisgarh; two cases in Gujarat; two cases in Kerala; three cases in Madhya Pradesh and five cases in Maharashtra. One fresh case has been registered by the NIA. During recording of the evidence in different states, senior police officers from the State Governments and the NIA deposed in respect of these cases. The said witnesses were examined by the learned counsel representing the respondents.

194. The Central Government in all examined 30 witnesses in support of the Notification dated 1st February, 2014 banning SIMI. All the witnesses who deposed before the Tribunal, as noted earlier, were cross-examined by the learned counsel representing Mr. Human Ahmed Siddiqui and Mr. Misbah-Ul-Islam. Even though the cases cited during the recording of evidence also pertained to the period prior to 3rd February, 2012, the Tribunal is considering, for the purposes of ascertaining ‘sufficient cause’, only those cases which are registered and intelligence inputs which pertained to the period after 3rd February, 2012.

195. It is pertinent to mention here that no evidence was adduced on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam despite opportunity.

196. PW-2, Mr. Moossa Vallikkadan, Inspector of Police, Nadakkavu, Kozhikode city, deposed in respect of two FIRs viz. FIR No. 533/2013 registered under Section 153(A) of IPC [Ex. PW-2/1] and FIR No. 697/2013 registered under Sections 153(A) & 153(B) of IPC [Ex. PW-2/2].

197. The witness in his affidavit has stated that a book “Dahvathum Jihadum” (which is a Malayalam translation of the book “Jahiliath Ke Khilaf Jung” written by Abdul Aleem Islahi, and translated by Usman Kadungoth) was published and exhibited at Thirurangadi Book Stall at Kozhikode for sale. The said book contained many sentences and ideas to

promote enmity and hatred between different religions and questioning the secular values of India as a Nation, besides other matters inciting hatred towards certain communities and thus capable of creating communal disharmony and enmity among the people. In this regard, on the basis of a communication dated 4.9.2013 received from DSP, SBCID, Kozhikode city, the SHO, Nadakkavu registered the FIR No. 533/2013 under Section 153(A) of IPC. There are four accused in the said FIR out of whom accused no. 3, P K. Abdurahiman was the former Ernakulam District President of SIMI.

198. During investigation, a search was conducted at Thirurangadi Book Stall on 05.09.2013 and at Nanma Book Stall on 07.09.2013, which resulted in seizure of 19 and 4 copies of the above book respectively. Further, the statement of accused PK Abdurahiman was also recorded in which the accused had disclosed in detail about his association with SIMI, organizational structure of SIMI and ideology and activities of SIMI. He also disclosed about his publishing activities and distribution of books to incite Jihad.

199. The case Crime No. 697/2013 was registered under Sections 153(A) and 153(B) of IPC on the basis of information that the publication and distribution of one book namely “Vazhiyadayalanganal” (English translation of the book “Mile Stone”) was causing enmity among the people and designed to break the communal harmony and integrity of the nation, and was selling at Vachanam Book Stall, Noor Complex, Mavoor Road, Kozhikode. Certified copy of relevant portion of the book “Vazhiyadayalanganal” is on record and exhibited as Ex. PW-2/4. In his affidavit, the witness has stated that this book contains imputations and assertions promoting disharmony and feeling of enmity and hatred between different communities and different religions and questioning the secular values of India as a Nation. There are three accused in the said FIR out of which accused no. 2 PK Abdurahiman, who is also one of the accused in FIR No. 533/2013 is a former District President of SIMI.

200. During his cross-examination the said witness stated that it is noted in the case diary that accused no. 2 & 3 in this case are members of SIMI. The witness denied the suggestions that the said two cases produced by him before the Tribunal have nothing to do with SIMI or do not show the activities undertaken by or on behalf of SIMI.

201. PW-12, Mr. B. Koteswar Rao, Inspector of Police, Special Investigation Team, Hyderabad City, Andhra Pradesh has deposed in respect of four FIRs viz. FIR No. 126/2012 registered at PS Saidabad under Sections 147, 148, 324, 153A and 149 IPC; 128/2012 registered at PS Saidabad under Sections 147, 148, 324, 427, 153A and 149 IPC, 130/2012 registered at PS Saidabad under Sections 147, 148, 427, 153A and 149 IPC and 133/2012 registered at PS Saidabad under Sections 147, 148, 435, 153A and 149 of IPC and Section 7(1) of CrI. Law Amendment Act.

202. FIR 126/2012 was registered pursuant to a complaint lodged by Sh. Mahesh Reddy at Saidabad Police Station that on 08.04.2012 when he and his brother were proceeding to Saidabad on their motorcycle, they were beaten up by some unknown persons indulging in sloganeering and rioting. FIR 128/2012 was registered pursuant to a complaint lodged by Sh. Bangari Prakash, Corporator, BJP, Mahidipatnam at Saidabad Police Station that on 08.04.2012 when he along with others were going to Madannapet to bring confidence among the people of the locality after Hanuman temple was maligned by some miscreants, 40 – 50 local people attacked them with lethal weapons and started pelting stones at Saidabad ACP office.

203. FIR 130/2012 was registered pursuant to a complaint lodged by Sh. Srinivas Reddy, at Saidabad Police Station that on 09.04.2012 when he along with his wife was going to hospital in his car, some unknown culprits pelted stones on his car in Saidabad colony, due to which the front glass, back glass and right side glass of the car were broken. FIR 133/2012 was registered pursuant to a complaint lodged by Sh. D. Rahul Singh, that on 08.04.2012 he along with his wife was coming from Balanagar on his motor cycle and when they reached near ACP Office, Malkpet, about 50-100 members started pelting stones towards them due to which he received injury on his back.

204. Investigation of the all the aforesaid cases were transferred to SIT on 13.04.2012. During the course of investigation seventeen persons were identified who indulged in rioting and were arrayed as accused 1 to 17. After completion of investigation, charge sheets were filed against the accused in the court of XIV Addl. Chief Metropolitan Magistrate, Nampally, Hyderabad. Investigation of the said cases revealed that a mob of over 100 persons had formed an unlawful assembly on the main road near ACP Office, Malakpet, Saidabad purportedly to protest against the incident of some Hindu youth attacking pushcart vendors belonging to Muslim community. The purported attack on the pushcart vendors was in protest against the alleged defiling, by throwing of cow-flesh, in Hanuman Temple, Kurmaguda, Madannapet. The alleged defiling of the Hanuman Temple was aimed at creating communal tensions between the two communities. The witness has further said that his investigation further revealed that SIMI activists actively participated in the above noted incidents and provoked the mob to commit unlawful activities and rioting. They are acting like sleeper cells and helping to create communal disturbances and causing breach of peace in the society.

205. In his cross-examination the witness denied the suggestion that he had produced these four cases before the Tribunal to malafidely and falsely supports the ban on SIMI.

206. PW-15, Mr. Harpalsinh Ajitsinh Rathod, Police Inspector, Crime Branch, Ahmedabad City, Gujarat deposed in respect of FIR No. (CR No.) 24/2013 (Ex.PW-15/2) registered at PS-Ranip under Sections 130, 224, 120(b) of IPC and under Sections 42 and 45 of the Prisons Act.

207. The witness in his affidavit has stated that the accused persons in FIR no. 24/2013 hatched a conspiracy with each other and tried to escape from the prison by digging a tunnel. On 10.02.2013, the accused persons were caught red handed while digging the tunnel and accordingly FIR No. 24/2013 was registered. During the course of investigation it was revealed that accused No. 1, Hafiz Hussain @ Adnam Jaid Tajuddin Gaus Mohit Dul Mulla, who was lodged in barrack No. 4/2 of Chhotachakkar of the jail premises procured some books from the jail library and after thorough study of these books he hatched a conspiracy with the other co-accused to escape from the prison and regroup. It was further revealed that all the accused persons also procured prohibited items like haxo blade, screw driver, compass, level pipe etc. The accused persons started digging tunnel from barrack no. 4/2 wherein there was a water tank between the toilet and bathroom outside the barrack and no guard or other jail officials would be able to notice their movement. The accused persons were successful in digging a tunnel which was 16.5 feet deep and 213 feet long. The end of the tunnel was stretched out of the jail premises. Initially 14 persons were arrayed as accused, however, during investigation involvement of further 10 accused persons came to light. The charge sheet was filed against all the 24 accused persons before the competent court.

208. The witness in his affidavit has further stated that the accused persons in FIR No. 24/2013 are also the accused in the offence bearing CR No. 236/2008 registered at PS-Shahibaug under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967, and which is commonly called as the serial bomb blast case wherein the city of Ahmedabad and Surat were subject to bomb blasts on 26th July, 2008. The investigation of the serial bomb blast case revealed that all the accused persons in CR No. 236/2008 are members of SIMI and SIMI's new form Indian Mujahiddin.

209. In his cross-examination the witness denied the suggestion that the jail break attempt case has nothing to do with SIMI and stated that it is incorrect for the reason that the accused persons mentioned in FIR No. 24/2013, who are members of SIMI, hatched a conspiracy and acted in furtherance of the said conspiracy to escape from the prison and regroup. It is thus clear that despite ban, SIMI members are still active and are still indulging in subversive anti-national activities aimed at destroying the unity and sovereignty of India. In response to the Tribunal's question, which are the documents, which form the basis of the aforesaid statement, the witness replied that the accused persons have made confessional statements during investigation in police custody and disclosed the aforesaid facts. The witness denied the suggestion that he had no basis for saying that the SIMI members are still active and is still indulging in subversive and anti-national activities. He further denied the suggestion that there is nothing in his investigation to show that the accused tried to break out of prison in furtherance of the activities of SIMI or in order to carry on the activities for SIMI.

210. PW-16, Mr. Anirudha Shyamsunder Nandedkar, Dy.S.P., CID (Crime), Aurangabad Unit, Maharashtra deposed in respect of FIR No.25/2012 (Ex.PW-16/1) registered at PS-Begampura, Aurangabad City under Sections 307, 333, 335, 336, 338, 352, 353 and 34 of IPC and Sections 3, 25 and 27 of Indian Arms Act.

211. The witness in his affidavit has stated that on 26.03.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information received by their informant that one person namely Abrar @ Ismail, who was absconding accused in 2008 Ahmedabad case and an active hardcore member of Indian Mujahiddin and SIMI, was coming to meet his accomplices at about 12:00 noon at Aurangabad. Accordingly, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation firing two persons namely Abrar @ Ismail and Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police head constable was also injured due to firing by accused. After incident of firing, local police was informed immediately and FIR No. 25/2012 was registered. During interrogation of the accused Abrar @ Ismail and Shakir @ Khalil Khilji, it was disclosed that they and other members of SIMI namely Abu Fazal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, Madhya Pradesh in the year 2006. In the said meeting they urged the members to carry on jehad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. Abrar also disclosed that in the year 2011, he committed dacoities in Gujarat and Madhya Pradesh to generate funds for Jihad and had also planned to loot trucks of copper scrap for the said purpose.

212. During investigation it was further revealed that one more accused namely Anwar Hussain was also involved in the crime. He assisted the other accused persons by driving them from Indore to Aurangabad on the date of incident. His statement was also recorded by the witness. He revealed that he is a member of SIMI. Investigation further revealed that one Jafar Hussain had assisted the accused persons by providing the SIM card at the time of incident. He also revealed that he is a member of SIMI and took part in various activities. He further disclosed that even after the imposition of ban on SIMI, he continued to recruit members and took meetings at the house of Akil Khilji. A copy each of the statement of Abrar @ Ismail, Anwar Hussain and Jafar Hussain along with English translation has been placed on record and exhibited as Ex. PW-16/2, PW-16/4 and PW-16/6 respectively.

213. In his cross-examination the witness in response to the question whether he verified the alleged membership of SIMI of the accused from any independent documentary source other than the statement under Section 161 Cr.P.C., has replied that there is a case pending against Khalil Khilji in PS-Khandwa, Madhya Pradesh under Section 153 IPC, Sections 3, 10, & 13 of Unlawful Activities (Prevention) Act and Sections 25 and 27 of the Arms Act. He further replied that for the other accused, he is solely relying upon the confessional statements of the accused persons to assert that they are members of SIMI.

214. PW-17, Mr. Manish Khatri, Superintendent of Police, ATS Indore, Madhya Pradesh deposed in respect of FIR No.22/2013 (Ex.PW-17/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307 and 34 of IPC and Sections 25 and 27 of Indian Arms Act.

215. The witness in his affidavit has stated that there were confidential reports that terrorists of SIMI namely Abu Faisal, Amjad, Aslam, Mehboob and Ajajuddin after escaping from Khandwa jail on October 1, 2013 would sneak into border districts of Madhya Pradesh and Maharashtra. On the basis of intelligence reports, separate teams of ATS and CTG (Counter Terrorism Group) arrived at Kharkiya rest house under Sendhwa police station of Barwani district on December 18, 2013. At around 2:15 am on 24.12.2013, when ATS personnel located three suspects and started chasing them, the suspects opened fire at ATS and CTG personnel on which CTG party fired back. After the police encounter, three SIMI activists/terrorists were caught namely Abu Faisal, Khalid and Irfan Nagori with three weapons country made 0.32 pistols, cash and fake ID's. In this regard, FIR was lodged with Sendhwa police station which was later transferred to STF/ATS for further investigation. The forensic report of handwash of aforesaid three accused found to have traces of Nitrate present implying the use of firearms by the three accused.

216. The witness has further stated that Abu Faizal in his voluntary statement described his organization's name as SIMI and that after escaping from Khandwa jail, he had stayed at the residence of Khalid, took money from him and chalked out plans for arranging arms and explosives and having used false identity in the name of Sushil and Ibrahim. He also described about targeting Narendra Modi, create blast at Muzaffarnagar, kidnap American citizens, targeting judges who gave judgment in Babri Masjid demolition, targeting owner of Diamond Comics and also targeting the then Home Minister, Sushil Kumar Shinde. Accused Irfan Nagori in his voluntary statement had disclosed that he met Khalid Muchale at Guddus place in Mahidpur who told him to bring bombs and weapons to Solapur. Sajid @ Guddu prepared the bag containing pistol and another bag containing Detonator, Gelatin and three bombs. They handed over the bag of pistols to Ismail and that of explosives to Khalid Muchale who gave it to Umer. He further stated that their main target was Narendra Modi. Accused Khalid Ahmed Muchale in his voluntary statement has stated that earlier in 2008 he was arrested along with SIMI members and awarded punishment of five years. He met Abu Faizal in Bhopal jail where he conspired with Abul Faizal to escape from Bhopal Jail and made arrangement of explosive material, pistol, cartridges etc. for Abu Faizal. He also informed about targeting Narendra Modi, Praveen Togadia and Sushil Kumar Shinde. Copies of statements of the three accused along with English translation are annexed with the affidavit of PW-17.

217. On the basis of information from the three accused, one SIMI activist namely Sadique was arrested by ATS on 24.12.2013. On the basis of information revealed by him, three computer processing units, printers, scanners, pen drives, hard disc, SD cards, foreign currency etc. were seized from his residence cum shop. The pen drives were found to have incriminating files stored including Al Quaida Mouth "Piece" Inspire, Forged ID's of accused Abu Faizal, AK 47 operational manual, training material about software programe, photographs of absconding and other SIMI activists etc. The computer files contained material glorifying and provoking suicide attacks, explaining ways and means to causing road accidents by blocking roads with trees, how to spread fire in forest, how to use capsule lens as bomb igniter, manufacturing process about Action Peroxide explosives etc.

218. Further interrogation of accused Sadiq led to arrest of Umer Dandoti who was found trying to flee carrying a bag containing three bombs each containing twelve Gelatin stick, three circuits of twelve detonator, thirty five Gelatin stick loose, two bundles of 24 and 48 detonators loose and one 9 mm pistol with 7 live rounds. Examination of the said material by forensic lab and bomb disposal squad revealed that explosive seized were high explosives. On information provided by Irfan Nagori, ATS arrested Adil, Aziz @ Aju, Wahid and Javed Nagori on 01.01.2014 and 800 gelatin rods, 12 primed gelatin rods, 54 detonators and pipe bomb were seized from their possession. In this regard a separate case in PS STF/ATS Bhopal No. 1/2014 under Sections 307, 34 of IPC and Sections 3 & 5 of Explosive Act was registered. The witness in his affidavit has further stated that during investigation it was established that accused being members of banned organization SIMI hatched criminal conspiracy and in order to realize their criminal conspiracy raised funds, collected arms and explosives, fixed targets, made fake identity cards, developed bombs through explosives and executed their plans with utmost confidentiality. Still others were helping the absconding SIMI terrorist by providing shelter, money etc.

219. In his cross-examination the witness has stated that after thorough investigation they found that SIMI activists collectively committed these crimes to generate money and for target killing and other illegal activities. He denied the suggestion that cases attributed to accused Abu Faisal vide paragraph 10 of his affidavit are on the basis of confessional statements recorded in police custody.

220. PW-18, Mr. Ajay Kaithwas, Dy. Superintendent of Police, ATS Indore, Madhya Pradesh deposed in respect of FIR No.1/2014 (Ex.PW-18/1) registered at PS-STF/ATS Bhopal, Madhya Pradesh under Sections 307, 34 of IPC, Sections 25 & 27 of Arms Act, Sections 3 & 5 of Explosive Substance Act and Section 13 of Unlawful Activities (Prevention) Act.

221. The witness in his affidavit has stated that on information provided by Irfan Nagori accused in CR No. 22/2013, raids were conducted on 01.01.2014 and accused Javed Nagori, Ajij @ Aju, Wahid, and Adil Nagori were arrested from Mahidpur and cache of ammunition were seized from the possession of the accused including one pipe bomb, one primed bomb, 800 super power Gelatin rods, 11 Primed Bomb, 540 live detonators, one 12 bore live cartridge. During investigation, it revealed that SIMI activists Khalid Ahmed, Abu Faisal, Irfan Nagori, Sadiq and Umer, who were accused and already been arrested in CR No. 22/2013, were also involved in the same case. Other accused/SIMI activists namely Abdul Majid and Sajid involved in the same crime surrendered before the CJM Court, Bhopal on 22.01.2014 & 30.01.2014 respectively.

222. He has stated that accused Abdul Majid in his voluntary statement has stated that he is an active member of SIMI. He also revealed information about manufacture and testing of bomb/s to eliminate targets. He also stated that he along with Sajid, Irfan Nagori, Khalid Ahmed went for testing of explosive near village Delchi Khurd, but in the meantime police patrolling party passed from nearby road, so they could not test the explosive and after hiding the bomb in one hollow pipe, they ran away from the spot. He has further stated about accused Sajid who in his voluntary statement has stated that he is an active member of SIMI and in spite of ban he was running the SIMI organization actively. He used to hold SIMI meeting in his room with absconder Saliq and accused Abu Faisal and Khalid Ahmed. The witness has stated that the accused Khalid Ahmed in his voluntary statement has stated that he himself, as also Abu Faisal are "Ameer" in SIMI organization; Adil Nagori is the "Ameer" of Ujjain; Javed and Sajid are the head of Mahidpur SIMI organization. He further stated that to take revenge of Gujarat and Muzzaffarnagar communal incident(s), he managed to brain wash other SIMI members, namely Wahid, Ajij, Majid, Sajid and Juber for the purpose of target killings in Sholapur, Maharashtra. He also convinced Irfan Nagori and Sajid Nagori to come to Solapur with arms and ammunition for this purpose.

223. PW-18, Mr. Ajay Kaithwas, DSP, ATS, Indore, Madhya Pradesh had also stated about accused Javed Nagori who in his voluntary statement has stated that he is an active member and head of SIMI organization in Mahidpur. He used to organize meetings of SIMI organization under his control and direction. He collected funds to run the organization, and stored arms and ammunitions to achieve nefarious objectives of the SIMI organization. Further investigations revealed that accused Abdul Wahid and Abdul Aziz were found to be involved in continuous meetings with other co-accused persons for the purpose of SIMI activities and they were involved in providing transport facilities to accused Abu Faizal. The witness in his affidavit has stated that Investigation in the case and the video statement transcripts of each of the accused reveal that the activities of SIMI include hatching criminal conspiracy for plotting murders, including conspiracy to murder/assassinate judges and prominent politicians and ATS officers, carrying out bomb explosions at public places.

224. In his cross-examination the witness denied the suggestion that SIMI has no connection with the accused arrested in FIR Nos. 22/2013 and 1/2014. He also denied the suggestion that the only basis for saying that the accused arrested in FIR Nos. 22/2013 and 1/2014 connected with SIMI are the confessions made by the said accused to the police.

225. PW-19, Mr. Brijesh Bhargav, SHO, M.P. Nagar, District Bhopal, Madhya Pradesh deposed in respect of FIR No. 424/2014 registered at PS-Maharana Pratap Nagar, Bhopal, Madhya Pradesh under Sections 295A, 153B and 34 of IPC.

226. The witness in his affidavit has stated that on 17.05.2014, certain members of SIMI, being accused and under trial in some pending cases including accused in FIR No. 01/2014, was to be taken from Central Jail to District Court, Bhopal. These members of SIMI after being produced before the District Court, Bhopal started shouting anti-national slogans. English translation of the slogan is "*Taliban zindabad, Islam zindabad, Pakistan zindabad, Palestine se lekar Afghanistan tak hamara raj hoga, ab Modi ki bari hai*". Accordingly, FIR No. 424/2014 was registered. The witness in his affidavit has stated that the action of the accused SIMI members is demonstrative of the divisive nature of the ideology propagated by SIMI and its members. He further stated that the accused persons in FIR No. 1/2014 registered by ATS Bhopal, who were also part of the incident enumerated above, have revealed the existence of a very wide and active SIMI network not only in the State of Madhya Pradesh but also all over India.

227. In his cross-examination the witness admitted that no slogan was shouted about SIMI or in favour of SIMI on that date. In reply to another question during cross-examination as to whether he had verified from independent documentary source that the accused were members of SIMI, he replied that FIRs mentioned the accused as being members of SIMI, therefore, he had mentioned that they are members of SIMI. He denied the suggestion that the facts pertaining to SIMI stated by him are false and concocted.

228. PW-20, Mr. Abhishek Diwan, City Superintendent of Police, Khandwa, Madhya Pradesh has deposed in respect of three FIRs viz. FIR No. 541/2013, 542/2013 and 209/2013. He has stated that the accused persons namely Abu Faisal,

Ajajuddin, Guddu @ Mehboob, Aslam, Jakir, Amjad & Mirza Abid Beg made a hole in wall of toilet of ward No. 2 of District Jail, Khandwa and escaped by jumping across the safety wall. While they were fleeing and passing through Siddhapuram & Warco City near Bhandariya Road, they were stopped by a patrolling party, with which the accused persons had a scuffle. The constable/patrolling party was attacked by the accused persons with the intention of causing death which resulted in grievous injuries to Constable Lokesh Hirwea and Sainik Suresh Tiwari. Their government rifles were snatched and the accused persons fled in the motorcycle belonging to these constables. Accordingly, on the report of Constable Lokesh Hirwea, FIR No. 541/2013 was registered at PS-Kotwali Khandwa under Sections 395, 307, 353 & 332 of IPC. During primary investigations the details about the jailbreak emerged and FIR No. 542/2013 was also registered by PS-Kotwali under Section 224 of IPC. After further investigation, Sections 3, 10, 13 & 16 of Unlawful Activities (Prevention) Act and Sections 120(B) and 75 of IPC were also added in the said FIRs. The witness has further stated that from investigations of the cases, it is revealed that the accused persons in FIR No. 541/2013 & 542/2013 are the members of banned organization SIMI.

229. The witness in his affidavit has further stated that in April, 2006, an incident took place on the occasion of Mahavir Jayanti when a procession organized by some people from the Jain community was attacked by some miscreants who also indulged in vandalism. During the course of investigation, SIMI activists were found to be involved in this incident and accordingly FIR No. 236/2006 was registered at PS-Kotwali. During the course of trial, the concerned Magistrate passed an order dated 10.01.2013 directing that a separate case be registered against Mohd. Khalil in view of the complicity of the said accused in activities relating to SIMI. Accordingly, FIR No. 209/2013 was registered and Mohd. Khalil was arrested on 22.08.2013. On completion of investigation, Final Report was filed before the Chief Judicial Magistrate. The case is presently under trial.

230. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness admitted that the FIR No. 209/2013 does not mention the name SIMI and that the magazine Tehrik-e-Millat recovered from the accused was published by SIMI. However, he denied the suggestion that the magazine Tehrik-e-Millat has nothing to do with SIMI and that the said magazine was never published by SIMI.

231. PW-22, Mr. Bhagwan Gopaji Yashod, Commandant SRPF, Group XIII, Nagpur, Maharashtra has deposed in respect of FIR No. 131/2012 (Ex. PW-22/1) registered by PS Nizampur Bhiwandi under Section 307 and 120(b) of IPC.

232. The witness in his affidavit has stated that on 03.08.2012, while the complainant Manoj Raicha was travelling by his car, with his armed police bodyguard Police Constable Acharekar, three shots were fired at him from a fire arm. One bullet grazed his right upper arm. Thereafter, the complainant lodged a complaint with the police about the threat to his life extended at the hands of accused Saquib Nachan on 6th July, 2011, on the basis of which, FIR No. 131/2012. It is stated that the motive behind the offence which is alleged against Saquib Abdul Hameed Nachan and his co-accused is to create a rift between Hindus and Muslims and to cause communal riots and with this motive only the said accused Saquib Abdul Hameed Nachan hatched the conspiracy to eliminate the first informant Sh. Manoj Raicha, Advocate, who is an active member of the Vishwa Hindu Parishad and Govansh Saurakshan Samiti. On 04.08.2012, supplementary statement of the complainant was recorded. It was stated in the supplementary statement that his police bodyguard Acharekar has seen one person running away from the lane by the side of Masjid after the incident, who was later identified as accused No. 2 Guddu @ Mohd. Hafeez Khan and that he had seen him prior to the incident at about 10:00 p.m. on red colour Pulser Motorcycle along with another person. During the investigation, the shirt of the complainant bearing blood stains and black spot of bullet were seized under seizure panch-nama.

233. He has further stated that accused No. 2 Guddu gave a memorandum statement leading to discovery of a country made pistol and 6 live cartridges from the house of absconding accused Abu Bakar. Further, a read colour Pulser Motorcycle was also recovered from the place near public toilet near a mosque. It is further stated that the accused No. 1 in his statement revealed that he has been a member of SIMI from the year 1982. He further revealed that Saquib Nachan still clandestinely continues to work for SIMI and still a strong sympathizer of the organization.

234. In his cross-examination by Mr. Ashok Agrwaal, Advocate on behalf of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam the witness has denied the suggestion that the seizure is fraudulent and the items stated to be recovered are fraudulent. He denied the suggestion that he had no basis for saying that the accused persons undertook any of the acts stated in his affidavit on behalf of SIMI or in furtherance of its objectives and volunteered that the accused have confessed to their acting on behalf of SIMI in their confessional statements made before the police.

235. PW-27, Mr. Vishal Garg, Addl. Superintendent of Police, NIA, New Delhi has deposed in respect of the three cases registered by NIA viz. 07/2013/NIA/DLI, 08/2013/NIA/DLI & 09/2013/NIA/DLI under Sections 153A, 324, 307, 427 & 452 of IPC, Sections 3 & 4 of Explosive Substances Act, Section 17 of Criminal Law Amendment Act and Sections 16, 18, 20 and 23 of Unlawful Activities (Prevention) Act, which are related to serial bomb blasts at Bodh Gaya, Bihar on 07.07.2013.

236. The witness has stated that with a view to terrorize the Indian citizens and international tourists, total thirteen bombs were planted at different places of Bodh Gaya including the main temple complex, out of which ten bombs were

exploded and three live bombs were recovered which were defused later on. The blast caused extensive damage to the secular image of the country. During the investigation, role of five planters of the bombs along with other key conspirators namely Haider @ Abdullah @ Salim Ansari @ Black Beauty, Mujibullah @ Mujib, Taufiq Ansari, Fariq (since dead), Imtiyaj, Numan, Umer Siddiqui and Azharuddin Qureshi had emerged. The witness has further stated that he personally interrogated the arrested accused persons who made disclosure about the activities of SIMI and the conspiracy hatched by SIMI members. The statements of accused Umer Siddiqui and Azharuddin Qureshi, recorded under Section 164 Cr.P.C. is enclosed with the affidavit. It is further stated that during the investigation of accused Ahmed Sidibappa @ Yasin Bhatkal (arrested by NIA in RC 06/2012), it was found that Yasin Bhatkal used to chat with IM Chief Riyaz Bhatkal (reportedly present in Pakistan) on internet, in which they also discussed about targeting Bodhgaya. The role of the SIMI members has also been mentioned in detail in the internet chat of Mohd. Ahmed Siddibappa @ Yasin Bhatkal and Riyaz Bhatkal.

237. The witness has further stated that the statement of several witnesses/accused were recorded under Sections 161 Cr.P.C. and also under Section 164 Cr.P.C. which further established the activities of SIMI in Ranchi/Raipur and their intention to terrorize the people of India and that SIMI operatives contacted several local persons at Raipur and Ranchi to obtain their assistance, support and providing infrastructural support for operations to carry out attack at religious place Bodh Gaya to avenge the alleged atrocities on Rohngiyas Muslims in Myanmar. The investigation also revealed that Umer Siddiqui was one of the principal conspirator in the conspiracy of SIMI and had personally motivated several persons including Haider Ali, Azharuddin and other activists on religious lines to wage war against other communities in India. It was also revealed that in pursuance of the conspiracy, the Indian Mujahiddin accused Asadullah Akhtar made efforts to some SIMI operatives out of India, for further sending them to Pakistan to get trained in terrorist activities, which clearly establishes that the SIMI has been continuously receiving assistance by the IM operatives based at Pakistan.

238. In his cross-examination by Mr. Ashok Agrwaal, the witness (PW-27) in reply to the question that the Magistrate has not put any question to the accused persons (Umer Siddiqui and Azharuddin Qureshi) to ascertain whether the confession was made voluntary, he stated that no question was put as to the voluntariness of the statement of the accused under Section 164 Cr.P.C. but volunteered that the Magistrate has given certificate under Section 164(4) Cr.P.C. and it is also noted that he has explained to both the accused persons that they are not bound to make a confession and if they do so that may be used as evidence against them.

239. PW-28, Mr. Vikas Vaibhav, Superintendent of Police, NIA, New Delhi has deposed in respect of the case No. RC 06/2012/NIA/DLI registered under Sections 120B, 121A and 122 of IPC and Sections 17, 18, 18-B and 20 of Unlawful Activities (Prevention) Act, which relates to an ongoing criminal conspiracy by the operatives of the Indian Mujahiddin, a terrorist organization, to commit terrorist acts by attacking various public places in India.

240. The witness has stated that on 29.08.2013, on reliable source information, two of the accused persons named in the FIR and who were terrorists of Indian Mujahiddin i.e Mohd. Siddibappa @ Yasin Bhatkal and Asadullah Akhtar @ Haddi were arrested at India-Nepal border town. During subsequent investigation, the role of some SIMI operatives including Manzer Imam, Ozair Ahmed and Haider Ali @ Abdullah was established as having sheltered and actually assisted the IM operatives including Tahseen Akhtar @ Monu, for the commission of terrorist acts. The statements of several witnesses were recorded under Sections 161 and 164 of Cr.P.C. at Ranchi, which further established the activities of SIMI in Ranchi in furthering the terrorist conspiracy of the Indian Mujahiddin. Investigation of the case further revealed that in pursuance of the conspiracy, the IM operatives contacted several SIMI operatives in order to obtain their assistance at a national level. An option of providing infrastructural support for operations of the IM was suggested, and efforts were being made to contact senior SIMI operatives like Safdar Nagori.

241. The witness has further stated that during investigation it has been established that the Muslim Student Federation (MSF) was formed in the states of Jharkhand and Bihar only to serve as a frontal organization of SIMI and to organize and radicalize youth on religious fundamentalism. The activities of MSF/SIMI in Ranchi resulted in the radicalization of several individuals including Haider Ali and Ozair Ahmed, and provided the fertile ground for the furtherance of the conspiracy hatched by the IM operatives. He has further stated that during the examination of one Hedayatullah, it emerged that the accused Manzer Imam had indicated to him that the MSF or the SIMI had split into two groups – a small one consisting of 20-25 operatives which had ideologically joined the activities of the IM and the other which was still continuing with the earlier activities of SIMI. The witness has also stated that the e-mails exchanged amongst the co-conspirators reveal that there is an ongoing conspiracy to commit various terrorist acts in India and the threat to National security and the safety of its citizens and property from the operative of the SIMI persists.

242. In his cross-examination by Mr. Ashok Agrwaal, the witness (PW-28) admitted that the first charge sheet dated 17.07.2013 does not allege that any of the five accused were members of SIMI but volunteered that on receiving the information the matter was further investigated, and in the supplementary charge sheet there were specific allegations against the accused persons belonging to SIMI. In the supplementary charge sheet, two out of the four accused were found to be involved in the activities of SIMI. He denied the suggestion that the statements recorded under Section 164(4) Cr.P.C. of the witnesses were not voluntary and that these statements were coerced from the said witnesses by holding out various kinds of threats and inducements and further that these persons were told that if they do not depose as

they were told to do by the NIA, they would be implicated in false cases. In reply to the question about the results of the investigation so far, the witness has stated that they had already charge sheeted two accused persons namely Manzar Imam and Uzair Ahmed for their part in the conspiracy of the Indian Mujahiddin, who were earlier SIMI operatives and that another SIMI operative Haider Ali has also been arrested in the instant case. He further stated that total number of accused persons is 33 and at present 9 have already been charge sheeted. Earlier some of them were SIMI/IM operatives.

243. In reply to the Tribunal's question, whether as per investigation, it is established that SIMI is still existing and their activities are still going on, the witness answered in affirmative and stated that not only they are holding meetings and keeping contact with each other, but the decisions are taken only after consulting the senior operatives of SIMI. He further stated that Riyaz Bhatkal has mentioned in internet chat to Yasin Bhatkal that decisions can only be conveyed after consulting with seniors.

244. The witness has stated that MSF was formed after the first ban on SIMI in September, 2001. It was based in Ranchi and it had approximately 40-50 members in that area. In response to question whether any case has been registered against MSF, he answered in the negative but stated that cases are registered against members of SIMI and MSF is same as SIMI. Further, in reply to question whether MSF is a banned organization, he stated that since MSF is a frontal organization of SIMI, therefore, no separate order is required to ban MSF. However, he denied the suggestion that MSF has no connection with SIMI and never had any connection with it. He also denied the suggestion that he had no basis for ascertaining that MSF is a front organization of SIMI.

245. PW-29, Mr. Jyoti Narayan, DIG, NIA, New Delhi has deposed in respect of two FIRs viz. FIR No. 361/2013 of PS GRP Patna registered under Sections 307, 326, 121, 121(A), 120(B) & 34 IPC, Section 3 & 5 of Explosive Substances Act, Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act and Sections 151 & 153 of Railway Act, and FIR No. 451/2013 of PS Gandhi Maidan, Patna registered under Sections 324, 326, 307, 302, 120B, 121, 121A of IPC, Sections 3, 4 & 5 of Explosive Substances Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act.

246. The witness has stated that he is the Supervisory Officer of FIR No. 361/2013 and FIR No. 451/2013, which are related to the bomb blasts in Patna on 27.10.2013 in the rally of Sh. Narendra Modi. The cases were initially registered by the local police but subsequently the investigation of the said cases was transferred to NIA, which re-registered the cases as RC 10/13/NIA/DLI (Ex. PW-29/1) and RC 11/13/NIA/DLI (Ex. PW-29/2) in NIA PS New Delhi. He further stated that investigation of cases RC 10/13 and RC 11/13 shows the involvement of SIMI and its activists in illegal and anti-national activities in the State of Bihar, Jharkhand and Chattisgarh. During investigation, the involvement of 16 accused persons in both the cases came into light.

247. The witness has further stated that during further investigation, it is revealed that the accused Umer Siddique and Azharuddin are members of SIMI. In his confessional statement, Umer Siddique stated that he has been associated with SIMI since 1997 and even after the ban on SIMI, he continued to organize meetings and programmes of SIMI in Raipur. He also provided shelter to absconding accused in RC 10/13 & RC 11/13 in Raipur. Azharuddin in his confessional statement has stated that he has been associated with SIMI for last two years and knew Umer, who organizes programmes of SIMI in Raipur. The witness in his affidavit has further stated that Mohd. Faizan Latif, one of the witnesses in RC 10/13 & RC 11/13 in his statement under Section 161 Cr.P.C. has stated that Azhar had taken him to the meeting of SIMI in 2012 where Umer and Haider were saying about bringing Islamic government in India and for Jihad in India. They were asking to collect funds of Jihadis and for making bombs. It is also revealed that Azhar told him that he will explode bomb at public place and run to Afghanistan. Another witness Mujammil Shadab in his statement has stated that the accused Haider had taken him to a SIMI programme in Hazaribagh, where Haider asked them to be prepared for Jihad and to undergo Naxal arms training.

248. In his cross-examination by Mr. Ashok Agrawal, the witness (PW-29), in reply to the question whether the investigation revealed the connection of 16 accused persons with SIMI, stated that they had sufficient oral and documentary evidence and even laptop and digital evidence to show their connection with SIMI but denied to reveal the said information. Further, in reply to the question whether, as per investigation, he feels SIMI is still existing, the witness stated that they had sufficient evidence and that as per the independent witnesses, intercepts on calls, analysis of laptop and other evidence, CCTV clippings, it is clear that SIMI is still active. He further stated that not only they are active, they have their regular training sessions, collecting sufficient funds, arranging programmes, motivating people and creating modules all over the country.

249. PW-30, Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs, Government of India appeared and produced her affidavit Ex. PW-30/A. The witness has also placed before the Tribunal sealed envelope containing confidential intelligence information on the activities of the SIMI cadres. The witness has stated that as per the information received after 3rd February, 2012 from various intelligence agencies, National Investigation Agency and the State Governments, despite the ban, SIMI and its members have continued to carry on their unlawful activities under the garb of various names/banners/cover organizations. They have indulged in radicalizing and brainwashing the minds, and indoctrination of Muslim youth by jihadi propaganda and through provocative tagreers, CDs etc. She has further stated that SIMI has been carrying on its activities, including terrorist and organizational activities, undertaking clandestine training and raising funds through illegal means. SIMI has also been making efforts to establish links with terrorist

outfits, to expand its network and to carry out violent actions. She further stated that the object of SIMI, as per its own constitution, is contrary to the basic fabric of the Indian Constitution.

250. In her cross-examination by Mr. Ashok Agrwaal, the witness, in reply to the question whether the issue of reasonableness of the restrictions upon SIMI come up during the preparation of the Note before the Cabinet, the witness stated that all the factors were taken into account including the inputs received from the States and Intelligence Agencies. When the witness was asked to name the Central Agencies from which the inputs were received, the witness replied that they had their intelligence agencies apart from NIA. She denied the suggestion that the alleged States inputs have been manipulated to mislead the Cabinet as well as this Tribunal to illegally and unjustifiably support the ban on SIMI. When the witness was asked to point out which part of the SIMI's constitution is contrary to the basic fabric of the Indian Constitution, she replied that she was talking about the Oath of Allegiance for Ansar. She denied the suggestion that the allegation against the constitution of SIMI being contrary to the basic fabric of the Indian Constitution is not contained in any of the previous Notifications banning SIMI; and that the present ban on SIMI is arbitrary and unjustified and it is a result of non-application of mind.

251. The appreciation of the aforesaid evidence is only for the purpose of making an assessment of "sufficiency of material" as available to the Central Government when the Notification No. S.O. 299(E) dated 1st February, 2014 was issued and not whether the said material can withstand judicial scrutiny during a trial in a court of law. There may be defects, incoherency, contradictions and procedural irregularities during the recording of these statements, which may prove fatal during the trial when placed under the scanner of Indian Evidence Act, but for the purpose of these proceedings, they are material which can be relied upon to determine "sufficiency of cause" and would also constitute material which the agencies, responsible for enforcement of law and order, could not have ignored for recommending suitable action under the Unlawful Activities (Prevention) Act. A small single lead in a statement, whether recorded by the police or otherwise, can lead to unearthing of organized acts of crime and conspiracy and keeping in view the objects of the Act, such statements/information may become relevant for action under the Act.

252. Apart from the above oral evidence brought on record by the Central Government, the intelligence reports and other confidential material submitted by the State Governments and the Central Government, which has been explained in detail page by page by the Joint Secretary (Home) of the Central Government, leads to an inescapable conclusion that activists of SIMI are continuing to group as an association and indulging in activities which are detrimental to the secular fabric of our country and which are intended to disrupt the sovereignty and territorial integrity of India. A perusal of the documents placed before the Tribunal in sealed cover establishes that SIMI activists have been holding secret meetings, inducting new members, raising funds and liaising with like minded organizations like Popular Front of India and Hizb-Ut-Tahrir. Their activities are aimed at radicalizing Muslim youth and motivating them for Jihad. In the secret meetings of the members of SIMI cadres, the participants are exhorted to be ready for Jihad and to sacrifice their lives for their brothers. In one of the secret meetings held in Kerala, the members called upon Muslims to uphold the slogans "Allah is our God"; "Quran is our Constitution"; "Mohammad is our leader"; "Jihad is our way"; and "Shahadat is our desire". Such secret meetings with the known objectives of SIMI are shown to have been held in Maharashtra, Uttar Pradesh, Kerala, Madhya Pradesh, Gujarat, West Bengal and Delhi.

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

".....

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

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

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

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

I,

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

I have been instructed to do so and I am among those who surrender.

May Allah help me to keep these promises. (Amen)"

254. Any constitution which prescribes such an Oath of Allegiance to its members must be seen as in direct conflict with the democratic sovereign setup of India and should not be allowed to be perpetuated in our secular society.

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

256. From the foregoing discussion, it is evident that SIMI association and its activists are continuing to indulge in unlawful activities within the meaning of Section 2(1)(o) of the Act. The Central Government has sufficient credible material and grounds for taking action under sub-section (1) of Section 3 of the Act for declaring SIMI as an Unlawful Association. I, therefore, hold that there exists “sufficient cause” to confirm the Notification issued under sub-section (1) of Section 3 of the Act, declaring SIMI to be an ‘Unlawful Association’.

257. The reference is answered in the affirmative and the ban imposed vide Notification No. S.O.299(E) dated 1st February, 2014 declaring the Students Islamic Movement of India as an ‘unlawful association’ under Section 3(1) of the Act, is confirmed.

258. Before parting with the reference I would like to make the following three suggestions, which the Central Government may consider taking note of for future reference:

(I) Issuance of notice to the suspected SIMI members/activists:

259. This Tribunal issued notice for service on the office bearers and members of SIMI on 4th March, 2014. The Central Government was directed to effect service of the notice as provided under the Act and the Rules. As has been stated during the course of arguments and examination of witnesses, the Central Government passed on the notices to the concerned State Authorities for effecting the service in terms of the orders of the Tribunal dated 4th March, 2014. The concerned State Governments thereafter also filed their affidavits of service before the Registrar of the Tribunal.

260. After the affidavits of service had been filed by the concerned State Governments as also the Central Government, this Tribunal received a number of representations claiming that notices issued to them should not have been issued as they were neither members of SIMI nor were they involved in any of their activities and that no case had ever been registered against them. In fact, during the hearing at Udaipur in Rajasthan, Zahir Mohammad Pathan, Kalim Mohammad Kazi and Mohammad Yasin Ali Khan appeared in person and also filed affidavits stating that they had never been the members of SIMI organization, they had never been involved in any of their activities; and no case had ever been registered against them. They also submitted that the Tribunal may take any view on the issue of ban on SIMI. They submitted that despite the above, notices are served on them whenever a Tribunal is constituted. The matter was enquired into by the Tribunal and pursuant to the said enquiry, Mr.Raghavendra Suhasaa, Superintendent of Police, District Bhilwara, Rajasthan appeared and stated that issuance of notices to these individuals, who claimed to have no connection with SIMI organization or its activities, was on the basis of information received from the State Special Branch in the year 2010. He, however, confirmed that the said three individuals are not involved in any activity related to SIMI and no case is registered against these individuals. Based on the statement, the notices issued to these three persons were discharged.

261. It may be noticed that the State Authorities are issuing the notices to individuals in a very casual manner without any verification to confirm whether the person to whom the notices are being issued are even remotely connected to the organization. Such notices to innocent people uninvolved in any activity of the banned organization not only harm their reputation but also spread fear in the minds of the noticee and his family. The society in general starts looking at the noticee with suspicion. This is never the intent of the notice issued by the Tribunal.

262. Accordingly, it is suggested that henceforth the Central Government should ensure that the concerned State Governments after due verification, update their lists of activists of the banned organization and restrict issue of notices only to those individuals who are members or office bearers of the organization; people who are involved in the activities of the association; or the people against whom cases have been registered with regard to the affairs of the banned organization.

(II) Cases registered on Suspicion:

263. During the sitting of the Tribunal at Bhopal, Madhya Pradesh, pursuant to the notices published in the newspapers, Mr. Akhtar Sayeed Siddiqui son of Abdul Kalam Sahab, aged 79 years, resident of Bhopal appeared and stated on oath that people who have been arrested for SIMI activities or who otherwise indulge in unlawful activities, should not be left unpunished. However, those who are innocent, should not be implicated in false cases and should not be kept in custody for long and be released quickly. He further stated that by registering false cases against innocent Muslim youth, the atmosphere in the society is vitiated and the secular image of Muslims in the community is harmed

and the larger community starts looking at Muslims with suspicion as if they are all guilty of crime. He also stated that if at this stage the youth are implicated in false cases, it would be dangerous to the society as a whole in general and their families in particular.

264. Sh. Narendra Modi, the Prime Minister of India, while addressing the Parliament on 24.07.2014, mentioned that cases are pending for trial in different courts of the country against the Political Leaders. Some of them may be just to take political revenge, therefore, the Prime Minister made an appeal to all the concerned that cases against the Political Leaders may be disposed of within one year. He further mentioned that those who are found guilty should be lodged in jails and those who are innocent should sit in the Parliament or respective State Assemblies with pride.

265. In view of the above, I deem it appropriate to note that there may be cases registered against Muslim youth on mere suspicion of their involvement in unlawful activity. The Tribunal feels that all such cases where mere suspicion is the basis of registration of a case, the matter must be investigated very expeditiously to ensure that innocent people, only by reason of suspicion, are not made to suffer incarceration over long periods. Thus, the Central Government may consider constitution of a Special Tribunal to look into such cases and expedite their disposal at the earliest to ensure that only the guilty are punished and the innocent persons, who stands incarcerated only for reasons of suspicion, are released.

(III). Evidence by the Investigating Officers:

266. It was noticed during the recording of the evidence tendered by the States that instead of the concerned investigating officers, the senior level police officers deposed about the cases registered in their jurisdiction. The senior supervisory officers are normally not very intricately involved in the process of investigation, hence, they are unable to answer relevant details, even though minor, with respect to the investigation of the case. On the other hand, the concerned investigating officers, who actually investigate the cases on ground are very familiar with each aspect of investigation since the whole process of investigation is routed through their hands and these investigating officers are, therefore, more competent persons to depose in respect of the cases being investigated by them. Accordingly, it is suggested that wherever it is possible for the Government to depose through the concerned investigating officer, it would be appropriate to endeavour to do so.

267. Before parting, I would like to place on record my appreciation for the assistance rendered by Mr. Rajeeve Mehra, Sr. Advocate, initially as the Additional Solicitor General of India and later as a senior advocate. I also place on record my appreciation of the assistance rendered by Ms. Pinki Anand, Additional Solicitor General of India, Mr. Sachin Datta, Mr. Ravindra Agarwal, Mr. Rajesh Ranjan, Mr. Balendu Shekhar and Mr. Aditya Malhotra on behalf of the Central Government. I also place on record my appreciation of the assistance rendered by Mr. Ashok Agrwaal, throughout the conduct of the proceedings of the Tribunal in Delhi as also in the other states.

JUSTICE SURESH KAIT

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

JULY 30, 2014

[F.No.14017/12/2014-NI-III]

DR. R. K. MITRA Jt. Secy.