Also by JTSA

'Encounter' at Batla House: Unanswered Questions (2009)
The Case that never was: The 'SIMI' Trial of Jaipur (2012)
Framed, Damned, Acquitted: Dossiers of a Very Special Cell (2012)
Capital Punishment: An Agenda for Abolition (2013)
Mauje khoon ser se guzer hi kiyon na jay,  
Aastane yaar se uth jaein kya

Even if a wave of blood were to pass over my head  
It's not as if I would get up from the beloved's doors

-- Mirza Asadullah Khan 'Ghalib'

'Incriminating material' seized in 3036/2008 dated 1.4.2008 at  
PS Vijapur Naka, Solapur City (Maharashtra).
1. Part I: Introduction to UAPA Cases in Madhya Pradesh  
   
2. List of Cases in Madhya Pradesh  
   
3. Part II: The Khandwa Trial  
   
4. Excerpts from some significant Supreme Court Judgements  

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Part 1

Introduction

Our last two reports, *The Case that Wasn’t: SIMI Trial of Jaipur and Framed, Damned, Acquitted* focused on terror trials that ended in acquittals. Our attempt was to illustrate the manner in which the prevalent discourse on terrorism allowed and justified the ‘usual suspects’, namely Muslim youth, to be detained, arrested and incarcerated on charges of terrorism. Sometimes these arrests occurred after certain incidents, such as the Jaipur serial blasts of 2008, as recorded in our Jaipur trial report. But there were many occasions, where arrests did not follow from any particular incidents of violence. A large proportion of these cases pertain to “furthering the activities of an unlawful association”.

Passed in 1967, and amended repeatedly, in 1972, 2004, 2008, and yet again in 2012, the anti terror legislation, Unlawful Activities Prevention Act (UAPA), grants the Centre the power to declare an association as “unlawful” if it is seen as a threat or a potential threat to the country’s “sovereignty and integrity”, or is seen as promoting “enmity between different groups” or for “imputations prejudicial to national integration”. Needless to say these are all very vague and subjective criteria that are contingent upon on the ideological persuasions of the government of the day. Further, with terrorism defined very loosely in law – “any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people” – the UAPA provides a ready recipe for witch-hunting and targeting of people, groups, communities, seen as inimical to ‘national interest’, defined according to the political, ethnic or communal prejudices of the executive.¹

Though there is no all-India audit yet of UAPA cases, more and more evidence is

¹ For an excellent critical introduction to UAPA, see *The Terror of Law: UAPA and the Myth of National Security*; CRDO, 2012; available at www.pudr.org)
surfacing about the extensive abuse of anti-terror laws in targeting minorities, tribals, deprived sections as well as political activists. UAPA seems to be following the trajectory of earlier anti-terror laws such as POTA and TADA, which were documented to have been used extensively to target minorities (among others). Thousands, almost all of whom were Sikhs, were detained in Punjab during the TADA years, while the state of Gujarat invoked POTA against 280 people, 279 of who were Muslims. Under the UAPA, while tribals and political dissenters are all too often lumped together as Maoists, carrying on the activities of the banned CPI (Maoist), Muslims are easily labeled as members and activists of the Students’ Islamic Movement of India (SIMI), which was proscribed in September 2001.

Sections 3, 10, 13 of the UAPA are central to this relentless exercise of labeling associations and activities as ‘unlawful’, and criminalizing them.

**Section 3. Declaration of an association as unlawful:**

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

**Section 10. Penalty for being members of an unlawful association:**

Whoever is and continues to be a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of, any such unlawful association, or in any way assists the operations of any such unlawful association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

**Section 13. Punishment for unlawful activities:**

(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.
At the heart of the UAPA legislation are two issues: membership (of unlawful organizations) and conspiracy (of furthering the activities of the unlawful organization). Both, membership to an organization that no longer exists legally, and nebulous charges of furthering the activities of such an organization are notoriously difficult to pin down. In most cases, the only ‘proof’ that the investigating agency is able to demonstrate is to associate the accused to a proscribed organization and his or her participation in unlawful acts is inferred through the alleged recovery of banned and seditious literature from the custody of the accused. The Jaipur trial, for instance, was based on the recovery of ‘SIMI literature’, and little else. Naturally, when it was discovered in the court that the so-called SIMI literature predated the ban on the organization, the prosecution case fell apart and all of the accused were acquitted. In our subsequent report, *Framed, Damned, Acquitted* too, we showed how fragile the basis of many of these terror cases were, with the prosecution appealing more to the court’s sense of outrage against an amorphous terrorism or the actual heinous acts, rather than on a sound investigation, evidence or adherence to due process that would indeed convict the accused and prove that he was guilty of the acts. We showed how 16 such cases collapsed in the face of judicial scrutiny. In certain cases the judges themselves not only castigated the police for their inefficiency and indifference to due process but also for fabricating crucial evidence.

However, not all such trials, where the prosecution is unable to furnish any evidence against the accused, where there is clear indication of rampant violation of procedures such as the lack of independent witnesses and even proper sanction for prosecution under UAPA, and an over reliance on confessions/ disclosures/ memorandums or prejudices in investigation, end in acquittals. There are in fact a large number of cases where the courts ignore these gross violations of due process, and grant the prosecution the benefit of doubt that should be granted to the accused, thereby inverting the very principles of natural justice. Sometimes the repeated refrain of ‘war on terror’ in the mainstream media and security circles exerts undue pressure on the court’s sense of justice. Framed, damned and convicted is an undeniable reality of our times.

Even if only grudgingly, the mainstream discourse admits that people may be framed and implicated in false terror cases merely on grounds of their religious affiliation, and this seems reason enough to stereotype them as ‘terrorists’. Malegaon and Mecca Masjid blasts are two glaring instances that have cemented this realization. However, across the country, scores of UAPA cases have resulted
in the incarceration of hundreds of men, mostly on the basis of seized literature of an unlawful association and nothing else. Madhya Pradesh is one such story, which has passed unnoticed, undocumented.

**Madhya Pradesh: Patterns of Persecution**

It is remarkable that there have been no incidents of terror attacks in Madhya Pradesh for the last many years. In fact, the only incident of actual violence was a shootout in Teen Pulia area of Khandwa district on 28 November 2009, in which three people, including an ATS constable, Sitaram Batham died. The local police alleged that the motorcycle borne assailant was a member of the outlawed association, SIMI. Except for this solitary incident – and the veracity of the assailant’s link to SIMI or even whether this shootout was indicative of any terror activity rather than being an instance of ‘ordinary’ criminality, was not established – there have been no other incidents reported. For a state with such a history, the number of cases in which the accused were charged with furthering the activities of an unlawful association under UAPA is fairly high. Cases are registered against former SIMI members, their friends and acquaintances – and sometimes people with no links to either SIMI when it was a lawful association, or any of its former members – in police stations in Indore, Seoni, Khandwa, Bhopal, Burhanpur, Ujjain, Neemuch, Guna etc, practically the entire state. [See List of Cases for an extensive, though not exhaustive, list of cases registered under section 3, 10 and 13 of UAPA in Madhya Pradesh.]

None of them however, paradoxically, involves any instance of violent crime. Nonetheless, the invocation of the tough anti-terror law was widespread. In almost all the cases, the accused are alleged to have been pasting SIMI posters or possessing SIMI literature. It is noteworthy that many of the charged are identical. From reading the FIRs, one will get the feeling that SIMI activists suffered from a death wish. The allegations as recorded in the FIRs are that the accused were standing in public places and shouting slogans in favour of the banned organization SIMI and vowing to take forward the cause. They were carrying posters and pamphlets, as if waiting for the police to arrest them with proof of their guilt. In many cases, though the accused are said to have collected a number of people to address them about SIMI or jihad, the police is unable to arrest anyone else.

Not only are the crimes that they are accused of identical, but so also the set of accused and the dates and time of the crime identical. For example: FIR No. 537/00
and FIR No. 663/00 were registered in Police stations Talliya and Shahjanabad respectively on 22\textsuperscript{nd} October 2000 against the same set of accused: (1) Sorab Ahmed (2) Maulana Arsad Ilyas ahtesham (3) Abdul Razzaq (4) Mohd. Aleem (5) Muneer Uz Zama Deshmukh (6) Khalid Naim. The six were accused of pasting provocative posters. The six then appeared in many other FIRs filed in the two thanas in various combinations and permutations. (See FIRs under ‘Bhopal’ in List of Cases)

In other cases, it appears that old FIRs are brought out, the files dusted and the facts of the case simply copied on to a new FIR. The FIR No. 101/08 in which the accused Aman was screaming slogans in favour of SIMI at the Sarvate Bus station when the police apprehended him is an exact replica of FIR No. 251/01, a case registered the day after SIMI was banned (see below for the details of this case).

In some cases, the evidence of guilt is identical: for example, the same copy of a magazine has been produced in at least 4 different cases across the state. The same receipt of contribution to SIMI funds has been produced as evidence in two different cases. Both cases ended in conviction, despite clear indication of concocted evidence! (See Part II for more details)

Talking of incriminating material, clippings of \textit{Dainik Jagran} newspaper, which carried stories about SIMI – especially story about Safdar Nagori’s narco analysis – have been submitted as proof of ‘furthering of activities of an unlawful association’. Mere possession of news items pertaining to SIMI has been turned into incriminating evidence (For example, FIR No. 467/ 01, PS Kotwali, Khandwa). Perhaps the Madhya Pradesh police should explain if it was unlawful for the newspapers to publish reports of arrests of alleged SIMI activists; if it was unlawful to read those news items once published. How then could possession of these news clippings be construed as evidence of unlawful activity (even if you grant that these news clippings were actually in the possession of the accused)?

Then there is the domino effect. The Pithampur case of Dhar (FIR no. 120/2008), one of the most prominent SIMI cases of Madhya Pradesh is also significant in that it set off a chain reaction resulting in the registration of near identical cases across the state. Arrests of 13 leading SIMI activists were allegedly made on 27 March 2008. Immediately after the arrests, on 29 March 2008, the Senior Superintendent of Police, Dhar, shot off letters to various districts of Madhya Pradesh asking for registration of similar cases. These letters immediately set of a chain reaction, resulting in 18 cases within one month, and another four over next six months. This surely must have been a record of sorts! How can we be sure that it was the SSP’s letters that produced this result? Not only do some of these cases so registered make
an explicit reference to this letter (for example FIR No. 180/2008, PS Neemach Cantt., dated 08.04.2008), the Investigating officer of the case, B.P.S. Parihar, himself produced 18 of these letters in the SIMI UAPA tribunal in 2010.

Some of the accused arrested in the Peethumpur case – Safdar Nagori, Hafiz Hussain, Amil Parvez, Shivli, Kamruddin, Kamran and Ahmad Baig – were then implicated in different cases across the country, including in the Ahmedabad serial blasts case of 2008, despite the fact that they were in jail at that time. If they were involved in the conspiracy of the blasts, it is for the government to explain how they participated in the conspiracy whilst in jail. This is nonetheless the way in which UAPA works, almost by association.

It is impossible to see these large number of cases registered as divorced from the continuation of the ban on SIMI. These cases validate the extension of the ban; the ban legitimizes the witch-hunt in the name of combating the ‘terrorist organization’ creating a vicious circle. Under UAPA, the ban on an unlawful association is required to be reviewed every two years by a tribunal. SIMI Tribunals are headed by a judge of the Delhi High Court. Barring 2008 when Justice Geeta Mittal revoked the ban citing the scarcity of evidence and facts – as opposed to the plenitude of allegations – against the organization, every single tribunal (2002, 2004, 2006, 2010 and 2012) has continued the ban. The endless extension of the ban on SIMI and the large number of SIMI cases are intimately related to each other. The ban is extended citing the large number of ‘SIMI’ cases, and Muslim youth are arrested and charged for being members of SIMI on flimsy grounds. It is a tragic tautology that has played out for the past decade and more.

**Judicial Abdication:**

What is most disturbing, however, is the judicial abdication in allowing this witch-hunt by ignoring violation of procedural norms by the police, by lowering the burden of proof, by overlooking the fact the incriminating literature predates the ban on the organization, and by ignoring the obvious contradictions, to hand out conviction after conviction. The frivolous nature as well as the number of cases should have alerted the judiciary to the scale of frame-ups that the police was indulging in. And yet, the judiciary, which should have acted as a bulwark against this, is abdicating its responsibility.

The number of convictions handed out on very spurious grounds compounds the number of cases registered. Take for instance, State versus Irfan (FIR No. 251/01, PS Gwaltoli, Indore). The prosecution case was that, on the intervening night of 27-28
September 2001 (the day SIMI was banned) at 12.15, Irfan was pasting posters of the banned organization SIMI on pillar number 14 of the Sarvate bus stand (Indore). He was screaming that though the government had banned SIMI, he would continue to be its member. His antics attracted a crowd. He was arrested and charged with Section 10 of UAPA. The prosecution presented seven witnesses. Of these, three were police witnesses, including the Investigating officer; two were from the ministry of Home who confirmed the signatures of the authority who granted the sanction for prosecution under UAPA. The only two independent witnesses – Chandar and Rajesh – denied the police story totally. An expert witness testified that the Urdu literature seized contained nothing against the state or society, and in fact only consisted of veneration of God. It was also accepted by the prosecution that there was nothing against the state in the seized material.

The court convicted Irfan under section 10 of the UAPA, sentencing him to two years of imprisonment and Rs 500 as fine because the police witnesses has testified that they had seen the accused pasting SIMI posters and propagating the banned organization SIMI. Such is the basis of numerous convictions across the state: police witnesses, dubious seizures and little else. [See Part II for a detailed analysis of the conviction in a high profile UAPA case from Khandwa (FIR NO. 256/06)]

In the Pithampur case, the court overruled all objections of the defence, dismissing the lack of panchnamas, overlooking the missing signatures of policemen who recorded the disclosures, and details such as FIR number from the disclosure statements of the accused, rejecting the absence of site map of the farm house from where recoveries were made, as mere procedural lapses. On the other hand, it gave no credence to the delay between the alleged raid in a factory called Silver Oak in Pithampur, and the bakery in Indore, the fact that seizures had not been proved, the presence of the same witnesses throughout the operation which lasted over several days, the absence of local witnesses, and even non-intimation to the local thana in Indore by the raiding party, as perfectly natural and understandable.²

It turned down the argument put forth by the lawyer for two of the accused from

² By the time, charges were framed against the 17 arrested men, many of them including Saďar Nagori, Hafiz Hussain, Amil Parvez, Shivl, Kamruddin, Kamran and Ahmad Baig were lodged in Ahmedabad jail and accused Shaduli, Ansar, Munroze and Yasin in Bangalore jail. Despite repeated issuing of production warrants, they were not produced before the sessions court hearing the Pithampur case citing security concerns; neither was there facility for video conferencing. This made the progress of the trial impossible. Therefore, on 27th September 2010, the trial of the six remaining accused, namely, Khalid Ahmad, Balliuddin, Mukeemuddin, Shami, Shahzad and Nafsher, was separated and initiated. This is one problem that results from the osmotic nature of UAPA charges. The accused are often not produced in courts in other states thus hampering their trials.
whose farmhouse the recoveries had allegedly been made, that that there was no evidence to prove their culpability in any unlawful activity. True, said the court, nothing documentary has been placed before it to prove their guilt. “However, this does not have an adverse impact [for the prosecution’s case] because it is not usually possible to find such proof; one cannot in fact expect or desire formal proof.” The court then goes on to repeat the entire prosecution story over the next 3-4 pages.

The defence also argued that the printed material seized from the farmhouse was literature of a religious nature and therefore not banned. Therefore, no crime could arise from the mere possession of such literature. To this the court said:

“PW 24 BPS Parihar in his cross examination has refused the suggestion that this literature does not pertain to sedition but only to religion. This seems appropriate since there is Jihadi talk about seeking revenge and it also excites feelings against other community and class. It is a clear and pernicious articulation of the ideology of the banned terrorist organization, and as such may be deemed to be banned, whether or not a notification to that effect has been issued or not.”

Firstly, the court does not provide any details of this so-called combustible printed material, which had to potential to excite passions against a particular community or against the state. All it says is that “from the Hindi translation of the texts, it is clear that the following is written: SIMI members are ready to offer any sacrifices on the path of God”. It also quotes from another article on Babri Masjid. It similarly refers to lecture and articles in CD and pen drives with titles such as “Jihad in Islam” but does not explain in any length how precisely they may be inflammatory or seditious.

Secondly, it is not for the court to decide which material is banned or not, and apply its own yardstick to labeling literature as banned, and then use it to sustain the charges under UAPA. This is a clear case of overstepping, inference and misapplication of mind.

In Part II of this report, we provide a detailed analysis of the Khandwa Case (FIR number 256/06) to illustrate how there was a willful miscarriage of justice when the court abdicated its responsibility in overlooking the fabricated charges and even going to the extent of misinterpreting the law and legal requirements protocols while adjudicating the case.
List of Cases

List of UAPA cases registered in the state of Madhya Pradesh.

Based on affidavits of the Madhya Pradesh government placed before the UAPA SIMI tribunal of 2008 and 2010.

ALIRAJPUR

1. **FIR No. 159/08; P.S. M.G. Road; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967**

On 30 March 2008, a FIR was registered against Abdul Rajjak. During investigations, the accused is said to have stated that he had been a member of SIMI between 1995 and 1999, had become the president of Bhopal City in 2000, and thereafter president of Indore unit in 2001. (It should be noted that SIMI was a lawful organization during the said period).

On 30 March 2008, the accused was detained for allegedly making pro-SIMI slogans and indulging in “illegal activity”. At the time of arrest, two books were said to have been seized from his possession: on one book the seal of Student Islamic Movement of India, 52, Nayapura, Indore was endorsed and on the second book, Student Islamic Movement of India, Unit Indore, was written by pen.

BHOPAL

1. **FIR No. 537/00; P.S. Taliyya; u/s 153-A, 153-B, IPC**

On 22 October 2000, information was given by an unknown person on telephone that a poster published by SIMI had been pasted near Kulsum Bi’s Mosque gate Budhwara, which seemed to be “provoking feelings” (sic). Case was registered against six people: Sorab Ahmed, Maulana Arsad Ilyas Ahtesham, Abdul Razzaq, Mohd. Aleem, Muneer Uz Zama Deshmukh and Khalid Naim. The police claimed
to have found posters similar to the one pasted on the mosque from these people, more specifically 5 posters and 10 pamphlets were allegedly recovered from under the bed of Muneer Deshmukh. The posters and pamphlets were publicity material for a conference to be held in Indore on 10-12 November (2000). The police deemed the text of the poster to be offensive. This text was actually a verse from the Quran (Verse 35 of Surah Mohammad). Note, that the date of seizure is 25th October.

2. FIR No. 663/00; P.S. Shahjahanabad; u/s 153-A, 153-B, IPC

On 22 October 2000, Head Constable Raghuvir Singh Thakur of P.S. Shahjahanabad found a SIMI poster pasted on the gate of Murgi Wali Masjid, Murgi Bazaar, Shahjahanabad. According to the police, the language used in the poster as well as the picture thereon was anti-national and intended to disturb communal harmony. Similar posters and pamphlets were seized from the homes of the following: Sorab Ahmed, Maulana Arsad Ilyas Ahtesham, Abdul Razzaq, Mohd. Aleem, Muneer Uz Zama Deshmukh and Khalid Naim. The date of the seizure in this case is 23rd October. The description of the posters is identical to the ones seized in the above case.

These are the same set of accused as in the above-mentioned FIR. Also note that both these cases date to a period before the ban on SIMI! However, there is no explanation as to how two raids, launched within two days of each other, produced identical seizures! Even more interestingly, the chargesheet in these cases was filed in 2005, five years after the cases were first registered, and by which time SIMI had been banned.

In the PS Taliyya case, the accused were acquitted by first class judicial magistrate Rama Jayant Mittal on 10 July 2012.

During the trial in the PS Shahjahanabad case, one of the witnesses said that he did not recognize the accused; the second witness admitted that he was not sure whether the documents the police had made him sign were blank or filled up; the third pleaded total ignorance about the case. However, first class judicial magistrate Varsha Sharma sentenced Deshmukh and the others to three years of rigorous imprisonment on August 3, 2011, for creating "unpleasantness between Hindus and Muslim community" after eight years of trial.

3. FIR No. 295/01; P.S. Gautam Nagar; u/s 10, Unlawful Activities (Prevention) Act, 1967

On the basis of information received from an informer, P.S. Gautam Nagar
registered an FIR against Mohd. Tahir ID @ Athar on 5 October 2001. The police alleged that the accused had collected people in his house and was exhorting them to join SIMI. On interrogation, he is said to have admitted that he was a member of SIMI. The police claimed to have seized an identity card of the SIMI meeting held in the year 2000 (before the imposition of the ban) and seven pamphlets of 51st conference, which also predate the ban.

4. **FIR No. 461/01; P.S. Kamlanagar; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On information received by P.S. Kamlanagar on 30 September 2001, an FIR was registered against Abdul Hameed. The accused was alleged to be instigating the Muslim community against Government of India. A computer on which SIMI was apparently written was seized from the accused.

5. **FIR No. 482/01; P.S. Tallaiya; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On information allegedly received from an informer, P.S. Tallaiya, registered FIR against accused Mujeeb ur Rehman on 3 October 2001. The accused was, according to the police, instigating people regarding the ban on SIMI and, appealing for strengthening the organization.

6. **FIR No. 522/01; P.S. Aishbagh; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On the information received from an informer, a case was registered in P.S. Aishbagh against Hakim Khan. He was accused of defying the ban on SIMI and addressing the Muslim community of P.S. Aishbagh region and “provoking them for communal riots” (sic).

7. **FIR No. 531/01; P.S. Aishbagh; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On information received from an informer, FIR was registered against accused Mohd. Aleem in P.S. Aishbagh on 6 October 2001. Aleem was accused of provoking the Muslim Community against the ban on SIMI and the government of India in the area of Ahatha Sikander Kuli Khant, Bogdapul.

8. **FIR No. 574/01; P.S. Shahjahanabad; u/s 153-A, 153-B, IPC and Section 10, Unlawful Activities (Prevention) Act, 1967**

On the information of an informer, the P.S. Shahjahanabad on 27 September 2001, registered an FIR against accused Maulana Arshad Ilyas Ahtesham. The police
claimed that the accused was defying the ban on SIMI and was appealing to the Muslim community to unite in favour of Islam. He also allegedly “made a speech for provoking Jihad” with the following words “TAMAM DUNIYA SE DUSRE KHUDA KI HAKMIYAT MITA DE AUR KHUDA KE BANDO PAR KHUDA KE SIVA KISI KI HAKMIYAT NA RAHANDE DE”. He was also alleged to be distributing posters, “books for jihad/SIMI literature” and asking people to die for community.

9. FIR No. 626/01; P.S. Habibganj; u/s 153-B, 295-A, IPC

That on information received from an informer, P.S. Habibganj on 27 September 2001, registered FIR No. 626/01 u/s 153-B, 295-A of IPC against Muneer Uz Zama. During the search of his house, the police claim that his wife Nusrat produced documents, amongst which was a memorandum of two pages, which was allegedly written by Muneer Deshmukh.

On October 22, 2011, R P Sonkar, Additional CJM and special judge, Bhopal, threw out the charges under the UAPA but convicted Deshmukh and the others under Sections 153 B and 295 A of the IPC, holding them "guilty of committing acts detrimental to national integration and outraging the feelings of a religious group". This, even after the original seizure memo case diary had gone missing; when the bulk of evidence was illegible photocopies; when a key witness turned hostile. An appeal has been filed against the conviction.


10. FIR No. 641/01; P.S. Habibganj; u/s 10, Unlawful Activities (Prevention) Act, 1967

On information received from an informer on 5 October 2001, the P.S. Habibganj registered FIR against the accused Sohrab Ahmed for “provocating and instigating the Muslim Community” (sic). According to the police, he was arrested while speaking.

11. FIR No. 27/02; P.S. Habibganj; u/s 10, Unlawful Activities (Prevention) Act, 1967

SI M.A. Sayyed of P.S. Tallaiya arrested Mohd. Noor Deshmukh on 12 January 2002, in P.S. Habibganj. Deshmukh was accused of instigating the Muslim community and provoking them, and seeking financial help for the activities of the SIMI organization.
12. **FIR No. 584/03; P.S. Aishbagh; u/s 10, Unlawful Activities (Prevention) Act, 1967**

An FIR was registered against Mohd. Rais alias Bablu at P.S. Aishbagh on 4 November 2001, supposedly, on information received from an informer. Bablu was accused of instigating people and speaking out against the ban on SIMI.

13. **FIR No. 95/08; P.S. Kotwali; u/s 419, IPC and Sections 3,10,13 of Unlawful Activities (Prevention) Act 1967**

The police affidavit claims that on 19 April 2008, Virendra Mishra, the SDOP of Narshingarh informed P.S. Kotwali, Bhopal orally and in writing that Irfan and Safdar Nagori and Hafiz Husain were residing in the house of Aziz Ur Rehman@Aziz Miyan under fake name since the 2006 and that they are active members and office bearers of SIMI. On making a search of the house, it was found locked. The lock was broken and on searching the house Urdu literature including five Books of SIMI on which there were seals of Bhopal and Ujjain and other books were seized.

14. **FIR No. 205/08; P.S. Shahjahanabad; u/s 419, IPC**

On 20 April 2008, the SDOP of Narsingharh informed the TI of Shahjahanabad that SIMI activist Safdar Nagori who was arrested in P.S. Narsingharh got himself admitted in Jeevan Rekha Hospital for treatment of fracture in left hand, under the false name of Moin Khan (R/o Bhopal, Fatak Sehore). The police claimed to have verified this information from the Director of Jeevan Rekha Hospital. On the basis of which an FIR was registered in P.S. Shahjahanabad.

15. **FIR No. 302/2008; PS Misroad**

The accused was arrested at the Misroad railway station on 19 September 2008. The printed material which was allegedly seized from the accused included a copy each of the February 2004 edition of *Tehreek* magazine and the June 2004 edition of *Tehreek-e-Millat* and a SIMI receipt bearing no. 003359, allegedly dated 25.01.2006.

It may be mentioned here that the copy of *Tehreek-e-Millat* had the word “Rafiya” written on it, in the same hand writing as on the copy which was allegedly seized from Rafiya Khan in FIR No. 256/2006, Kotwali Khandwa on 16 April 2006. It should also be noted that *Tehreek* and *Tehreek-e-Millat* are not banned literature. Further, the receipt of SIMI was made out in the in the name of ‘Kumari Ashiya Khan’, which was allegedly seized from Asiya Khan in FIR 256/2006, Kotwali Khandwa on 16th April 2006. There can be no doubt that material was planted on the
accused. (See Part II)

16. **FIR No. 431/ 2010; P.S. Hanumanganj; u/s 16, 17, 18, 20, unlawful activates (prevention) act 1967. (Also known as the Mannapuram Gold Dacoity Case)**

It is the M.P. police’s case that the dacoity in Mannapuram Gold Finance Company on 23 August 2010 was committed by members of SIMI in furtherance of a concerted plan to commit Bank dacoities for the purpose of funding of SIMI activities. During investigations, Abu Faisal, Ikrar Shaikh, Azazuddin were arrested and taken on police remand. On 13 September 2011, the accused Abu Faisal, Mohammad Ikrar, Mohammad Azazuddin, allegedly admitted to having committed dacoity in Manappuram gold finance company on 23 August 2010.

**BURHANPUR**

1. **FIR No. 170/01; P.S. Ganapatinaka; u/s 153-A, IPC and Section 10, Unlawful Activities (Prevention) Act, 1967**

On 27 September 2001, S.A. Khan, the then station officer of P.S. Ganpatinaka, registered a criminal case and conducted an investigation. He arrested Tariq Mukti for allegedly promoting and carrying out unlawful activities prejudicial to the maintenance of communal harmony. The second accused, Mohd. Iliyas Khan went absconding since the date of registration of crime.

2. **FIR No. 269/01; P.S. Kotwali; u/s 153-A IPC and Section 10, Unlawful Activities (Prevention) Act, 1967**

On 27 September 2001, R.C. Pathak, the then station officer of P.S. Kotawali, registered a criminal case. During investigation he seized “incriminating documents” from the office of SIMI activists situated at Tana Gujarri Masjid, Anda Bazar, Burhanpur and arrested the following people for promoting and creating disharmony: Sarfaraz Ahmed, Khalil Ahmed, Mohd. Aarif Ansari, Mohd. Sarfaraz Khan, Dr. Rizwan Ahmed, Ehatesham Khan and Shafique Ahmed. Accused Mohd. Iliyas Khan is said to be absconding since the date of registration of the offence.

**DHAR**

1. **FIR No. 120/2008; P.S. Peethampur; u/s 122, 124-A, 153-A, IPC and Sections 3, 10, 13, Unlawful Activities (Prevention) Act, 1967**

See details of the case in Part I.
After the arrest of 13 alleged members of SIMI in FIR No. 120/2008, Peethumpur, Dhar, the S.P. District Dhar vide letters dated 29.03.2008, sent a district wise list of list of names based on the personal diaries, mobile phones, etc., of the accused in that case to the S.Ps of several districts of Madhya Pradesh, asking them to take action. This letter was then forwarded by the S.Ps to the SHOs in their own districts with an instruction to take action. It is on the basis of these instructions that action was initiated by the SHOs. Most of these cases were registered in March and April 2008.

GUNA

1. **Charged u/s 108, Cr.PC**

On 29 September 2001, SHO Chachoda, C.P.S. Tomar arrested four persons viz., Abdul Mubin, Ubed Khan, Abdul Sakil, and Fareed Ahmad in Chachoda town. The police accused them of being SIMI activists, “disseminating ill will” and “feelings of hatred towards the nation”, “inciting the feelings of people of their community and outraging religious sentiments of other communities”. The accused were produced before the Executive Magistrate Chachoda u/s 108 of Cr.PC, who was satisfied with the charges and bounded the accused with the security of Rupees Ten Thousand each.

2. **Charged u/s 108, Cr.PC**

On 3 October 2001, SHO Chachoda C.P.S. Tomar arrested two persons viz., Rahees Khan and Javed Khan. The police accused them of being SIMI activists, “disseminating ill will” and “feelings of hatred towards the nation”, “inciting the feelings of people of their community and outraging religious sentiments of other communities”. The accused were produced before the Executive Magistrate Chachoda u/s 108 of Cr.PC, who was satisfied with the charges and bounded the accused with the security of Rupees Ten Thousand each.

3. **Charged u/s 108, Cr.PC**

On 11 November 2001, C.P.S. Tomar, SHO of Chachoda arrested Abdul Fareed Khan. The police accused him of being a SIMI activist, “disseminating ill will” and “feelings of hatred towards the nation”, “inciting the feelings of people of their community and outraging religious sentiments of other communities”. The accused was produced before the Executive Magistrate Chachoda u/s 108 of Cr.PC, who was satisfied with the charges and bounded the accused with the security of
Rupees Ten Thousand each.

4. FIR No. 104/08; P.S. Chachoda; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967

On 7 April 2008, L.C. Shrivas, SHO of Chachoda, claimed to have received information by an informer that Rafeeq Maulana had arranged a secret meeting of members of SIMI organization at his house. On this information the TI, P.S. Chachoda and his staff raided the house of Rafeeq Maulana. According to the police, there were nine persons in the meeting, of which alleged SIMI members Ubed Shah, Abdul Mubeen, Fareed @ Bhau, Jaheer @ Mohhamed Jaheer, Abdul Kadir were said to have been arrested on the spot by the police whereas four apparently fled. Of those nine arrested, were five close neighbours of the Maulana From the arrested persons, the police claimed to have recovered cuttings of Hindi newspapers Nai Duniya and Dainik Jagran, identity cards and mobile phones. Later, a copy of a SIMI pamphlet was also claimed to have been found.

The trial court, vide its judgment dated 8 February 2010 convicted the accused under section 10 and 13 r/w section 3 of UAPA. The pamphlets seized proclaimed: “oppose attempt to ban SIMI”, thus being clearly pre 2001. The other document which was allegedly seized is an appeal for funds and a letter of introduction issued by a madrasa in Rajasthan. This madrasa is the Darul Uloom Rashidia of Mewat, a perfectly legal entity.

The judgment notes that both the panch witnesses turned hostile during the trial. It also notes that the witnesses of the police team that affected the raid and arrest made contradictory statements during the trial. And yet, the court passed the judgement convicting the accused.

INDORE

1. FIR No. 250/01; P.S. Chhoti-Gwal-Toli; u/s 10, Unlawful Activities (Prevention) Act, 1967

On 27 September 2001, information was received from an informer that accused Afsar was shouting near Ganesh Lodge Square against the ban on SIMI.

2. FIR No. 251/01; P.S. Chhoti-Gwal-Toli; u/s 10, 13, Unlawful Activities (Prevention) Act, 1967

On 28 September 2001, the police claimed that information was received through
telephone that accused Irfan was pasting SIMI pamphlets on pillar no. 14 and was shouting slogans in favour of SIMI organization. The pamphlet was allegedly recovered and seized.

3. **FIR No. 253/01; P.S. Chhoti-Gwal-Toli; u/s 10, Unlawful Activities (Prevention) Act, 1967**

That on 29 September 2001, information was claimed to have been received from an informer that accused Gulrez was provoking and shouting slogans at Patel Monument Square against the ban on SIMI organization.

4. **FIR No. 266/01; P.S. Chhoti-Gwal-Toli; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 6 October 2001, during patrolling near Ganesh Lodge Square, Jabboo @ Haroon was allegedly found shouting and provoking public against the ban on SIMI organization.

5. **FIR No. 267/01; P.S. Chhoti-Gwal-Toli; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 6 October 2001, during patrolling, the police alleged that information was received from an informer that Kamal was shouting and provoking public at Sawera Lodge near Sarwate Bus Stand against the ban on SIMI organization.

6. **FIR No. 288/01; P.S. Chhoti-Gwal-Toli; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 18 October 2001, during patrolling, information was allegedly received from an informer that near Ganesh Lodge Square accused Idris was shouting and provoking public against the ban on SIMI organization.

7. **FIR No. 304/01; P.S. Khajrana; u/s 10, Unlawful Activities (Prevention) Act, 1967**

According to the police, on 28 September 2001, during patrolling in Dilip Nagar, Khizrabad Colony near Naharshah Bali Dargah, it was found that accused Mohd. Ibrahim was instigating members of the Muslim Community to support SIMI activists.

8. **FIR No. 305/01; P.S. Khajrana; u/s 13, Unlawful Activities (Prevention) Act, 1967**

On 27 September 2001, information was received from an informer, claim the police
that Amil was provoking the public at Jam-Jam Square, Main Road Khajrana against the ban on SIMI and distributing SIMI literature containing anti-national slogans.

9. **FIR No. 308/01; P.S. Khajrana**

The police claim that on 29 September 2001, at Khijrabad Colony near mosque, Mohd. Salim Ansari was found instigating the residents in favour of Taliban. One anti-national pamphlet was allegedly recovered from his possession.

10. **FIR No. 399/01; u/s 10,13, Unlawful Activities (Prevention) Act, 1967**

According to the police, on 1 October 2001, information was received from an informer that at Nayapura Triangle near Pink Palace Pan Shop Abdul Razzaq was provoking the general public against the ban on SIMI.

11. **FIR No. 420/01; P.S. M.G. Road; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 2 October 2001, information was allegedly received from an informer that accused Ashim Parvez was provoking the public against the ban on SIMI.

12. **FIR No. 479/01; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 28 September 2001, the police claim that information was received from an informer that in Garib Nawaz Colony on the main road Bablu @ Rafiq was trying to provoke the residents of the colony against the ban on SIMI and wanted all Muslims to unite on this issue and to gather against the Government of India the subsequent Friday at the time of prayers.

13. **FIR No. 298/06; P.S. Chhoti-Gwal-Toli; u/s 3,10,13 Unlawful Activities (Prevention) Act, 1967**

This case is especially striking as Imran Ansari, accused and arrested in another case was charged with holding a “secret meeting” on 1 November 2006, in Wadi Chicken Centre, Banda Compound, when he was brought to Indore Court for trial from Khandwa. He is alleged to have met with owner of the Wadi Chicken Centre Akhtar Rasheed @ Chanda, Abdul Razzaq, Gulrez and other. The police claim that a witness revealed that the secret meeting was conducted to disturb the communal harmony and to perform terrorist acts in the city of Indore. According to the police, some of the people that attended the meeting had previously also been found to be indulging in unlawful activities of SIMI and FIRs had been registered against them earlier.
However, the obvious question remains how an accused and an under trial in one case who was being transported in police custody could hold a “secret meeting”. The two constables Rajesh Jhansekar and Parshuram Dawar who had brought Ansari to Indore from Khandwa were suspended and departmental inquiry was initiated against them. However, they were soon reinstated after a minor punishment but no FIR was filed against them.

14. **FIR No. 459/06; u/s 153-A, IPC**

The police claimed that on 7 November 2006, information was received that in Shahjahan Colony, Khajrana, Rasheed Ahmed Khan was standing on the gate of his house and shouting about Taliban and threatening to undertake terrorist activities against other communities in the city of Indore. One magazine named *Islamic Movement* was recovered from his possession.

15. **FIR No. 1076/06; P.S. Sanyogitaganj; u/s Section 153-A, IPC and Sections 10, 11, 12, 13, Unlawful Activities (Prevention) Act, 1967**

The police claimed to received information through telephone to say that Akbar Beg was planning to instigate communal riots and was having meeting with SIMI members at his Medina Nagar residents to expand SIMI organization and was planning to distribute SIMI literature amongst those present on 10 November 2006. The police also claimed to have recovered “26 books containing SIMI literature” from his house.

16. **FIR No. 35/08; P.S. Sarafa; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967**

On 2 April 2008, a case was registered against Mohammed Zakir Lala for allegedly shouting defiant slogans in favour of SIMI, challenging the authority of the Indian Government and making instigating statements. He was saying in particular that: “so what if the government has banned SIMI. I will not let any member of SIMI be arrested and will give them my full support.” The literature seized from him was books on the life of the Prophet and other Islamic literature. Again, the crowd that Lala was allegedly addressing disappeared and evaded arrest while Lala was caught.

17. **FIR No. 101/08; P.S. Chhoti-Gwal-Toli; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967 and POTA!**

On 2 April 2008, Aman was arrested from near the Sarvate Bus Stand for allegedly putting up posters of SIMI at a bus stand, making provocative speeches and
shouting slogans. Copies of the pamphlet, which were allegedly seized in this case, have not actually been seized. Despite the fact the place of occurrence was obviously a public spot, there are no independent eyewitnesses in this case. Though the charge sheet says “passersby”, the FIR in this case makes it clear that the two public witnesses in fact accompanied the police to the alleged place of occurrence. 

**Surprisingly, the accused is charged under sections 16, 17 and 18 of POTA, 2004, nearly 4 years after the Act was repealed** (chargesheet filed on 17 June 2008).

18. **FIR No. 129/08; P.S. Sadar Bazar; u/s 3,10,13, Unlawful Activities Prevention) Act, 1967**

On 2 April 2008, a case was registered against accused Mohammad Irfan ‘Cheepa’ for allegedly possessing SIMI booklet and pamphlets. The chain of events unfolded, as in most other cases, at the receipt of secret information of a mukhbir. The mukhbir informed the police that Cheepa had collected people in the compound of his house and instigating them to avenge the arrest of SIMI leaders. The police surrounded him and arrested him – though none of the others who had apparently collected at his behest. Among the items seized is a an appeal in Hindi, which misspells ‘Bismillah’.


19. **FIR No. 135/08; P.S. Sadar Bazar; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967.**

The case as per the FIR is that on 10 April 2008, Yousuf @ Younus Khan was standing in front of a cinema hall, in a “doubtful position”. He was apprehended and material pertaining to SIMI was allegedly seized from him. One of the documents seized in this case and shown as incriminating is page 3 of Hindi newspaper *Dainik Jagaran* dated 9.04.2008 which apparently carried a news item regarding the arrest of SIMI members. The document indicated as a pamphlet is in fact an advertisement of one New Crescent Publishing Co., New Delhi, which, appeared in June 2000 edition of Islamic Movement magazine of SIMI.

20. **FIR No. 159/2008**

The accused in this case was arrested from near a mosque while he was allegedly shouting: “I am a member of SIMI and would remain a member of SIMI and along with me are certain books concerned with SIMI”. Two books with seal of SIMI office at 52, Nayapara, Indore Unit, Indore-3, were allegedly recovered from him.
The office has been lying sealed since September 2001, from the time of the ban.

21. **FIR No. 181/08; P.S. Aerodrome; u/s 3,10,13, Unlawful Activities (Prevention) Act 1967**

On 1 April 2008, Rafiq was arrested and several pamphlets and one book with SIMI seal were allegedly seized from his possession at the time of arrest.


The accused was said to be collecting donation for SIMI and arrested on 30 March 2008. Strangely only photocopies of alleged “objectionable” pamphlets and posters were seized from the accused. The photocopy of the poster which was allegedly seized in this case very evidently pertains to a programme organized by SIMI in November 2000. The other documents were in fact not pamphlets but mere photocopies of the front and last pages of the SIMI magazine, *Islamic Movement*, all published September before 2001. Other seized documents relate to the Gujarat earthquake relief fund which was published in the April 2001 volume of *Islamic Movement*.

23. **FIR No. 192/08; P.S. Khajrana; u/s 153-A, 153-B, IPC and Sections 10,11,13, Unlawful Activities (Prevention) Act, 1967**

On 7 April 2008, the police claimed, Mohammad Naved Irfan was found distributing objectionable material of SIMI as a result of which a riot-like situation was created. The police further claimed that during investigation, Irfan disclosed that he had been in touch with Imran Ansari, Chief of SIMI in M.P. and Abdul Razzaq for the past two years.

24. **FIR No. 200/08; P.S. Juni; u/s 3,10,13, lawful Activities (Prevention) Act, 1967**

On 11 April 2008, an FIR was registered against Mohammed Shahid @ Billi and Saiyed Iqbal. During the investigation, it is the police claim that both accused admitted to participating in the functions of SIMI. The two accused in this case are said to have been holding a meeting near Shyam Nagar Masjid and that 3-4 other people had also gathered. However, even though the police rounded up the accused, none of the other persons present in the alleged meeting were arrested or pursued. Again, the documents seized were either SIMI material predating the ban, or photocopies—not even originals!
25. FIR No. 219/08; Chhoti-Gwal-Toli; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967

On 19 August 2008, a case was registered against Aman for allegedly making anti-national and anti-government statements and distributing pamphlets of the banned organization SIMI at Ganesh Lodge Square. An identical case had been lodged against him in April, in the same police station by the same police officer (101/2008). The allegations are also the same except that he is said to have been distributing pamphlets instead of pasting them. Though the FIR states that the accused was distributing pamphlets to members of the public, no such pamphlets were recovered from anyone in the crowd that had allegedly gathered. There are no independent eyewitnesses either in this case.

JABALPUR

1. FIR No. 637/98; P.S. Gohalpur; u/s 153-A, IPC

During the patrolling on 3 December 1998, Girish Bohre, the SHO of P.S. Gohalpur claimed to have seized two posters, which were fixed on a pan shop. One of those posters was alleged to be depicting “Lord Ganesh” and “Lord Shankar” in a derogatory manner. The poster made a reference to “Babri Masjid”, which in SHO’s view was done with the purpose to instigate. On the poster, “Babari Masjid….People’s Attention Programme from 27th Nov. to 6th Dec. 1998 Student Islamic Movement of India 151-C/ Zakir Nagar, New Delhi, 52, Phone No. 6906615”, was inscribed. On the second poster was printed the following: “Babari Masjid weeps – ummate Muslima sleeps” along with the picture of crying Babri Masjid was printed on the poster. Both the posters were deemed to be against peace and harmony and seized from the spot. Similar posters were also seized from Pasiana, Ansar Nagar, Charkhambha, Nai Basti, Machhali Market and Miloniganj—all situated within the Gohalpur, P.S. An FIR was registered against the Students Islamic Movement of India and the publisher. Khursheed Ahmad and Nazeer Ahmad were arrested in the case.

2. FIR No. 222/01; P.S. Gohalpur; u/s 153-B, IPC

On 5 April 2001, S. K. Banerji, the SHO, P.S. Gohalpur, registered a case against certain unknown accused – workers of Students Islamic Movement of India, Jabalpur unit for organising an exhibition of Muslim religious literature in the Alif Beg Masjid. The police found this literature to be against the Hindu Religion.
3. **FIR No. 537/01; P.S. Gohalpur; u/s 10, Unlawful Activities (Prevention) Act, 1967**

On 30 September 2001, the SI J.P. Verma, P.S. Gohalpur, registered a case against Khursheed, Mahmood Bharti, Irfan Ulla, Parvez Akhtar and Safeeq, all alleged members of SIMI, for conducting illegal activities in the Jabalpur unit of SIMI at House No. 855 of Chopra situated at Ansar Nagar.

4. **FIR No. 539/2001; P.S. Gohalpur; u/s 10, 13(1), Unlawful Activities (Prevention) Act, 1967**

On 1 October 2001, the SI J.P. Verma, P.S. Gohalpur, arrested Samsuddin @ Gayasuddin, Mohd. Yunus, Anis Ahmad, Sultan Ahmad, Mohd. Ali for allegedly convening a meeting for teaching about SIMI organization and shouting slogans like- “Laaden – you struggle – we are with you”. The accused persons were allegedly arrested with the audio cassettes containing the above mentioned slogans and other literature was said to have been seized subsequently. According to the seizure memo, the following were recovered from the possession of the accused: the two rubber stamps of SIMI, magazines of Islamic Movement – May 2001, Magazine *Rudad* (1998-2000), Pamphlets of SIMI, the certificate of admiration given by SIMI, etc., **all of which admittedly dated from the period prior to the imposition of the ban on SIMI.**

5. **FIR No. 36/06; P.S. Gohalpur; u/s 295-A, 147, 151, 186, 294, 148, 353, 332, IPC**

On 12 January 2006, on the occasion of 'Eid Festival”, a hoarding was fixed on the electric poll at Charkhamba wherein the picture of an Ox and Camel was drawn and matter regarding the sacrifice of both the animals was written on that board. Acting on the complaint of some Hindus, the police found the depiction to be offensive to Hindu religion. Therefore, Police Constable No. 1765 Nisar Ali, P.S. Gohalpur, who was on duty, dialled Mobile No. 9300636800 which was mentioned on that board and instructed the person who answered the phone to pull down the board. The police story goes that the following persons (1) Sarfraz Kamruddin, (2) Ameen, (3) Jabbar, (4) Parvez, (5) Asfaq, (6) Sarfraz Niazmuddin, (7) Raju, (8) Shakeel kirana wala, (9) Shiraj, (10) Raju @ Jameel, (11) Zaved, (12) Aslam, (13) Shakeel rangadi, (14) Afroz, (15) Arif, (16) Majeed, (17) Mohd. Rafeeq, (18) Anees, (19) Tanveer, (20) Anjoom, (21) Afzal, (22) Anwarool, (23) Abrar and others collected at the spot and became aggressive and refused to pull down the board, assaulted the police personnel and forcibly took away the board which had been seized by the police.

On 30 July 2006, R.K. Puri, SHO of P.S. Kotwali, Khandwa and Dy. S.P, Ghanshyam Malviya came to P.S. Gohalpur along with Imran Ansari, an accused in FIR No. 256/06 P.S. Kotwali Khandwa and at his instance, the book *Islamic Movement*, and *Tehareek-E-Millat* were allegedly seized from the accused Sarfaraz. At the same time accused persons Sarfraz, Baseemuddin, Parvez, Jameel, and Ameenuddin were arrested by SHO.

5. **FIR No. 244/08; P.S. Gohalpur; u/s 3,10,13, Unlawful Activities (Prevention) Act, 1967**

A case was registered on the basis of the statements made by accused persons (Amil Parwez, Kamaruddin Nagouri, Safdar Hussain Nagouri and Kamraan @ Fajeelak) arrested in Crime No. 120/08 of P.S. Peethampur on 4 April 2008.

The following persons were arrested: Mohd. Yunus Ansari, Gayasuddin, Shekh Sarfraj, Shafiq Ahmad Ansari and Naseer Ahmad Ansari. They were accused of being members of the banned organization SIMI and of carrying out its unlawful activities. Not only does the FIR not make any specific allegations regarding any unlawful activities undertaken by the accused, it states that the case has been registered on the basis of previous criminal record, circumstantial facts and oral evidence. There is no mention of what these circumstantial and oral evidence are.

6. **FIR No. 6/09; u/s 153-A, 153-B, 120B, IPC and Sections 3, 10, 13(a) and 13(b), Unlawful Activities (Prevention) Act, 1967, at ATS/STF, Bhopal**

On 3 November 2009, the police claim goes, information was received from an informer that Inamurrehman and Amzad were present at Dada Miyan ki Dargah in Kabristan, Madar Tekri in Jabalpur to conduct a meeting with other persons for collection of funds for SIMI and to propagate the views of SIMI. It is contended that following this information, the ATS team raided and arrested Inamurrehman, Amzad Khan, Sheikh Afroz and Azad Ahmad. According to the ATS, the search of the persons revealed offending material, which included four copies of a book in Urdu/Arabic named *Khudkush hamlon se Muttalik wajeh Dalai* and four CDs containing songs about the Babri Masjid, copies of SIMI magazines and a large amount of cash.
KHANDWA

1. **FIR No. 314/01; P.S. Moghat Road**

   Case registered against Hanif Khan for possessing Urdu paper cuttings relating to SIMI.

2. **FIR No. 460/01; P.S. Kotwali**

   Case registered against Aquil Khilji for possessing SIMI literature, diary of SIMI, and Urdu pamphlets.

3. **FIR No. 467/01; P.S. Kotwali**

   Case registered against Amir Khan for possessing clippings of daily *Dainik Jagran* (Agra edn.), a SIMI letter and a list of members and office bearers of SIMI, MP.

4. **FIR No. 256/06; P.S. Kotwali**

   Case registered against Aquil Khilji and 13 others for allegedly publishing, possessing and distributing banned SIMI literature.

5. **FIR No. 202/08; u/s 153-A, IPC and Sections 3,10,13, Unlawful Activities (Prevention) Act, 1967**

   On 01.04.2008, upon information by an informer, a case was registered against Jafar and Moh. Salik. Further investigation, Seikh Mumtaj was arrested on 4 April 2008. Three accused Amjad, Guddu @ Mehboob and Khalil Kharwari were absconding.

   Khalil was arrested on 28 September 2008 and Amjad on 23 November 2009 by S. K. Nasine, CSP, Khandwa.

MANDSAUR

1. **FIR 149/10; PS Pipiyamandi Thana u/s 395, 124 IPC, Section 25,27 Arms Act, Sections 3,10,13(1)(a), 15, 16, 17, 20, 21 of Unlawful Activities (Prevention) Act, 1967**

   An incident of bank robbery took place on 1 June 2010 at State Bank of Indore, branch Pipiyamandi. According to the police, intimation was received from ATS/STF Bhopal Hqr. & ATS/ STF Bhopal, Distt. Jabalpur regarding arrest of SIMI activities in Crime no. 4,5/2011. The accused persons in the said case also provided crucial information about the instant crime. Consequently, upon further investigation the complicity of the accused persons in the instant case of bank robbery.
dacoity at State Bank of Indore, branch Pipliyamandi became clear. On the basis of the Memorandum of the accused Zakir, some mutilated currency notes (amounting Rs. 14,800) which had allegedly been looted from the bank were recovered from Akola (Maharashtra). On the basis of Memorandum of accused Abu Faisal, looted currency notes (amounting to Rs. 12000) were recovered. On the basis of Memorandum of accused Mohammad Sajid alias Sheroo, from the house of 'nani' (Mother’s mother) of the said accused, there has been seized two “cassettes” containing SIMI literature. The firearms allegedly used in the robbery have been recovered by ATS, Bhopal (in crime No. 4, 5/2011) and by GRP Ratlam (in Crime No. 35/2011).

It turned out that no “cassettes” were ever seized; the police claimed later that they were in the habit of labeling Video CDs as cassettes. No details about what precisely was contained in the CDs was provided. No other literature was seized or mentioned in the chargesheet.

NARSINGHPUR

1. FIR No. 399/2008, Kareli, Narsinghpur

The accused in this FIR was arrested on the basis of a statement made by the accused in another case, FIR No. 706/2006, PS Gohalpur, Jabalpur. The FIR does not make any specific allegations regarding any unlawful activity undertaken by the accused persons. No material pertaining to SIMI was seized from either of the accused. There is no basis for registering the case and it seems to have been done solely on the basis of the instruction received from the SP, following the Pithampur case. Otherwise there no other conceivable reason why the SP’s letters dated 29.03.2008 and 2.03.2008 were filed with the charge sheet.

NARSINGHGADH (DISTRICT RAJGADH)

1. FIR No. 142/2008

The chargesheet mentions the recovery of “two papers…with obnoxious Ayats of the Quran”. The FIR and chargesheet in this clearly state that the case was initiated on the basis of DIG Intelligence, Bhopal and redirected through SDOP, Narsinghgarh, dated 5 April 2008. There is no mention of any specific incident or unlawful activity in which the accused were involved in, pursuant to the FIR was filed.
NEEMUCH

1. FIR No. 321/01; u/s 13(1), Unlawful Activities (Prevention) Act, 1967

On 28 September 2001, FIR was registered against Gulam Mohd. He was accused of being involved in the propagation of the ideology of SIMI and the expansion of activities of SIMI after the organization was banned. Gulam Mohd was accused of spreading communal hatred and creating communal tension amongst the people in the locality. Several copies of Islamic Movement dating to the period before the ban on the organization were the main material shown as recovered from Gulam.

2. FIR No. 325/01; u/s 10, Unlawful Activities (Prevention) Act, 1967

On 30 September 2001, FIR was registered against Abdul Rauf. He was accused of speaking out against the restrictions and the ban imposed on SIMI. According to the police, he was provoking and instigating the Muslim community against the enforcement of law.

3. FIR No. 180/08; P.S. Neemuch Can; u/s 53-A, 124-A, IPC and Sections 3, 10, 13(a), 13(b), Unlawful Activities (Prevention) Act, 1967

On 8 April 2008, an FIR was registered against four people: Firoz, Nadeem, Azhar and Shabbo Shabir. Readers may recall that Superintendent of Police, District Dhar vide letters dated 29.03.2008, sent a district wise list of list of names based on the personal diaries, mobile phones, etc. of the accused in the Pithampur Case to the Superintendents of Police of several districts of Madhya Pradesh, asking them to take action. This letter was then forwarded by the SPs to the SHOs in their own districts with an instruction to take action. It is on the basis of these instructions that action was initiated by the SHOs. Most of these cases have been registered in March and April 2008.

FIR 180/08 was among the several cases registered as a result of this. It was filed the day after the SP Neemuch’s letter was sent to SHO Neemuch Cantt. The following items were allegedly seized: one donation card of Rs. 100 of SIMI, pamphlets of SIMI donation card, pamphlets on Babri Masjid and Sirk, with their photocopies. The FIR makes no specific allegations of any unlawful activities committed by the accused. Nonetheless, serious offences under UAPA and 153A and 124A IPC have been registered solely on the basis of some pamphlets which were allegedly recovered from the accused. This, as is evident in this list, is the standard operating procedure of the Madhya Pradesh police.
SEHORE

1. FIR No. 239/08; P.S. Sehore; u/s 153-A, 153-B, IPC and Sections 3, 10, 13, Unlawful activities (Prevention) Act, 1967, PS Sehore

Acting upon secret information, on 7 April 2008, the police searched the houses of Abdul Karim Ansari and Rafiq Mohammad and recovered a blue diary, SIMI booklet, SIMI sangharsh yaatra ke pachis varsh 1977-2002 and some Urdu and Hindi pamphlets. A case was registered against Abdul Karim Ansari, Mohammed Rafiq, Safdar Nagori and Kamruddin Nagori. The entries in the diary clearly show that the diary pertained to the activities of SIMI before the ban. For instance, entries at pages 30 and 31 clearly mention dates in March and May 2001. The booklet and the pamphlets too clearly belong to the pre-2001 ban period because both the Delhi and Ujjain offices of SIMI office lie sealed from 2001 till date.

SEONI

1. FIR No. 250/01; u/s 153-A, 153-B, 295-A, IPC

According to the police, Raja Bhaghel reported that he was at the bus stand at Seoni on 28 May 2001, when two persons, Jamir Ahmad and Abdul Rahman @ Papa Bhai persuaded him to purchase a particular book. When he read the book, he found that it was called Islamic Movement published by Student Islamic Movement of India (SIMI), 5th edition, May 2001. When he read the book, he found that the articles therein contained material “which went against the feelings and sentiments of other communities”.

2. Crime No. 423/01; P.S. Seoni; u/s 10, Unlawful Activities (Prevention) Act, 1967

On 28 September 2001, a telephonic information was allegedly received by Om Pate, SHO of P.S. Seoni (presently retired from service) that Ayyub Bose, Jamir Ahmad and Abdul Rahman @ Papa Bhai, who were allegedly members of SIMI, while standing near Choti Masjid and discussing matters relating to SIMI organization. They were said to be proclaiming that if America or any other country attacked the Taliban, then all Muslims and followers of Islam must be ready for Jehad. All three above accused were arrested and their homes searched. Police claimed to have found objectionable press notes/pamphlets.

On 2 August 2006, J.S. Bisen, the SHO of P.S. Seoni claimed to have received telephonic information from an unknown person that Imran, Mohammad Idris and Bablu @ Shahjade all were standing in front of Masjid, Jinna Chowk and, discussing matters related to SIMI organization and spreading and promoting anti-national feelings against Government of India and Hindu religion. On receiving this information, the SHO says he went to the spot and found the accused persons with books and literature of SIMI.

GUILTY BY ASSOCIATION: UAPA CASES FROM MADHYA PRADESH

SHAJAPUR

1. FIR No. 564/2001; u/s 153-A, IPC

On 21 September 2001, ASI R.S. Chouhan and Constable Naresh Patel, claimed to have seized two posters in Urdu from the crossroad near Somwariya Sarafa gate upon the information received. The posters were said to be causing agitation among the public. An FIR against unidentified criminals was registered. Subsequently, four people, namely, Toji-ul Islam, Shahid, Shahrukh alias Harun and Akram were arrested in the case.

2. FIR No. 593/01; P.S. Kotwali; u/s 153-B, IPC and Sections 10,13, Unlawful Activities (Prevention) Act, 1967

On 2 October 2001, SI Dilip Singh Chaudhary, P.S. Kotwali, Shajapur, claims to have received information that Toji-ul Islam Kamri, Shahid, and Akram (the same set of accused in the above mentioned case) were collecting donation for SIMI membership and distributing objectionable literature at Mahupura cross road Shajapur. SI Chaudhary raided the place and found that Toji-ul Islam, Shahid and Akram were standing and talking to people while Toji-ul was also making receipts. Following documents were allegedly seized from the accused: SIMI receipt book containing some undated counter foils of receipt and two counter foils of the receipt dated 2 February 2001 (pre-ban), copies of Islamic Movement, also predating the ban, SIMI membership forms and one SIMI poster.

3. FIR No. 686/2001; P.S. Kotwali; u/s 10,13, Unlawful Activities (Prevention) Act, 1967

On 17 November 2001, SI, Dilip Singh Choudhary, P.S. Kotwali, Shajapur claimed again to have received information from informer that Farukh and Harun of Mahupura were propagating unlawful activities of SIMI. After calling witnesses Santosh Joshi and Sudarshan Soni, SI Dilip Singh Choudhry reached Mahupura to
arrest them. However, according to the police, Farukh was apprehended whereas Harun escaped from the site. From the possession of Farukh, ten SIMI membership forms, two copies of *Islamic Movement* magazines of September issue and one SIMI receipt book were allegedly seized.

UJJAIN


The SP of Ujjain claimed to have received information that Jadil Parwaz was carrying out a training camp at the house of Amil Parwaz, (who had already been arrested previously by Madhya Pradesh police). They raided the place and allegedly found Jadil Parwaz giving physical training and training for using firearms to the other accused. He was also simultaneously said to be giving instigating speeches for making India an Islamic country and protesting against the banning of SIMI by calling the government its enemy. According to the police, Jadil Parwaz, Akbar Aasu @ Ayaz, Irshad Ali, Meharuddin were arrested from the spot and following items seized: SIMI literature, schedule of training for the training camp, various Urdu books, posters of SIMI and other objectionable material from all the accused.

It may be of some interest to note that no firearms were recovered from the spot, so how was arms training being imparted? One air gun was allegedly recovered but no offence under Arms Act or Explosive Substances Act is registered against the accused in FIR or charge sheet. The only material related to SIMI that has allegedly been seized in this case were three copies of *Islamic Movement* and two posters. As per the seizure memo, both magazines and posters pertained to pre-2001. The poster pertained to a conference which was held in Kharjrana, Indore between 10-12 November 2000.

2. **FIR No. 699/2008; PS Mahakal**

Documents were seized from the accused and the police declared him to be an active member of SIMI. These documents are booklet *Simi Sangharsh Yatra ke 25 saal*, Ansar forms with the address of the sealed SIMI office in Zakir Nagar Delhi, photocopies of blank receipts of SIMI units in MP and Maharashtra. Three receipts clearly pertained to pre-ban period. Other material includes *Tehreek –e-Millat* and some pamphlets which does not mention SIMI anywhere.
Part 2
The Khandwa Trial

State of Madhya Pradesh versus Mohd. Aquil Khilji and others (total 14 accused)
FIR: 256/2006
Kotwali Police Station, Khandwa
SC: 180/2006

Dramatis Personae

Key police officers
Superintendent of Police Manoj Rai, IO
SHO RS Solanki
Sub Inspector Anand Tiwari
Deputy SP Ghanshyam Malviya

Main prosecution witnesses
Pappu Bhusare, admitted to being a member of Bajrang Dal
Kamlesh Thakur
Akash, who committed suicide in the course of the trial
Bajrang Lad, charged for a crime in the Kotwali Police Station, the same police station investigating the case 256/06

The 14 accused
Aquil Khilji, Md. Asif, Javed Ghouri, the three siblings Asiya, Rafia and Inamur Rehman; The Siddqui brothers Zafar, Khaleel and Shafeeque; A.M. Naim, Jafar, Amanullah, Imran Ansari, Sarfaraz
List of Plates and Illustrations

1. Graphic illustration of the chain of memoranda
2. Reply to an RTI query showing the registration of a criminal case against Bajrang Lad at Thana Kotwali, Khandwa.
3. City SP’s letter admitting that no Roznamcha had been prepared for the Burhanpur visit.
4. Local newspapers from Khandwa reporting about the illegal detention and torture of Akash (PW 5)
5. Local newspapers reporting Akash’s suicide
6. Receipt of SIMI made out in the in the name of ‘Kumari Ashiya Khan’, shown in both the Khandwa case and 302/2008, PS Misroad (Bhopal)
7. Cover page of the prosecution’s application in the High Court seeking cancellation of bail
9. Cover page of June 2002 issue of Tehreek e Millat ‘Rafia’ seized allegedly from Rafia in the Khandwa case, but also shown as a recovery in the FIR 320/2008
Sequence of Events:

The prosecution case follows a very familiar narrative.

16 April 2006, Khandwa

The SHO of Kotwali police station (PS) Khandwa received a call from an informer that accused Aquil Khilji, Md. Asif and Javed Ghouri were present in a lane close to Kaharwadi mosque. Wanting to capitalize on the communal tension that had gripped the city during Milad-un-Nabi (celebrations marking Prophet Mohammad's birthday), they wanted to strengthen SIMI and enlist new members to carry out the organisation’s unlawful and ‘seditious’ activities.

This information was reduced in writing by SHO Kotwali police station in DD (Roznamcha) serial number 1038. Immediately, under the leadership of the Superintendent of Police Manoj Rai, a team comprising SHO RS Solanki, Sub Inspector Anand Tiwari and other police personnel as well as summoned witnesses Kamlesh Thakur and Pappu Bhusare, reached near Kaharwadi mosque where Aquil Khilji. Md. Asif and Javed Ghouri were found to be standing in a lane addressing a crowd of people and disseminating the anti-national and subversive SIMI ideology. They were surrounded and apprehended.

Recoveries:

From the spot, SIMI membership forms, a magazine titled, '25 years of SIMI’s journey' were recovered in the presence of witnesses. Panchnamas were prepared and the above accused were arrested under sections 3,10,13.

The accused were questioned about other active members of SIMI and their memorandums were recorded under section 27 of Indian Evidence Act in the presence of the pancha witnesses. Following this, raids were carried out in the homes of Javed Ghouri, Aquil Khilji, Md. Asif and the following items were seized from there: SIMI constitution (dastoor), membership forms, copies of Tehreek, Tehreeke Millat and Tameeer e Millat, none of which is a banned text.

In his memorandum, Javed Ghouri disclosed that SIMI literature was in the possession of the siblings Asiya, Rafia and Inamur Rehman. The police arrested the sisters Asiya and Rafia. However, Inamur Rehman escaped.

R.S. Solanki, SHO of city Kotwali PS, filed FIR number 256/ 06 under sections 3,10,13 of the UAPA on 16.04.2006 (exhibit 334). The FIR only named five people: Aquil, Javed Ghouri, Asif, Asiya and Rafia.
The same afternoon, Inamur Rehman was arrested from near Khan Shah wali dargah.

**18 April 2006, The Siddiqui Brothers in Burhanpur and Jalgaon**

On 18 April, Sub Inspector Anand Tiwari (PW 19), along with witnesses Akash (PW 5) and Bajrang (PW 6) went to Burhanpur and seized SIMI literature and SIMI receipts from the home of Zafar (s/o Zaheer) and arrested him. During the questioning, Zafar recorded his memorandum (exhibit 119) in the presence of the two above-mentioned witnesses where he disclosed about his younger brother, Shafeeqe Ahmed Siddiqui’s – resident of Jalgaon – involvement in SIMI activities in Burhanpur and Khandwa and the possibility of recovery of SIMI literature from him.

On the same day (i.e., 18 April) Anand Tiwari seized SIMI material and literature from the house of Khaleel (s/o Zaheer; brother of Zafar) situated in Khairati bazaar, Burhanpur, and arrested him; also on the same day, the I.O, Anand Tiwari went to Jalgaon and seized SIMI literature as well as membership forms and contribution receipts from the Jalgaon home of Shafeeqe Siddiqui. He was arrested.

Shafeeqe Ahmed gave a memorandum to SP City with information about the Kota office of *Tehreek e Millat* (U-P-7, Vigyan Nagar, Kota) of which he was a subscriber.

**1 May 2006, Kota**

On the basis of Shafeeqe’s memorandum, there was a raid at the house of A.M. Naim at Kota and copies of *Tehreek e Millat, Tameer e Millat* magazines, Constitution of Milli Council, Milli Council’s membership receipt, *Millat* magazine and other SIMI literature were seized.

**3 May 2006, Khandwa**

I.O. Manoj Rai (PW 26) took down Naim’s [first memorandum](#) in the presence of PW Akash (5) and PW Bajrang (6) where he gave information about Shahid Badr Falahi of Azamgarh and Iman Ansari (r/o Choti Gwal Toli, Indore) and their involvement in SIMI activities and the material kept with them.

**5 May 2006, Azamgarh**

On the basis of the memorandum, I.O. Manoj Rai went to Azamgarh to search for Falahi. On reaching there, they found that Falahi was not present and thus conducted the search in the presence of Shahid Badr’s father and the presence of
6.4 panchas. From his house, *Tehreek e Millat* and *Tehreek* were seized.

**8 May 2006, Khandwa**

I.O. Manoj Rai, in the presence of Akash and Bajrang wrote down the second memorandum by Naim wherein he informed about the printing and publication of *Tehreek e Millat* by Jafar’s GN Offset printing press, Bengali Colony, Kota from 2003 onwards, and also informed that Amanullah used to distribute the magazines through courier in Khandwa, Kota and other places.

**12 May 2006, Kota**

I.O. Manoj Rai recorded the statements of former employees of GN offset printing press.

Witnesses Ram Prasad, Dilip, Puran Mal and Duli Chand stated that till 3-4 years ago, Naim used to get *Tehreek e Millat* published and Jafar (s/o Haji Ibrahim) used to print it for him at GN offset printing press.

Witness Puran said that he used to work at GN offset printing and stated that he saw Naim getting a bill for the publication of the magazine on 21.06.2003 and then paying it.

Witness Omprakash stated that he was manager at Delhi Rajasthan Transport, Kota. On 30.12.04, Amanullah had received a packet from Mumbai from some Rehman Book Stall, and that this had happened in the past too.

**19 May 2006, Kota**

On the basis of Naim’s memorandum, Amanullah was arrested.

**22 and 23 May 2006, Kota**

Kota-based Jafar (s/o Haji Ibrahim) was arrested by I.O. Manoj Rai, who also seized his printing machine and a hard disc from his press.

**23 May 2006, Kota**

I.O. Manoj Rai recorded the statement of Md. Anwar, proprietor of National printing press wherein he admitted to having printed 80 receipt books for *Tehreek e Millat*, raised the bill for the same and received Rs 750 from Naim as payment. I.O. seized the said receipt book.

**Imran’s Memorandum**

On the basis of Naim’s first memorandum, then Deputy SP Ghanshyam Malviya...
(PW 24) procured the police remand for Imran Ansari who had been arrested by Bhopal Police. Malviya interrogated him and recorded his memorandum.

Imran in his memorandum stated that accused Aquil Khilji, Javed Ghouri, Md. Asif, Asiya, Raafiya, Inamur Rehman, Shafeequ Siddiqui, Khaleel, Zafar, Naim, Amanullah, Jafar and Shahid Badr Falahi carried out the activities of SIMI and distributed SIMI literature.

On the basis of this, the Ujjain police registered crime no. 93/06 against Aquil Qureishi, Shafi (s/o Abdul Bari), Imran Ansari and Naim at thana Kharakuan.

**Jabalpur**

On the basis of Imran’s memorandum, and a raid was conducted on the house of Sarfaraz.

**30 June 2006**

DSP Ghanshyam Malviya interrogated Sarfaraz and recorded his memorandum in which Sarfaraz spoke about a Tata Indicom mobile given to him by accused Imran. The mobile was recovered from him vide panchnama (exhibit 331). This Tata Indicom was then shown as recovery in two different cases. First, in the present Khandwa case; however, the recovery also became the basis for registering another case in Jabalpur against Sarfaraz. This was crime no. 706/06 lodged by Police Station Gohal, Jabalpur.

This illustrates well the point made in the Part I of the report about how one case triggers the registration of multiple cases across the state, even on the basis of the same recoveries. Imran’s memorandum in the Khandwa case therefore led to the registration of two more cases: one in Ujjain, and another in Jabalpur.

**The Charges**

I. Md. Jafar (s/o Haji Ibrahim) published literature and others namely, Md. Aquil, Javed Gauri, Md. Asif, Kumari Asiya, Kumari Raafiya, Inamur Rehman, Shafeequ Siddiqui, Khalil Ahmed, Zafar (s/o Zaheer Ahmed), Abdul Naim, Amanullah, Md. Jafar (s/o Haji Ibrahim) and Imran kept this literature in their possession for purposes of distribution.

This literature:

- could have incited hatred and insult towards the lawfully established government;
• would lead to communal disharmony, create rift and enmity between religions;
• cast aspersions on the country’s secularism and nationalism;
• instigated members of Muslim community to not uphold the sovereignty and unity; to not uphold the Constitution;
• was written and distributed with the malicious intent to hurt the religious sentiments of the Hindu community.

The accused were charged under sections:
124 (A), 153 A, 153 B, 295 A of the IPC

II.

In addition, Md. Aquil, Javed Ghouri, Md. Asif, Kumari Asiya, Kumari Raafiya, Inamur Rehman, Shafeequ Siddiqui, Khaleel Ahmed, Zafar Ahmed (s/o Zaheer Ahmed), A.M. Naim, Amanullah, Md. Jafar (s/o Haji Ibrahim), Imran and Sarfaraz were also accused of becoming members of the unlawful organization, SIMI, and furthering its activities.

They were charged under Sections 3 (10) of the UAPA

III.

Jafar (s/o Haji Ibrahim) was additionally accused of publishing material for the banned organization SIMI and the other accused were accused of keeping in their possession material of SIMI and for furthering its activities.

They were charged under 3 (13) of UAPA

Memorandums:
The bulk of the evidence comprises the memoranda, which the accused allegedly gave following their arrest, disclosing information about unlawful literature and other alleged members of SIMI. Mainly, according to the prosecution, it was a chain of memoranda that led to the recoveries of literature and the arrest of one accused after another, rather than any investigation.
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The Cracks in the Case

The case rests on:

a) Recoveries of literature alleged to be 'seditious' and 'inflammatory'

b) Memorandum given by accused

c) Recoveries made on the basis of this information

From the very beginning, the case was riddled with faults that the trial court chose to ignore.

I. Delay in submitting the seized material:

The orders passed by the court and the testimony of the 'maalkhana nazir' (an officer in-charge of the custody of seized/recovered material) clearly show that the seized material was kept illegally in the custody of the police for three months after the presentation of the challan. The challan was filed on 17 July 2006 whereas the seized material was submitted in court on 13 October 2006

II. Sanction for UAPA questionable:

1) Sanction for prosecution under sections of UAPA was not obtained, and yet the crime was taken cognizance of. Five months after the presentation of the challan, the prosecution moved an application asking for an extension for seeking the central government’s sanction but the trial court had rejected this (order sheets of trial court, dated 10 November 2006 and 23 December 2006). However the same trial court admitted the sanction two months later despite protests by the defence lawyer about the delay. The sanction was recorded by the court on 29 January 2007. In fact, the court had taken cognizance of the crime without the receipt of sanction. Sanction against Imran Ansari was presented as late as on 10 July 2008 and no sanction was ever presented against Sarfaraz.

2) RTI applications filed by the accused show that applications submitted to the state government seeking sanction were not accompanied by seized material. Indeed, the representative of the MP state home ministry admitted in court that he was not aware of the basis on which the Principal Secretary, Madhya Pradesh Home Department, had granted sanction for prosecuting the accused under the UAPA. Also, it should be noted that sanction was obtained without getting the books and magazines originally in Urdu translated into Hindi. The representative also admitted that he had never seen the Chief Secretary reading Urdu. It is thus clear that there was no material basis on which the Chief Secretary granted sanction.
III. Witnesses

1) Witnesses not independent: The Defence argued that the witnesses to the recoveries were not independent and were in fact all pocket panchas (stock witnesses) of the police, with some even affiliated to right wing organizations whose politics revolves around targeting of Muslims. Some even had a criminal record with cases pending against them which could have been used to arm-twist and make them say things the police wanted.

a) Deepak (PW 1) accepted that he is a member of Bajrang Dal.

b) Bajrang Lad (PW 6) was booked under a criminal case in the Kotwali thana (Cr No. 737/04 dated 20.11.2004), which was being heard in the court of Chief Judicial Magistrate, Khandwa/SC Number: 2053/28.12.04). The same thana was also investigating the present case.

Reply to an RTI query showing the registration of a criminal case against Bajrang Lad at Thana Kotwali, Khadwa.
2) Contradictions in the Testimonies of prosecution witnesses:

a) Pappu (PW 2) and Kamlesh (PW 3) stated that they saw Javed, Asif and Aquil distributing SIMI pamphlets whereas Solanki (PW 23) denied this.

b) Pappu (PW 2) in his statement in para 23 said that the locks to the house in Kaharwali mosque were broken whereas Kamlesh (PW 3) mentioned that the accused himself opened the lock to the house.

c) Kamlesh (PW 3) said they went into only one house in Kaharwali mosque, whereas Pappu (PW 2) said they went to two houses.

The fact that the testimonies of the two key witnesses were riddled with contradictions points to the fact that there is a big possibility that no seizures were made from the accused.

3) Witnesses not local:

The defence further argued that witnesses Deepak (PW 1), Pappu Bhusare (PW 2) and Kamlesh (PW 3) who witnessed the arrests and seizures from Kaharwali, Gulshan Nagar, Khan Shah Wali dargah were not residents of these places but belonged to Khandwa city area. Even witnesses to arrests and seizures in Burhanpur, Jalgaon and Kota were not locals but residents of Khandwa.

Bajrang Lad, in his sworn statement in Para 9, accepted that during the raid in Burhanpur, no neighbours were called upon as witnesses, despite it being a residential locality.

The fact that local people were not called in as witnesses is clearly a malicious act.

4) Kota witnesses turn hostile:

The prosecution witnesses in support of their contention that A.M. Naim got Tehreek e Millat printed in Jafar’s offset printing press were the following:

a) Ramprasad (PW 9), a worker at the printing press: he refused to recognize Naim and denied that Naim received Tehreek e Millat from him.

b) Dilip Singh (PW 10), also a karamachari has testified along the same lines.

c) Duli chand (PW 14), also a karamchari, also testified along the same lines. All three were declared hostile by the prosecution.

d) Puranmal (PW 13) did not recognize Naim.
**Court’s Response:**

The court deliberated on this and reached the conclusion that although Deepak has accepted to be a member of the Bajrang Dal, he did not seem to harbor any enmity with the accused and hence his testimony could not be evaluated on that basis.

The court cited *State of MP versus Paltan Mallah AIR 2005, SCC 733*, which holds that unless prejudiced, the statement of witnesses who are not local is not invalidated. Court denied the possibility that Deepak’s ideological affiliation could be grounds for prejudice. It also did not strike the court that a person who was booked in a crime and who becomes witness to another crime booked by the same police station, could be prejudiced and in fact under the influence and control of the police.

According to the court, the contradictions in the statements of the prosecution witnesses and I.O. Solanki, amounted to nothing. The court recalled that since it was established that the prosecution witnesses bore no personal enmity against the accused Javed, Aqueel, Md.d Asif, Asiya and Raafia, they could not be interested in falsely framing the accused. Just because of a contradiction (between Pappu and Kamlesh’s statement about distribution of pamphlets and Solanki’s denial of this), their testimonies cannot be discarded, because “in India, the maxim: false in one, therefore false in all does not apply.”

Further, the court said: “It is true that Kamlesh talks about going to only one house in Kaharwali, whereas Pappu mentions going into two houses. It is not disputed, however, that Aquil was a resident of Kaharwali, Khandwa. Pappu has in his cross-examination stated that documents were seized from Aquil’s locked house and then the police party entered the house next door, which was open. It appears that since parts of Aquil’s house were both open and locked, Pappu talks about entering two houses.”

The court clarifies that Pappu says this out of confusion and therefore this contradiction has no material value for the Defence. The Judge therefore draws his own inference that Pappu must be confused and therefore assumed one house to be two.

Again and again, the court dismisses each contradiction and problem in the testimonies of the prosecution witnesses with the assertion that the prosecution witnesses have no personal enmity against the accused, and the testimony of the police witness cannot be disregarded only because they belong to the police.
IV. SEIZURES

1) Delay in depositing the seized items:

The chargesheet was filed on 17 July 2006 but the prosecution did not present the seized material in the court till 28 September 2006. It kept the material with it for two months and 11 days, and hence tampering cannot be ruled out.

2) Seizures were not sealed:

Seizures allegedly made from Javed, Aquil, Md. Asif, Rafia, Asiya, Zafar, Khaleel, Shafeeque and A.M. Naim from their personal searches and from their homes were not sealed.

The defence cited Salim Akhtar urf Mota versus State of Uttar Pradesh AIR 2003 SC 4076, where the seizure was considered suspect and thereby discarded because the pistol recovered had not been sealed even though the bullets were sealed, and argued that these recoveries be discarded.

Court’s Response:

The court declined to give the accused the benefit of this SC judgement, because in its view, the facts of the present case were different. According to the Court, in the case cited by the defence, detailed information about the pistol was not provided in the FIR and seizure memo whereas, the documents seized from the accused in the present case have been described in detail in the seizure memo and the same magazines and documents have been presented in the Court.

Further, the investigating officers have not expressed any desire to falsely implicate the accused in the crime. Surprisingly, the court found this reassurance from the police good enough to not question the way the seizures were held back and not submitted on time.

3) Rafia and Asiya’s Recoveries Doubtful:

Pappu Bhusare in his statement had claimed that books and forms etc. were seized from the sisters from their bags. But in his cross examination, he said that these seizures were made from the house in which two burqa-clad women were present. In fact, he gives elaborate details such as that posters and pamphlets were lying under a table in the house in which the parents of these two girls were also present. The articles, he says, were seized and kept in the jeep.

It therefore naturally raises doubts about the police version that the material was seized from the personal searches of the two girls when they were apprehended in a
lane with bags on their shoulders.

**Court’s Response:**

In the Court's view the seizures which Pappu mentions in his testimony could be in fact in addition to the seizures already made by the police from the personal search of the two girls.

But one could question as to what happened to this material seized from their home in the additional 'search' which the court mentions? The court is disinterested in pursuing that. Does it appear in the list of seized material? There seems to be no attempt to clarify the matter.

**V. The Missing Link of Burhanpur:**

Anand Tiwari has stated in his testimony that on 18 April 2006, when he was posted as sub Inspector in the Kotwali city police station, Khandwa, while investigating the crime serial no. 256/06, he went to Burhanpur to arrest Zafar.

However, nowhere in the prosecution story is it mentioned what prompted the Khandwa police to go to Burhanpur. Not even a secret informer is mentioned who may have pointed them towards Burhanpur. See 'Box on Memoranda', which clearly points out the chain of events as they unfolded as a result of one memorandum leading to another. None of the memoranda recorded in Khandwa mention Burhanpur or the Siddiqui brothers. This point remains glaringly unexplained. Also, while visiting Burhanpur and Jalgaon, the Khandwa police did not care to inform the local police. The question remains as to why they did not.

**There was no roznamcha about the Burhanpur visit in police records. In fact the police admitted that no roznamcha was prepared.**

**Court’s Response:**

Since it is proved that recoveries have been made from Zafar and Khaleel, it is not important as to what was the police’s source of information about the possible material in possession of Zafar and Khaleel. Just because roznamcha has not been presented before the court, the police operation in Burhanpur cannot be deemed suspect, concluded the court.
VI. Witnesses: Further complications

1) Akash: The Tragic Story of PW 5

In his evidence before the court on 1 February 2008, Akash testified about going to Burhanpur and corroborated the prosecution story about seizure of material and
Zafar’s memorandum. He also testified that police raided the home of Khaleel and seized books and other material. Similarly, he corroborated the prosecution story about the raid, seizure and arrest of Shafeequ.</p><p>At this point, the hearing ended and resumed again the next day (i.e., 2 February 2008). Initially, he corroborated the prosecution story, but then turned hostile, altogether denying that he accompanied the police to Burhanpur and Jalgaon; or that he had been witness to any seizures, arrests and recording of memorandum. He said that he had identified his signatures on the memos and has corroborated the prosecution story initially in the court under pressure from the police.</p><p>In his cross examination, Akash also admitted that on the eve of going to Burhanpur, police made him to sign 10-12 sheets of paper in the column of witness, which he signed without reading.</p><p>The matter, however, took a very tragic turn. One year after Akash turned hostile in court, blaming police pressure for his earlier statements, he was picked up, beaten and kept in custody by ASI Madhu Pagare of the Kotwali police station.</p><p>On the night of 19 February 2009, according to the statement made by Akash’s mother, Mrs. Rajni Yuvne, a police party from the Kotwali thana came to their house just as Akash had gone out to lock the main gate for the night. They took away Akash with them. When the son did not return home, the mother telephoned the Kotwali to make enquiries. She was assured that he would be released soon. When Akash did not return till morning, she went to the Kotwali police station. The policemen on duty informed her that ASI Madhu Pagare had been on duty at the time her son was picked up. She was asked to sign some papers and the son was handed over to her. But she was stunned to see that Akash was limping and upon enquiring, he started to cry and told her that he had been blindfolded and beaten. There were wounds on his soles and thighs.</p><p>This midnight detention and torture by the police became front-page news in the local papers.</p><p>The furore led to the institution of an enquiry into the incident. But surprisingly, the enquiry was conducted by a senior officer of the same Khandwa police station. The probe was conducted by City Superintendent Suresh Nasheene. The CSP recorded the statements of neighbours and police officers and concluded that Akash was a drug addict and was in fact beaten by his brother Prakash at his mother’s behest when he became totally out of control on the night of 19 February. It further said that Mrs. Rajni Yuvne had voluntarily handed him over to the police.
Local newspapers from Khandwa reporting about the illegal detention and torture of Akash (PW 5)

Of course, in the tradition of the Kotwali thana, no roznamcha had been made out. This, said the officer enquiring into the incident, was carelessness on the part of ASI Madhu Pagare. This disregard for procedure had rendered ASI Pagare vulnerable...
to the false complaints of Akash’s mother.

One can only imagine how fair this enquiry would have been: a police officer probing his junior, who belonged to a thana where one of the most prominent SIMI cases in the state was registered; the officer accused of detaining and torturing a witness who had turned hostile, openly accusing the police of pressurizing him into giving false statements, possibly jeopardizing the high profile case, and the reputation of the Khandwa police. Could we have expected any other conclusion by this enquiry committee?

But Akash’s tragic story does not end here. On 7 July 2009, a few months after the police detention, Akash was found hanging from the ceiling at his home. His wrists had also been slashed. Akash had taken his own life. An enquiry conducted by sub inspector N.R. Verma of Kotwali thana came to the predictable conclusion that Akash was a drug addict and had lost his mental balance because he could not access drugs, and therefore committed suicide. Verma’s assessment was based on the suicide note recovered, forensic examination of the site, and postmortem report of the deceased. The suicide note, according to the police statements in the press, said that Akash was depressed over a fight with his mother, and it was his guilt for having slapped his mother that forced him to take this extreme step. Though statements of some unnamed people are mentioned in a letter in reply to an RTI enquiry, the enquiry officer also says that though attempts were made to record the statement of Akash’s family he remained unsuccessful. In any case, if the family suspected any foul play, he argued, they would have approached the police.

This is surely laughable.

Her mother was quoted in the local newspapers accusing the police of terrorizing her son and driving him to suicide. She said that so acute was his fear of the police that he would run to hide every time he spotted a police vehicle or khaki uniform.

Akash’s story is that of a young man whose conscience did not allow him to implicate innocent people in a false case, and he paid for it with his life.

**Court on Akash:**

In the court’s view Akash corroborated the prosecution story initially but turned hostile in the later part of his cross-examination, claiming that he was under police pressure. Had this been true, in the court’s wisdom, he would have turned hostile at the beginning of the cross-examination on 2 February.
Local newspapers reporting Akash’s suicide

In this context, the judge cites *Khuiji alias Surendra Tiwari versus the State of MP, AIR 1991, SC 1853*, which holds that in the chief examination, if a witness supports the prosecution story initially and on a later date turns hostile, it will be held that the witness has been bought over by the accused and his earlier statements will be deemed as reliable.

The court therefore found that the complete denial of the prosecution story by Akash after the recommencement of the cross examination on another day was under pressure from the accused. Thus, only that portion which is supported by the police officer Anand Tiwari, PW 19, will be considered. (69)

Akash’s detention, torture and subsequent suicide made no impact on the court.
2. Problems with testimonies about Burhanpur

a) Contradictions:

- **Place of recording Zafar’s memorandum**: Bajrang stated in the court that Zafar’s memorandum was made out in the police station in Khandwa whereas Anand Tiwari says the memorandum was recorded in Burhanpur.

- **Time of recording Zafar’s memorandum**: In the memorandum itself, the place is recorded as Burhanpur and date is given as **17 April 2006, 2.40 am**, i.e., in the intervening night of 16 April and 17 April, but right below the signatures of Anand Tiwari, the writer of the memorandum, the date interestingly reads **18 April 2006**.

(Please note that Akash has already denied being witness to the recording of memorandum)

The contradictions render the whole exercise suspect.

b) Testimonies of Bajrang and Anand Tiwari

Interestingly, while describing the operation of going to Burhanpur and Jalgaon, raiding and seizing material and arresting the accused, I.O. Anand Tiwari and prosecution witness Bajrang make no mention about the presence of each other at all in their testimonies.

c) Seizure suspect:

Bajrang conceded that he was sitting in the jeep when the police went to Burhanpur and Jalgaon and did not actually witness the police operation of raid and seizure at the home of the Siddiqui brothers. He says (para 12) that he would be unable to say where Shafeequ Siddiqui’s house in Jalgaon was, that he could not say in which area it was located; he was unable to give the number of floors in the building in which Shafeequ’s house was in, nor even say on which floor Shafeequ’s house was. He even failed to identify the photographs of the building in which Shafeequ lived.

d) Tutored Witness:

The Defence produced a photograph before the court where Bajrang Lad is pictured chatting with Anand Tiwari. In his cross examination, he even admitted that he went to AGP (Additional Government Prosecutor) office prior to his statement in court. He said in court that the government prosecutor asked him whether he remembered everything correctly. This clearly calls the bluff of the prosecution that
the witnesses were independent and not testifying on the dictats of the police.

**Court’s Response:**

In the court’s view, the long intervening period of one and a half years between the incident and his cross examination, Bajrang must have suffered memory loss and must be confused about the place of recording memorandum. As to the two dates on the memorandum, the court said that Defence had not sought any clarification about the different dates on the same memorandum during the cross examination (so by deduction, in its view, the raising of the issue in the final arguments could not be seen as credible objections to the prosecution story.) It therefore appeared to the court that the difference in date was merely a typing error. So benefit of doubt could not be granted to the accused.

Third, the court also did not find it strange that the testimonies of police officer and witness did not mention each other even though they were describing the same police action.

Fourth, the court said even if Bajrang was sitting in the jeep, there was Akash’s testimony about the recoveries that could be relied upon. (Ignore the fact that Akash had denied going to Burhanpur and Jalgaon).

Finally, the court expressed its satisfaction with the denials of Bajrang and the police that he was a tutored witness disregarding the photograph of the witness and the prosecution not only chatting in court premises but also meeting formally to discuss the testimony.

### VII. Shafeeque’s Memorandum doubtful:

1) It is to be noted that Shafeeque was taken into police custody on 18 April, while his memorandum is shown recorded on 30 April 2006. What investigation did the police do between 19 April and 30 April remains unclear.

2) **Signatures Forged:** Defence has argued that Shafeeque’s signatures on arrest memo and seizure memo do not match, and further that the signatures on seizure memo and memorandum have been forged.

To prove their case, the defence brought in a handwriting expert, Mr. Tuteja. (Tuteja has been an handwriting expert with the government of India for 25 years before retiring and since then, has been scrutinizing documents, giving his advise on as many as 1600 cases). Upon examination, he testified that while the signature on the arrest memo appeared genuine; the signatures on memorandum and seizure memo were likely to have been forged.
The prosecution challenged the Defence by saying that all signatures belong to the accused Shafeeqe and that the handwriting expert has been given incentives to submit a report favourable to the accused. Tuteja denied this.

**Court’s Response:**

While the court had been enthusiastic to accept the denials by the police that they had not tutored the witnesses, the same court was not so inclined to place its confidence in Tuteja’s denial of inducement.

The court also argued that since the Defence had not placed the question of Shafeeqe’s forged signatures to the witnesses who had seen the operation, during their cross examination, the objection about signatures being forged didn’t seem genuine. Also, since arrest memo had genuine signatures, why should there be false signatures on the seizures. (Recall here that seizures were not sealed, and the court has already admitted seizures as evidence despite them not being sealed.

3) **Shafeeqe’s memorandum and A.M. Naim’s arrest: Key Problems**

Shafeeqe in his memorandum stated that: “I receive Tehreek and Tehreek e Millat magazines from U-P-7, Vigyan Nagar, Kota by subscribing to it. The office of the magazine is U-P-7 Vigyan Nagar. I can get them recovered.”

There are several important points to be note here:

a) First, Shafeeqe is accused of being a registered subscriber of the magazines Tehreek e Millat and Tehreek but no copies of the said magazines were seized from him.

c) Shafeeqe’s memorandum is dated 30 April 2006 and mentions City Kotwali (Khandwa) as the place of recording. Whereas, Santosh Malakar (PW 4) admitted in his cross examination that Shafeeqe was questioned in the police vehicle, and also that written formalities were done in Kota, thus bringing into doubt the veracity of the memorandum.

d) Malakar, who is cited by the prosecution as the key witness to the recoveries made in Kota at the behest of Shafeeqe’s memorandum, admitted in cross examination that he was sitting in the jeep when the police brought the seized books and literature wrapped in a bundle from Naim’s house in Kota.

e) The prosecution failed to produce some recoveries allegedly made from A.M. Naim, in the court. This should have instantly raised doubts about the entire seizure.
Court’s Response:

The court admitted the recoveries as valid and disregarding the fact that the witness actually did not see the content of the recoveries but only saw a bundle.

VIII. No Site Map:

No site map of the houses from where recoveries shown from Zafar, Khaleel and Shafeequ have been produced before the court, which cast a shadow over the truthfulness of recoveries.

It had already been accepted that one of the key witnesses to the recoveries, Bajrang, was not actually witness to the raid and seizure as he was sitting in the jeep outside and so therefore did not know in which part of the house precisely the seized items were kept.

Akash had already denied going to Burhanpur and Jalgaon.

The I.O. Anand Tiwari too did not state from which part of the house the materials were recovered.

Court’s Response:

The absence of site map does not render the recoveries suspect. In the court’s view, the Defence has not been able to prove that these documents were not in their sole possession. Surely, the court here inverts the principal of natural justice, shifting the burden of proving their innocence on the accused, rather than on the prosecution of proving their guilt.

IX. Problems with A.M. Naim’s memorandum:

In brief, the prosecution case was that Naim was produced before the Khandwa court on 2 May 2006 and was sent on remand till 8 May 2006. According to Manoj Rai, he gave his memorandum on 3 May 2006. PW Bajrang has testified that on 3 May 2006, around 4 o’clock, Naim disclosed that Tehreek e Millat’s name was changed to Tehreek and was being distributed by Shahid Badr Falahi and Imran Ansari of Indore. On the other hand, in complete contrast, witness Akash testified that Abdul Naim gave his memorandum the day following the arrests of Zafar, Khaleel and Shafeequ (i.e., 18 April)

Court’s Response:

The fact that Manoj Rai’s and Bajrang’s testimonies match, it appears that Akash must have suffered loss of memory and thus given the date of the recording of memorandum incorrectly.
The circular logic of memorandum:

The prosecution case is this: arrests led to memorandums being recorded which led to more arrests and seizures. Again and again, the court discards problems raised about sanctity of the seizures, and in fact uses these dubious seizures to validate the memorandums. It’s a circular logic in which memorandums are used to support seizures when the latter are called into question; and vice versa, when the defence doubts the memorandums, seizures are held up to prove the memorandum. Just as Shafeeque’s memorandum was proved in the court’s eyes through the recoveries from Naim’s house; Naim’s memorandum was proved through the recoveries (copies of January and February 2006 issues of *Tehreek* and *Tehreek e Millat*) from the Azamgarh residence of Shahid Badr Falahi.

X. Dubious Criminal Investigation:

The police made no attempt to trace the people whose names were written on the SIMI membership forms allegedly recovered from Asiya. Neither did the court deem it fit to ask the police as to why it had failed to pursue the investigation. Similarly, when the police went to Azamgarh and conducted a raid, they did not find Shahid Badr Falahi. Again, they did not bother to track him down. This points to the fact that the police was not interested in conducting a proper criminal investigation but simply in casting a net, in order to apprehend whomsoever they could at that time.

XI. UAPA proved on the basis of unproven Receipts:

Sections of UAPA, namely, 3 (13) and 3 (10) were proved by reliance on receipts of contributions towards SIMI building funds made by Aquil and Asiya, and received by Shafeeque.

It tests one’s credulity to even think that a banned organization would solicit funds for construction of buildings or that anyone would make contributions to a banned organization, and further that this transaction would be recorded through receipts maintained carefully. It is noteworthy that no attempt was made by the court to prove the signatures of the accused on these receipts. The court admitted that the receipts had been filled by hand, and handwriting was not proved, but in its view, what was noteworthy was that a large number of forms, magazines etc., had been recovered. In these circumstances, it concluded that it did not matter if handwriting experts were not called in to testify about the handwriting on the receipts.

As has already been mentioned, no attempt was made by the police to track any of
those in whose names also receipts were found.

But most damningly, the same receipt made out against Asiya Khan’s alleged donation of Rs 500 that is shown as evidence in the present case is also shown as evidence in *State vs Sajid Ali and another*, (FIR Number 302/2008) another SIMI trial in Bhopal!

Receipt of SIMI made out in the name of ‘Kumari Ashiya Khan’, shown in both the Khandwa case and 302/2008, PS Misroad (Bhopal). This is taken from the 302/2008 case file.
XII. Tampering with seized material on the pretext of submitting it to the HC with bail cancellation order:

It is striking that the police repeatedly took into its custody, the seized material from the court on the pretext that the prosecution was filing appeals in the High Court against the bail orders of some accused. However, it was brought to the notice of the trial court that this material retrieved from the court was never appended to the appeals filed in HC. It was a clear case of misleading the court about the seized material.

4 April 2007:

High Court granted bail to Inamur Rehman, Shafeeq Siddiqui and Khalil Ahmed. But while doing so, it made some scathing remarks about the prosecution, particularly its unwillingness to produce before it the seized material.

“Learned counsel for the State opposed the application and contended that several documents were recovered from the possession of applicants ad those documents belong to SIMI, and therefore, a prima facie offence under the above mentioned Sections are made out.

... When I enquired upon as to what type of documents or articles were seized from the possession of applicants, the learned counsel for the State failed to show me those articles or documents and stated that the Police Station, Khandwa failed to send all the documents.

... It appears that the Police Officers of Police Station does not want to show those documents because the applicants may get the bail, but they do not know that in the absence of said documents, the applicants may be granted bail.

A.K. Saxena, Judge, High Court of Madhya Pradesh, Jabalpur

6 April 2007:

I.O. moved an application to take custody of the seized material which was needed to be attached to the bail cancellation application he was going to move against Inamur Rehman, Shafeeqe Siddiqui and Khaleel Siddiqui. An order was passed granting the same.

9 April 2007:

I.O. moved a bail cancellation application in the HC but no material was attached with the application. Only seizure memos were appended.
IN THE HIGH COURT OF JUDICATURE AT JABALPUR

MISC. CRIMINAL CASE NO. 5323/OF 2007

APPLICANT: State of Madhya Pradesh through Police Station, City Kotwali, Khandwa, District Khandwa (M.P.)

Versus

NON-APPLICANTS: Inam Urrahman, son of Abdul Hafiz Qureshi

LIST OF DOCUMENTS

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<td>Copy of Gazette of India dated 8th February 2006</td>
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<td>8.</td>
<td>Copy of seizure memo and abstract of relevant document</td>
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<td>9.</td>
<td>Copy of memorandum of co-accused Imran Ansari</td>
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JABALPUR:

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OFFICER-IN-CHARGE
OF THE CASE

Cover page of the prosecution’s application in the High Court seeking cancellation of bail
On three consecutive dates (28 June 2007; 3 August 2007 and 5 September 2007) the prosecution told the trial court that the recovered material had not yet been returned by the HC where the bail cancellation application was pending.

However, there is no accounting for why the seized material was not attached with the application on 9 April 2007 and on what date precisely the material was submitted to the High Court. There is little doubt that the police had in its custody seized material from the case—an utter violation of procedure.

22 January 2008:

The High Court took serious note of the way the trial Court had allowed the police access to the seized material after the filing of charge-sheet. (see Box below)

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**High Court's strictures against the trial court**

“The documents which were sealed in this matter have been produced in this Court and it has been disclosed that on the basis of order passed by this Court, the documents were taken from the Court concerned and produced before this Court for perusal. It has also been disclosed that chargesheet has already been filed in the Court.

Even if this Court passed an order for production of documents, how the Court concerned handed over the documents to police, which were filed with the charge-sheet, is a matter of surprise. At the most, it should have been informed to this Court that all the documents have already been filed with the charge-sheet and then this Court can issue the directions to the concerned Court to send the documents, but this was not the proper procedure that the documents should have been handed over the police, which were filed with the charge-sheet. The Court concerned has adopted a wrong procedure and it is directed that this type of mistake should not be repeated in the future.

... I perused the documents which were said to have been seized from the applicants. Most of the documents are in Urdu language and the In-charge, Police Station, Kotwali, Khandwa admits that Hindi translation of these books have not been filed in the trial Court. One map of Tamil Nadu State had also been seized in which, several places of worship have been shown, but whether this is sufficient ground to make out a prima-facie case under the Unlawful Activities (Prevention) Act, it may be considered by the trial Court....”

A.K. Saxena, Judge, High Court of Madhya Pradesh, Jabalpur

22 January 2008

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Similarly, in Zafar’s case, the prosecution similarly kept the seized material in its custody on the pretext that it was to be submitted to the High Court. The trial court was happy each time to grant this request.

24 November 2006

The I.O. Ghanshyam Malviya moved an application in the trial court, pleading that the material seized from Zafar (s/o Zaheer) had to be mandatorily produced before the High Court Jabalpur.

25 November 2006:

The court acceded to this request, but did not even bother to pass a separate order, simply signing its approval on the application: “Allowed Original documents to be handed over to the prosecution after obtaining due receipt. Nazir is directed accordingly.”

This only shows the casual approach of the court towards safeguarding the seized material, which was now its property, and to ensure that it wasn’t misused.

Why did the police take the seized material in its custody?

The answer to this will become clearer if we realize that the bulk of SIMI cases are built on recoveries of literature and receipts of contribution, membership forms etc., often planted, as is evident from a perusal of the above points. But since the supply of such material is not limitless, given that SIMI was banned in 2001 and given that it suspended printing and publishing literature and membership forms etc., the same material is used to be shown as recovery. The Khandwa case illustrates this well.

We have already mentioned above that the donation receipt issued to Asiya was shown as recovery in the State versus Sajid Ali and another (302/ 2008 Misroad, Bhopal). In fact that case also showed in its list of recovery a copy of Tehreek e Millat magazine which has Rafia written across the cover page in hand.
Cover page of the judgement in the FIR 302/2008
Cover page of June 2002 issue of Tehreek e Millat 'Rafia' seized allegedly from Rafia in the Khandwa case, but also shown as a recovery in the FIR 320/2008.
Collusion between Khandwa Police and Mumbai ATS

An attempt to link the accused in the present case to an actual act of violence and terrorism in order to magnify their guilt in public perception, could be seen in the collusion of Mumbai ATS and Khandwa police.

A letter dated 14 October 2006 was received by the Officer-in-Charge of the Kotwali Police Station, Khandwa, from Sadashiv L. Patil, Assistant Commissioner of Police and I.O., Mumbai ATS. The letter referred to the Mumbai Train blasts, which had taken place in July 2006, a month after the Khandwa arrests began.

It referred in particular to Ehtesham Kutubuddin Siddiqui, “aged 25 years …arrested in the said case on 28/09/2006”. Further: “The said accused is an active member of SIMI, a banned organization.”

“It is learnt that he is wanted in your police station CR No. 256/06/ U/sec 10.13 of the Unlawful Activities (Prevention) Act. You are requested to furnish copies of FIR, panchnama and other relevant documents of the above offence to us urgently.”

Note that the letter says, “it is learnt” but cites no source form where this fact was learnt. No letter from the Khandwa police, or any other document was cited to show that the Khandwa police was in fact searching for Ehtesham Kutubuddin Siddiqui. Within days of receiving this letter, paper work was set in motion and production warrants were sent to Arthur Road Jail to produce Ehtesham in the Khandwa court in the case number 256/06.

The only mention of Ehtesham Kutubuddin is in the memorandum of Imran Ansari of Indore. (But even in his memorandum, there are a string of names from Kerala to Bangalore, which are not followed upon).

Thereafter, there is nothing on record to prove that the Khandwa police were looking for him. His name also does not appear in the challan. Besides this solitary and passing mention of this name in one memorandum, there was nothing on record in the case files which link the accused in the present case to Train blasts in Mumbai, or to any of the accused in the case. However, the Khandwa police used the letter from the ATS and the production warrant when filing its appeal against the bail granted to Inamur Rehman, Shafeeque and Khaleel Ahmed by the High Court. This was to show how dreaded terrorists the three were, and how the High Court should cancel their bail immediately.

The exchange with ATS is hardly innocent, if we look at the mutual benefits that both ATS and Khandwa police reaped.
While the Khandwa police hoped to mar the chances of bail by tainting them with their alleged association with Mumbai train blasts accused, the ATS has also benefitted from the Khandwa police’s supply of ‘SIMI literature’. Often the recovery of such literature is enough to justify the arrest, denial of bail, and even conviction.

The magazines allegedly seized from Asiya Khan, and shown as an item of recovery in the court, has magically appeared in the seizure list of Mumbai ATS in at least four different cases it was prosecuting. How we know that this is precisely the same magazine is because it is mentioned as *Tehreek e Millat ‘Asiya*’ in the ATS seizure list, and besides, has ‘Asiya’ written in hand on the cover. Whether it was photocopied for use or circulated around the country for the benefit of different agencies is a question that ought to be asked.

This said magazine was said to have been recovered from:

1) Mumbai Train blasts of July 2006: the same magazine is said to have been recovered from Sohail Mehmood Shaikh of Bhimpura, Lashkar, Camp Area Pune; Mohd Faisal Ataur Rehman Shaikh of Bandra, Muzzamil Ataur Rehman Shaikh of Mira Road, Jameer Latifur Rehman Shaikh of Vallabhbhai Patel Nagar and Dr Tanvir Ahmad Mohd Ibrahim Ansari of Agripada, all from Mumbai.

2) Recoveries made from alleged SIMI activist Danish Riyaz Shaukat Ali Shaikh, arrested on July 30, 2006, by the ATS also included *Tehreek e Millat* Asiya, as stated in the ATS affidavit submitted before the 2010 UAPA tribunal.

3) Recoveries from Mohd Najib Abdul Rashid Bakali and some of his “SIMI associates” on August 14, 2006 included the said magazine.

4) Malegaon Blasts 2006: The same magazine (*Tehreek e Millat ‘Asiya*) was also found in the possession of the main accused, the labourer Noorul Hooda.

Now that the ATS case in the Malegaon 2006 case has collapsed and known to be a case of willful frame up involving forced confessions under MCOCA, it stands to reason that all these cases, linked together through the solitary magazine, *Tehreek e Millat ‘Asiya’, are fraudulent and cooked up by the ATS with help from the Khandwa police. It follows also, that the Khandwa police were less than scrupulous in building and prosecuting the present case. A story detailing these astounding facts was published in a national English daily, *The Indian Express*. A copy of the
news story was submitted to the trial court in Khandwa. It was disregarded.

(See “2 years, 5 cities, 6 cases – and ‘proof’ everywhere is the same magazine” by Muzamil Jaleel, Indian Express, 1 October 2012; can be accessed at: http://www.indianexpress.com/news/2-years-5-cities-6-cases---and--proof--everywhere-is-the-same-magazine/1007920/0)

Court’s Response:

Deep thought was given to the matter, according to the court. It held that the material was taken out with the permission of the court in connection with the bail cancellation applications. As far as the allegation of tampering is concerned, the material seized has been described in detail in seizure memos, and looking at these materials, no tampering is evident. Even though the accused have raised the issue of seized material being in custody of the police, the seized material is in accordance with the list outlined in the seizure memo and since no tampering is evident, there are no grounds for taking cognizance against the police.

To Summarize, the key issues which raise serious doubts about the prosecution’s story are:

- The prosecution could bring nothing on record to prove that the accused by way of words or gestures had committed any crime.
- The seized books do not belong to SIMI. The magazines which are at the heart of the case—Tehreek e Millat and Tehreek—were never proscribed, neither at the time the offence was made out by the police, nor today.
- The receipts of giving and receiving monetary contribution for SIMI are not proved by handwriting or otherwise.
- The prosecution has made no attempt to prove where the office of the banned SIMI was, and who its office bearers were.
- According to SIMI’s Constitution seized by the prosecution, membership to SIMI could only be for those below 30 years of age. The accused Aquil, Shafeequ, Zafar and Naim are over 30 years of age.
- Even if one conceded that the seized literature belonged to the accused, mere possession of it is not a crime. The accused have not indulged in any act that is against the lawfully established government, or caused disharmony or acrimony between communities.

In addition, we have also shown how the whole prosecution case was riddled with procedural violations, a fact also underlined by the High Court of Madhya Pradesh.
a) Seizures were not sealed.
b) There were no direct independent witnesses to seizures, as all of them later conceded that they were sitting in the police vehicle whilst the raid was being conducted.
c) There were contradictions in testimony with regards to seizures, as for example, in the case of Asiya and Rafia.
d) Same seizures were shown in other cases in the state of Madhya Pradesh and even in Maharashtra.
e) The court refused to consider the fact that witnesses were not motivated, even though it was proved through photographic evidence submitted in the court that one of the witnesses was even in touch with the public prosecutor.
f) The court even refused to take cognizance of the fact that one of the key witnesses, Akash, committed suicide owing to police pressure, even when its attention was drawn to this fact.
g) The court also ignored the fact that one of the main prosecution witnesses, Bajrang Lad, was involved in a criminal case filed in the same City Kotwali thana.
h) Akash’s testimonies which suited the prosecution story were considered - even when he claimed that he was pressured by the police; and those portions of his testimony which contradicted the police story were discarded.

But ultimately, each objection by the defence, every single violation of procedure by the prosecution brought before the court was dismissed by the argument that there was no personal enmity between the police officers and the accused, and the police officers had not shown any inclination to falsely implicate the accused, so the violation of procedure must be seen as an oversight, confusion, memory loss etc.

The Judgement:

The court finally relying on dubious recoveries and in disregard of the procedural violations at every stage of the investigation – and trial – handed out a judgement, acquitting some accused of lighter charges under IPC but convicting them under the more serious UAPA charges.
Convictions:

Sections 3 (10) UAPA
Aquil, Inamur Rehman, Md. Asif, Javed Ghouri, Asiya, Rafia, Zafar (s/o Zaheer), Khaleel, Shafeeque and A.M. Naim.

Sections 3 (13) UAPA
Aquil, Javed, Asif, Inam, Rafia, Asiya Abdul Naim , Shafeeque, Jafar (s/o Haji Ibrahim

153 A IPC
Aquil, Javed, Asif, Inam, Rafia, Abdul Naim , Jafar (s/o Haji Ibrahim).

153 B IPC
Aquil, Javed, Asif, Inam, Rafia, A.M. Naim, Jafar (s/o Haji Ibrahim): 

295 A
Aquil, Javed, Rafia, Inam, Asif and Naim, Jafar (s/o Haji Ibrahim):

Acquittals:
153 A, 153 B and 295 A
Asiya, Zafar, Khaleel and Shafeeque

124 A
All accused acquitted under these charges
Imran Ansari, Amanullah and Sarfaraz were acquitted of all charges.
EXCERPTS FROM SOME SUPREME COURT JUDGEMENTS

“If the Investigating agency suspected a conspiracy to wage war, it was its bounden duty to search for evidence wherever it could be found and not content itself by reading the letters and examining the recipients of the letters. It is not again correct to say that the case of waging war is founded entirely on the letters addressed to the President of India, etc. and that all that was necessary for the investigating agency to do was to examine the recipients of the letters. The letters are only items of evidence and not the totality of the evidence.”


“In Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) the U.S. Supreme Court went further and held that mere ‘advocacy or teaching the duty, necessity, or propriety’ of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed ‘to teach or advocate the doctrines of criminal syndicalism’ is not per se illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First and Fourteenth Amendments to the U.S. Constitution.

In United States Vs. Eugene Frank Robel, 389 U.S. 258, the U.S. Supreme Court held that a member of a communist organisation could not be regarded as doing an unlawful act by merely obtaining employment in a defence facility.

We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution.

In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our
observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.”

**Arup Bhuyan vs State Of Assam on 3 February 2011**
**Bench: Markandey Katju, Gyan Sudha Misra; Criminal Appeal No(s). 889 of 2007**

“14. In Noto’s case (supra) Mr. Justice Hugo Black in a concurring judgment wrote: ‘In 1799, the English Parliament passed a law outlawing certain named societies on the ground that they were engaged in “a traitorous Conspiracy .......... in conjunction with the Persons from Time to Time exercising the Powers of Government in France .......” One of the many strong arguments made by those who opposed the enactment of this law was stated by a member of that body, Mr. Tierney: The remedy proposed goes to the putting an end to all these societies together. I object to the system, of which this is only a branch; for the Right Hon. gentleman has told us he intends to propose laws from time to time upon this subject, as cases may arise to require them. I say these attempts lead to consequences of the most horrible kind. I see that government are acting thus. Those whom they cannot prove to be guilty, they will punish for their suspicion. To support this system, we must have a swarm of spies and informers. They are the very pillars of such a system of government.

…

26. It has been submitted by the learned counsel for the Government before the TADA Court that under many laws mere membership of an organization is illegal e.g. Section 3(5) of Terrorists and Disruptive Activities, 1989, Section 10 of the Unlawful Activities (Prevention ) Act 1967, etc. In our opinion these statutory provisions cannot be read in isolation, but have to be read in consonance with the Fundamental Rights guaranteed by our Constitution.

27. The Constitution is the highest law of the land and no statute can violate it. If there is a statute which appears to violate it we can either declare it unconstitutional or we can read it down to make it constitutional. The first attempt of the Court should be try to sustain the validity of the statute by reading it down.”

**Sri Indra Das vs State Of Assam on 10 February 2011. Author: M Katju; Bench: P. Sathasiva, B.S. Chauhan (in The Supreme Court Of India; Criminal Appeal No.1383 of 2007)**
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About JTSA

Jamia Teachers' Solidarity Association (originally Jamia Teachers' Solidarity Group) is a collective of university teachers, formed in the aftermath of the Batla House 'encounter' in 2008. Though initially focusing on the demand for a judicial probe into the Batla House 'encounter', JTSA has emerged as an important voice arguing for rule of law, and against illegal detentions, encounter killings, and communal witch hunts by anti-terror agencies.

JTSA conducts fact-findings, investigations, publishes reports, engages in legal aid work as well as collaborates with a range of civil society groups on issues of democracy, justice and civil rights. For more on the activities of JTSA, visit www.teacherssolidarity.org

JTSA is a non-funded organization which depends on the goodwill, support of all democratic and progressive forces and individuals who would like to see our work to go on. We welcome contributions to sustain our campaigns and legal aid work. Please write to info.jtsa@gmail.com if you would like to support us.