LAW COMMISSION HOME PAGE

LAW COMMISSION OF INDIA

173RD REPORT

ON

PREVENTION OF TERRORISM BILL, 2000

APRIL, 2000

D.O. No.6(3)(53)/98-LC(LS)

April 13, 2000

Dear Shri Jethmalaniji,

I am forwarding herewith the 173rd Report on "Prevention of Terrorism Bill, 2000".

2. The Ministry of Home Affairs, Government of India requested the Commission to undertake a fresh examination of the issue of a suitable legislation for combating terrorism and other anti-national activities in view of the fact that security environment has changed drastically since 1972 when the Law Commission had sent its 43rd Report on offences against the national security. The Government emphasised that the subject was of utmost urgency because the erstwhile Terrorist and Disruptive Activities (Prevention)
Act, 1987 had lapsed and no other law had been enacted to fill the vaccum arising therefrom. The Commission was asked to take a holistic view on the need for a comprehensive anti-terrorism law in the country. The Commission circulated a working paper to all the concerned authorities, organisations and individuals for eliciting their views with respect to the proposals contained therein. Two seminars were also held for this purpose.

3. The Commission took note of several points addressed by the speakers and after taking into consideration the several opinions expressed in these two seminars and the responses received, the present Report has been prepared.

4. The Commission has taken into consideration the original Criminal Law Amendment Bill, 1995 introduced in Rajya Sabha, as also the Official Amendments proposed by the Ministry of Home Affairs which are set out in the working paper (Annexure –I) annexed with this Report. The Report brings out that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment of such a legislation would by itself subdue terrorism. It may, however, arm the State to fight terrorism more effectively. Besides recommending for various measures to combat terrorism, the Commission has at the same time provided adequate safeguards designed to advance the human rights aspects and to prevent abuse of power. We have thoroughly revised the Criminal Law Amendment Bill and have suggested a new Bill "Prevention of Terrorism Bill" for it.

5. For the sake of convenience, the Bill entitled "Prevention of Terrorism Bill, 2000" as modified by the Law Commission is annexed with the Report.

With warm regards,

Yours sincerely,

(B.P. Jeevan Reddy)

Shri Ram Jethmalani,
Minister for Law, Justice & Co. Affairs,
Shastri Bhavan,
New Delhi

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CHAPTER I
INTRODUCTORY

The Government of India in the Ministry of Home Affairs requested the Law Commission to undertake a fresh examination of the issue of a suitable legislation for combating terrorism and other anti-national activities in view of the fact that security environment has changed drastically since 1972 when the Law Commission had sent its 43rd Report on Offences against the National Security. The government emphasised that the subject was of utmost urgency in view of the fact that while the erstwhile Terrorists and Disruptive Activities (Prevention) Act, 1987 had lapsed, no other law had been enacted to fill the vacuum arising therefrom. The result is that today there is no law to combat terrorism in India. The Commission was asked to take a holistic view on the need for a comprehensive anti-terrorism law in India after taking into consideration similar legislations enacted in other countries faced with the

problem of terrorism. Accordingly, the Commission had taken up the study of the subject and prepared a Working Paper (Annexure I) which was circulated to all the concerned authorities, organisations and individuals for eliciting their views with respect to the proposals contained therein. Two seminars were also held for this purpose. The first seminar was held on December 20, 1999 at the India International Centre, New Delhi. It was inaugurated by Shri Justice J.S. Verma, former Chief Justice of India and presently the Chairperson of the National Human Rights Commission. The following persons spoke at the said seminar: Shri P.P. Rao, Senior Advocate, Supreme Court and former President of the Supreme Court Bar Association, Brig. Satbir Singh, Senior Fellow and OSD in Institute for Defence Studies and Analysis, Prof. V.S. Mani, Jawarharlal Nehru University and Secretary-General, the Indian Society of International Law, Shri K.T.S. Tulsi, Senior Advocate, Supreme Court and former Additional Solicitor General, Shri D.R. Karthikeyan, former Director, CBI and presently holding the post of DG(Investigations), National Human Rights Commission, Shri Prashant Bhushan, Advocate, Supreme Court and an activist in human rights field, Prof. B.B. Pandey of Delhi University, Shri P.S. Rao, Legal Adviser, Legal and Treaties Division, Ministry of External Affairs, Shri K.P.S. Gill, former DGP, Punjab, Shri Ravi Nair from South Asia Human Rights Documentation Centre, Ms. Kamini Jaiswal, Senior Advocate, Supreme Court and an activist in the human rights field, Shri Shiv Basant and Dr. P.K. Agarwal, Joint Secretaries in the Ministry of Home Affairs, Shri B.A. Agrawal, Joint Secretary and Legal Adviser, Ministry of Law, Justice & Co. Affairs, Shri S.V. Singh, Additional DGP Crime, Punjab, Shri S.S. Puri, Additional DGP(L&O), Maharashtra, Shri M.L. Sharma, Joint Director, CBI, Shri N. Kumar, Senior Advocate, Supreme Court, Shri Justice Rajinder Sachhar, Senior Advocate and former Chief Justice, Delhi High Court.

The Commission made a note of the points made by all the above speakers. Shri Tulsi has also sent his comments in writing. The Addl. DGP, CID, Assam has sent his comments in writing. Amnesty International has also sent a communication in this behalf dated December 18, 1999. Though the said organisation said in this letter that they would be sending a detailed response later, the Commission has not so far received any such detailed comments.

A second seminar was held on January 29, 2000 in association with the India International Centre in the auditorium of India International Centre. The following persons spoke at this seminar: Shri N.N. Vohra, former Home Secretary and Director of the India International Centre (who co-chaired the seminar), Shri R.K. Khandelwal, former Chairman, Joint Intelligence Committee, Shri Prashant Bhushan, Advocate, Supreme

Court, Shri P.K. Dave, former Lt. Governor of Delhi, Shri S.K. Singh, former Foreign Secretary, Ms. Maja Daruwalla, Director, Commonwealth Human Rights Initiative, Air Chief Marshal N.C. Suri, Lt.Gen. Raghavan, Shri P.N. Lekhi, Senior Advocate, Delhi High Court, Shri D.R. Karthikeyan, DG(Investigations), NHRC, Shri U.R. Lalit, Senior Advocate, Supreme Court, Shri Ashok Bhan, Advocate (Kashmiri Pandit - migrant), Shri K.P.S. Gill, former DGP, Punjab, Shri P.P. Rao, Senior Advocate, Supreme Court, Dr. Ajit Muzoomdar, IAS(Retd.), Shri Sushil Kumar, Senior Advocate, Supreme Court, Shri P.S. Rao, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Brig. Satbir Singh, Senior Fellow and OSD in the Institute for Defence Studies and Analysis and Shri Ravi Nair from the South Asia Human Rights Documentation Centre. (On account of paucity of time, several other participants could not speak on this occasion.) Shri H.D. Shourie, Director, "Common Cause", sent his written comments since he could not attend the seminar personally. Other persons who sent written comments include the following: Dr. M.L. Chibber, General(Retd.), Shri L. David, IPS, Assam, Shri K.T.S. Tulsi, Senior Advocate, Shri Rakesh Shukla, Secretary, Peoples' Union for Democratic Rights, Shri K.G. Kannibaran, President, PUCL, Shri Tapan Bose, Secretary General, South-East Forum for Human Rights, Shri D.R. Karthikeyan, Director General, NHRC and Shri A.K. Srivastava, Judge Advocate General's Branch. Later, South Asia Human Rights Documentation Centre also sent a written representation.

The Commission has taken note of several points made by the above speakers. After taking into consideration the several opinions expressed in these two seminars and the responses received, the present report has been prepared.

CHAPTER II
SECURITY SITUATION IN THE COUNTRY

In its Working Paper the Law Commission had set out the following facts and figures in paragraphs 1.2 to 1.15 in chapter I. They read as follows:

"1.2 The law and order situation for some years has continued to remain disturbed in several parts of India. Militant and secessionist activities in Jammu and Kashmir and the insurgency-related terrorism in the North-East have been major areas of concern. Bomb blasts in different parts of the country, including those in Tamil Nadu, constituted

another disquieting feature. There has been extensive smuggling in of arms and explosives by various terrorists groups. The seizures of these items, which represent but a small percentage of the total quantities brought in indicate the kind of sophisticated arms and explosives being brought into the country illegally.

The security situation in some states/regions of the country is indicated below.

1.3 Jammu and Kashmir

There have been 45,182 incidents of terrorist violence in J&K since 1988 and upto March 1999. In this violence, 20,506 persons have lost their lives. 3421 incidents of violence took place in Jammu and Kashmir which included 2198 cases of killing in 1997 alone. 5523 incidents and 2858 killings took place in 1996. In 1998, there were 2213 killings. There were numerous cases of abductions, robberies, extortions, explosions, incidents of arson and killings. Civilians remained the major victims of violence (1333 killed in 1996, 864 in 1997 and 416 in the year 1998 upto June). Security forces personnel, `friendly militants' and political activists were the priority targets of the militants. There has been an increase in the number of casualties among security forces.

1.3.1 The militants are found to be well trained. Most of them are of foreign origin. Mercenaries and fanatic fundamentalist terrorists from Afghanistan, Sudan, Pakistan and other countries are being inducted increasingly into this movement. According to several reports, one of the prime targets of international terrorist leaders, like Osama Bin Laden, is Kashmir. The terrorism in India has thus become a part of international terrorism and India one of its prime targets. Their targets are security forces personnel, political activists, `friendly militants', suspected informers and their families, as also Hindus residing in isolated pockets. They indulge in acts of demonstrative violence, mainly with the help of explosives; induction of more and more sophisticated weaponry, including anti-aircraft guns and RDX. They have extended the arc of terrorism to the Jammu region, particularly Rajouri, Poonch and Doda districts.

1.3.2 The militancy in Jammu and Kashmir has left a large number of Hindu families homeless and they had to migrate to other places outside the State.

1.4 Punjab

The State remains vulnerable to sporadic terrorist actions by the remnants of the militants, numbering about 300, who appear to be under pressure to revive the separatist movement. The militant bodies are funded and equipped mainly by overseas activists.

1.4.1 The need for high level of vigil in order to checkmate any attempts at revival of terrorism in the State, hardly need be overemphasised.

1.5 North-Eastern Region

Militant activities of various insurgent and extremist groups and ethnic tensions have kept the conditions disturbed in large areas of the North East.

1.5.1 In Assam, ULFA, Bodo and Naga militancy shows an upward trend in 1998, accounting for 735 incidents (603 killings) as against 427 incidents (370 killings) in 1997. This trend has continued in the first eight months of 1999, which has witnessed 298 incidents (208 killings). Nalbari, Nagaon and Kamrup districts remain the worst affected and Lakhimpur, Dibrugarh, Goalpara and Jorhat districts moderately affected by ULFA violence.

1.5.2 The Bodo militants were responsible for 178 incidents (215 killings) in 1997, as against 213 incidents (260 killings) in 1996. Bodo militants were also responsible for 10 explosions (22 deaths) in 1997. During 1998, an upward trend has been evident.

1.5.3 The NSCN(I) and its satellite, the Dima Halam Deogah (DHD) in NC Hills and Karbi Anglong districts and the NSCN(K) in Golaghat, Jorhat and Sibsagar districts also indulged in violent activities. There was a `ceasefire' agreement (July 25, 1997) between the NSCN(I) and the Government of India.

1.5.4 Overall militancy in Assam showed an upswing in 1998, accounting for 735 incidents as against 427 in 1997. The upward trend has continued in the first eight months of 1999. Police, security forces personnel and uncooperative businessmen have been the main targets of the outfits.

1.6 In Manipur, despite large scale security forces operations, there has been a sharp rise in the overall violence, involving Naga, Kuki and Valley extremists, as also ethnic groups resulting in several deaths.

1.6.1 The State witnessed a particularly high rate of security forces casualties - 111 personnel lost their lives in 92 ambushes in 1997 as against 65 killed in 105 ambushes in 1996. As against total 417 incidents and 241 killings in 1996, these groups were responsible for 742 incidents in which 575 persons were killed in 1997. In 1998, 250 persons were killed in 345 incidents. During 1999 (upto August), there have been 153 incidents claiming 100 lives.

1.7 In Nagaland, there was no let up by NSCN and its factions in its violent activities such as extortions, abductions and attacks on civilians, etc. In 1998, there were 202 incidents which claimed 40 lives. Upto August 1999, 10 persons have been killed in 126 violent incidents.

1.8 In Tripura, violent activities of the various tribal organisations like the ATTF and the NLFT, and assorted groups of lawless elements, continued. During 1997, there were 303 violent incidents, involving 270 deaths, as against 391 incidents (178 deaths) in 1996. In 1998, 251 persons were killed in 568 violent incidents. During 1999 (till August), 417 incidents of violence have been reported, resulting in 152 deaths.

1.8.1 The violence in all above cases mostly took the form of ambushes, looting, extortion, kidnapping for ransom, highway robberies and attacks on trucks/vehicles as well as attacks on the security forces personnel, government officials and suspected informers.

1.9 In Meghalaya, on the militancy front, the level of violence and killings by the HNLC and Achik National Volunteer Council remained almost unchanged. It is feared that in the North-East, certain development funds allocated by the Central Government have been siphoned off to fund insurgent groups. The insurgent groups in the North-East are also being helped across the country's borders with illegal arms. They were responsible for three deaths in 14 incidents in 1997 and 14 killings in 16 incidents in 1998 and 22 killings in 28 incidents in 1999 (till August 1999).

1.10 Religious Fundamentalist Militancy

Religious militancy, which had first raised its head in 1993 with bomb explosions in Mumbai, continue to make its presence felt. In 1997, there were 23 blasts in Delhi and three

each in Haryana and Uttar Pradesh. In the year 1998, Mumbai witnessed three explosions just before the Parliamentary elections. Al-Ummah, the Principal fundamentalist militant outfit of Southern India, was responsible for 17 blasts in different areas of Coimbatore (Tamil Nadu February 1998).

1.10.1 A number of miscreants, including a few Pakistan nationals and Bangladeshis, who were responsible for the blasts in North India in 1997, were arrested. Investigations have provided ample evidence of a sinister game plan to undermine the internal security and integrity of the country. Efforts are being made to forge an alliance between Muslim militants and terrorists of Punjab and J&K. Bases in Nepal and Bangladesh, in addition to those in Pakistan, are being utilised for launching disruptive operations in India. Recruits are being picked up from amongst fundamentalist youth for undergoing training in Pakistan as a prelude to being inducted into Pakistan's proxy war against India. Weapons and explosives are being pumped into the country in large quantities, in pursuance of the above game plan."

Indeed, over the last few months since the Working Paper was released, the security situation has worsened. The hijacking of Indian Airlines flight, IC-814, the release of three notorious terrorists by the Government of India to save the lives of the innocent civilians and the crew of the said flight, the subsequent declarations of the released terrorists and their activities both in Pakistan and the Pakistan-occupied Kashmir, have raised the level of terrorism both in quality and extent. The repeated attacks upon security forces and their camps by terrorists including suicide squads is a new phenomenon adding a dangerous dimension to the terrorist activity in India. Even in the last two months, substantial quantities of RDX and arms and ammunition have been recovered from various parts of the country. Indeed, it is now believed that the plan for hijacking of the Indian Airlines flight was hatched and directed from within the country.

After setting out the facts in paragraphs 1.2 to 1.15 in chapter I of the Working Paper, the Commission summed up the position in the following words:

"Some time back, the Union Home Minister declared his intention to release a white paper dealing with subversive activities of the ISI. The ISI-sponsored terrorism and proxy war has resulted in deaths of 29,151 civilians, 5,101 security personnel and 2,730 explosions. Property worth Rs.2,000 crores is reported to

have been damaged. Almost 43,700 kg. of explosives, mostly RDX, had been inducted and 61,900 sophisticated weapons had been smuggled into India. It is estimated that security related costs in countering ISI's activities have totalled an amount of Rs.64,000 crores (Vide Economic Times, New Delhi, 21 December, 1998, p.2) - which could alternatively have been spent on better purposes like education, health and housing.

1.16.1 A perception has developed among the terrorist groups that the Indian State is inherently incapable of meeting their challenge that it has become soft and indolent. As a matter of fact, quite a few parties and groups appear to have developed a vested interest in a soft State, a weak government and an ineffective implementation of the laws. Even certain foreign powers are interested in destabilising our country. Foreign funds are flowing substantially to various organisations and groups which serve, whether wittingly or unwittingly, the long-term objectives of the foreign powers."

We do not see any reason to depart from the said analysis.

In Chapter II of the Working Paper, the Commission had set out the provisions of The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and the decisions of the Supreme Court thereon. We do not think it necessary to reproduce the same in this report over again since we are enclosing a copy of the Working Paper to this report. It must, however, be added that it has since been brought to our notice that the State of Maharashtra has enacted a law to deal with organised crime, namely, The Maharashtra Control of Organised Crime Act, 1999. The Commission has taken note of the provisions of the Maharashtra Act and would be referred to at the appropriate stage.

In Chapter III of the Working Paper, the Commission had set out in extenso the provisions of the U.S.A. Anti-terrorism and Effective Death Penalty Act of 1996 and the following U.K. Acts as well as a Consultation Paper:

1. The Prevention of Terrorism (Temporary Provisions) Act, 1989.

2. Northern Ireland (Emergency Provisions) Act, 1996 as amended in 1998.

3. The Criminal Justice (Terrorism and Conspiracy) Act, 1998 and

4. The provisions of a Consultation Paper issued by the Government of U.K. in December 1998 on "Legislation Against Terrorism (Cm 4178)".

We do not think it necessary to reproduce the contents of Chapter III of the Working Paper here again, as a copy of the Working Paper is enclosed herewith as Annexure I. It is, however, necessary to point out that the British Parliament has since introduced an anti-terrorism Bill in the House of Commons, on December 2, 1999. The Act is a comprehensive piece of legislation containing as many as 99 sections and 14 Schedules. The Law Commission has perused the said Bill. It would be appropriate to mention briefly the contents of the said Bill. Section 1 defines "terrorism" and the associated expression "action" in the following words:

"Terrorism: interpretation.

1.(1) In this Act "terrorism" means the use or threat, for the purpose of advancing a political, religious or ideological cause, of action which-

(a) involves serious violence against any person or property,

(b) endangers the life of any person, or

(c) creates a serious risk to the health or safety of the public or a section of the public.

(2) In subsection (1)-

(a) "action" includes action outside the United Kingdom,

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated, and

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom.

(3) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation."

Part two containing sections 3 to 12 deals with proscribed organisations mentioned in Schedule two. This Part provides for notifying the proscribed organisations, appeals against such orders and the effect of declaring an organisation as a proscribed organisation followed by forfeiture of its properties. Any person who belongs to such organisation or supports the activities of such organisation, is liable to be prosecuted and punished.

Part three containing sections 13 to 30 deals with `terrorist property' including proceeds of terrorism. The provisions in this Chapter prohibit raising of funds for terrorist activity including money laundering and provide for seizure, detention and forfeiture of property of terrorists as well as cash belonging to them. The Chapter also places an obligation upon the citizens to disclose information relating to terrorist activity and to cooperate with the police in that behalf. Part four containing sections 31 to 37 include provisions concerning terrorist investigations. These provisions empower the police to cordon areas, to search and to take other actions in the cordoned areas as detailed in Schedule five and other allied provisions. Part five contains sections 38 to 51 dealing with counter-terrorist powers of the police. Section 38 defines the expression "terrorist" in the following words:

"38. (1) In this part "terrorist" means a person who-

(a) has committed an offence under any of sections 10, 11, 14 to 17, 52 and 54 to 56, or

(b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the passing of this Act, concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by section 1."

The provisions in this Part empower the police to arrest without warrant, search premises and persons, stop and search vehicles and the provisions incidental thereto. The police is also empowered to place restrictions on and to regulate parking, to impose ports and border controls and to search, seize and detain terrorists and their properties. Part six containing sections 52 to 61 deals with "miscellaneous" matters. The provisions in this Part deal with terrorist offences including possession of arms and explosives (which is made an offence), with training in weapons including biological, chemical and nuclear weapons and with collecting information, etc. useful to terrorists. The British Parliament has assumed extra-territorial jurisdiction in this behalf in the sense that preparations for carrying out terrorist offences in any other country (other than the U.K.) are also made punishable in U.K., which is a good development from our country's point of view. Part seven containing sections 62 to 109 deals with Northern Ireland. The provisions in this Chapter are far more stringent in all respects.

Part eight containing sections 110 to 124 carries the heading "general". This part specifies the additional powers of the police conferred by the Bill over and above the common law powers and the extent of such powers and certain other matters.

Chapter five of the Working Paper sets out the proposals put forward by the Law Commission for public debate and discussion.

As stated hereinbefore, the Law Commission has considered the responses received and the various views expressed at the two seminars. So far as the structure of our report is concerned, we must reiterate that we have taken the Criminal Law Amendment Bill, 1995, as proposed to be amended by the Official Amendments as the basis. The reasons for this approach are not far to seek. The TADA - whose improved version is the present Bill - was in force for more than ten years; indeed it continues to be available for the pending cases. The constitutionality of the Act and the meaning and scope of its provisions have been the subject-matter of several decisions of the Supreme Court and the High Courts. In this view, we thought that instead of drafting a new law altogether, it would be more appropriate - and convenient - to take the Criminal Law Amendment Bill along with official amendments as the basis and suggest appropriate modifications and additions, wherever found necessary.

In the interest of convenience and clarity, we shall deal with the sections in the Criminal Law Amendment Bill, as introduced in Rajya Sabha on 18th May, 1995 (together with the proposed "official" amendments), chapter-wise, and suggest modifications and additions in the light of the responses received pursuant to the circulation of the Working Paper and the views expressed in the seminars.

CHAPTER III
WHETHER THE PRESENT LEGISLATION IS AT ALL NECESSARY?

The representatives of the human rights organisations and other activists in that field, namely, S/Shri Prashant Bhushan, Advocate, Supreme Court, Ravi Nair from the South Asia Human Rights Documentation Centre, V.S. Mani from Jawaharlal Nehru University, Kamini Jaiswal, Advocate, Supreme Court, Justice Rajinder Sachar, former Chief Justice of Delhi High Court, Prof. B.B. Pande of Delhi University and Maja Daruwalla, Director, Commonwealth Human Rights Initiative,

questioned the very necessity of such a legislation at the present juncture. Similar stand was taken by The Peoples Union for Civil Liberties (PUCL) (who while declining to participate in the seminars, chose to send the comments of Shri K.G. Kannabiran on each of the features of the Bill), The Peoples Union for Democratic Rights (PUDR) (letter from Shri Rakesh Shukla) and by another organisation "South Asia Forum for Human Rights". They submitted that the proposed legislation was indeed the very same TADA, in a new garb. Indeed, some of them contended that the provisions of the proposed legislation are harsher than the provisions of TADA. They submitted that TADA was widely abused and misused by the police authorities while it was in force and that it had not succeeded in checking terrorism. They submitted that a number of accused who were arrested and were being prosecuted under the TADA, were still languishing in jails and their cases were still pending trial before the designated courts notwithstanding the fact that TADA itself had lapsed in the year 1995. If TADA could not successfully counter terrorism, they asked, how could the present legislation succeed. They submitted that the police in this country is notorious for its third degree methods and illegal methods of investigation which is indeed the byproduct of their inefficiency. They submitted further that the Law Commission should not look to U.K. and U.S. or to the anti-terrorism laws in force there, because the standards of behaviour of the police in those countries were far more civilised and consistent with the norms of law. Introducing provisions similar to the provisions existing in those enactments would not be appropriate, they submitted, inasmuch as the social and political standards and the level of consciousness of the citizens of this country are not the same as that of U.K. or U.S.A. The policeman is held in awe in this country and this legislation would clothe him with more arbitrary powers which cannot but result in harassment of innocent persons besides being unable to achieve its objective. They further raised the point that before enacting such a legislation there must be a far wider debate throughout the country and that the Commission must also look into and verify several abuses which had occurred under the TADA. They submitted that human rights of the citizens of this country would be in great peril if such a law was enforced. Another submission put forward by Shri K.G. Kannabiran is that terrorism is a consequence of socio-economic injustice and is thus really a political problem and not a `law and order' or `public order' problem.

On the other hand, Brig. Satbir Singh, Senior Fellow and OSD in the Institute of Defence Studies and Analysis, Shri K.T.S. Tulsi, Senior Advocate, Supreme Court, Shri K.P.S. Gill, former DGP, Punjab, Shri Shiv Basant, Joint Secretary, Ministry of Home Affairs, Shri S.V. Singh, Addl. DGP, Punjab, Shri S.S. Puri, Addl. DGP, Maharashtra, Shri M.L. Sharma, Joint Director, CBI,

Dr. P.K. Agarwal, Joint Secretary, Ministry of Home Affairs, Shri P.K. Dave, former Lt. Governor of Delhi, Shri S.K. Singh, former Foreign Secretary, Shri U.R. Lalit, Senior Advocate, Supreme Court, Shri A.K. Shrivastava, Judge-Advocate-General, Army, Lt.Gen.(Retd.) Dr. M.L. Chibber, Shri L. David, Addl. DGP, Assam, Shri H.N. Ray, former Finance Secretary, Government of India and Shri Ashok Bhan, Advocate and a Kashmiri migrant Pandit, called for a more stringent law than the one proposed. They submitted that some of the proposals put forward by Law Commission with a view to provide protection to the accused were unworkable and impractical. They pointed out the serious situation in which India was placed now with terrorism threatening its security from all sides. They pointed out that today India was threatened not only with external terrorism but also with internal terrorism. They submitted that Indian Penal Code was not conceived and was not meant for fighting organised crime; that it was designed only to check individual crimes and occasional riots at local level. Organised crime perpetrated by highly trained and armed fanatical elements or mercenaries who are trained, financed, armed and supported by hostile foreign countries and agencies had to be fought at a different level than as an ordinary law and order crime. They pointed out that the anti-terrorism laws of the U.K. and U.S.A. were far more stringent than the provisions of the proposed legislation. They submitted that the plea that police was likely to misuse or abuse the provisions of the new legislation could not be a ground for opposing the very legislation to fight terrorism. It is one thing to say, they submitted, that the provisions of the legislation must be so designed as to prevent or minimise its abuse and misuse and quite another thing to say that because of the possibility of abuse, no such law should be enacted at all. For that matter, they submitted, there was no Act on the statute book either in this country or anywhere else which was not open to abuse or misuse. Even provisions of the Code of Criminal Procedure or the Indian Penal code were liable to misuse but that could not be a ground for asking for the repeal of those enactments. They submitted that one must realise the extraordinary, alarming and dangerous situation in which the country was placed today because of the activities of the hostile neighbour and the fundamentalist Islamic terrorism which have made India their prime target. They pointed out that foreign terrorists now far outnumbered the local terrorists in Jammu and Kashmir and that thousands more were waiting to enter J&K with a view to carrying on the so-called `Jehad'. In such a situation, any delay or inaction on the part of the country to take measures to fight these terrorist elements would be a grave dereliction of duty on the part of the State. The present enactment was but one of the means of fighting terrorism and therefore its enactment could not validly be opposed.

Shri Justice J.S. Verma, Chairperson, National Human Rights Commission, while inaugurating the first seminar, opined that having regard to the extraordinary situation obtaining in the country and in view of the steadily worsening situation in certain parts of the country, a special law was necessary to fight terrorist activities. At the same time, he suggested that the Act must contain necessary safeguards and it must be a legislation with a human face. He stressed the importance of maintaining a balance between individual rights and the rights of the society and opined that in case of conflict between the two, the interest of society must prevail. Justice Verma referred to several decisions of the Supreme Court rendered under TADA including the decisions in Kartar Singh, Sanjay Dutt and Shaheen Welfare Society and suggested that the several guidelines available in those decisions might be kept in mind while enacting the new legislation. The learned judge also referred to the Armed Forces Special Powers Act and stated that its constitutionality had been upheld by a Constitution Bench of the Supreme Court while reading certain constitutional safeguards into the Act. He pointed out the long pendency of cases under TADA and the adverse image of India it was creating in the international arena. He suggested that the Preamble to the Constitution and the guarantees contained therein should be kept in mind and that in the matter of bail, a classification of cases may be provided for on the lines indicated in the of decision in Shaheen Welfare. The learned judge also stressed the importance of speedy trial. If bail was not granted and the trial was also not proceeded with reasonable promptitude, it becomes oppressive, the learned judge stated. Six months should be the time limit for a trial to conclude. The learned judge also affirmed the correctness of the argument that the mere possibility of abuse could not be a ground for the very enactment of such a legislation. On the other hand, the learned judge pointed out that effort should be made to try to find out how best to prevent the misuse and abuse of the provisions of such a legislation. The learned judge then referred to the experience under TADA and suggested that investing powers under the Act in higher authorities was an effective means of preventing its misuse. He also referred to the experiment of the Review Committees and to the desirability of plurality in the composition of the reviewing authorities. He concluded his inaugural speech by observing that while the legislation was necessary, it was equally important to incorporate provisions to prevent its misuse. He also suggested that the authorities found misusing the provisions of the Act, should be sternly dealt with.

Shri P.P. Rao, Senior Advocate, Supreme Court and a former President of the Supreme Court Bar Association spoke in the same terms as Justice J.S. Verma. He welcomed the provisions relating to presence of counsel during the interrogation of the accused and

suggested that the power to arrest or the approval of decision to arrest should be by an authority higher than the Superintendent of Police. In the matter of bail, the learned counsel suggested that the basic premise being liberty, the provisions with respect to bail should not be made too stringent. He also emphasised the desirability of speedy trial.

On a consideration of the various viewpoints, the Law Commission is of the opinion that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment of such a legislation would by itself subdue terrorism. It may, however, arm the State to fight terrorism more effectively. There is a good amount of substance in the submission that the Indian Penal Code (IPC) was not designed to fight or to check organised crime of the nature we are faced with now. Here is a case of organised groups or gangs trained, inspired and supported by fundamentalists and anti-Indian elements trying to destablise the country who make no secret of their intentions. The act of terrorism by its very nature generates terror and a psychosis of fear among the populace. Because of the terror and the fear, people are rendered sullen. They become helpless spectators of the atrocities committed before their eyes. They are afraid of contacting the Police authorities about any information they may have about terrorist activities much less to cooperate with the Police in dealing with terrorists. It is difficult to get any witnesses because people are afraid of their own safety and safety of their families. It is well known that during the worst days in Punjab, even the judges and prosecutors were gripped with such fear and terror that they were not prepared to try or prosecute the cases against the terrorists. That is also stated to be the position today in J&K and this is one reason which is contributing to the enormous delay in going on with the trials against the terrorists. In such a situation, insisting upon independent evidence or applying the normal peace-time standards of criminal prosecution, may be impracticable. It is necessary to have a special law to deal with a special situation. An extraordinary situation calls for an extraordinary law, designed to meet and check such extraordinary situation. It is one thing to say that we must create and provide internal structures and safeguards against possible abuse and misuse of the Act and altogether a different thing to say that because the law is liable to be misused, we should not have such an Act at all. The Supreme Court has repeatedly held that mere possibility of abuse cannnot be a ground for denying the vesting of powers or for declaring a statute unconstitutional. In State of Rajasthan v. Union of India (1978 1 SCR p.1), the Supreme Court observed "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and

at the same time incapable of mischief" (at page 77). Similarly, in Collector of Customs v. Nathella Sampathu Chetty (AIR 1962 SC 316), the Court observed, "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity". In Kesavananda Bharati v. State of Kerala (1973 Supp SCR p.1), Khanna J. observed as follows at page 755: "In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error. Constitutional law like other mortal contrivances has to take some chances. Opportunity must be allowed for vindicating reasonable belief by experience." To the same effect are observations of Krishna Iyer J. in T.N. Education Department v. State of Tamilnadu (1980 1 SCR 1026 at 1031) and Commissioner H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (AIR 1954 SC 282). All these decisions were referred to and followed by a recent nine-Judge Constitution Bench in Mafatlal Industries v. Union of India [1997 (5) SCC 536].

With respect to the plea that even if an anti-terrorism law is made, it should not be a permanent enactment, we must say that this objection is academic since the Bill, as drafted by the Government read with the Official Amendments, speaks of only a five year duration for the proposed legislation, which feature remains unchanged.

CHAPTER IV
PART I OF THE CRIMINAL LAW AMENDMENT BILL

Part I contains only two clauses. Clause 1 provides for the title and the extent of the Act. In our opinion the short title of the Bill should be the Prevention of Terrorism Bill, 2000.

Sub-clause (2) and sub-clause (3) as proposed by the Official Amendments, in our opinion, requires no change.

Clause 2 defines certain expressions occurring in the Bill. In the original Bill, there were only five definitions with the residuary clause saying that words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure (Cr.P.C.) shall have the meanings respectively assigned to them in the Code. We propose to define under clause (b) the term `proceeds of terrorism' as explained under paragraph 5.13.3 of the Working Paper (Annexure I). By Official Amendments, however, two new definitions are sought to be

introduced, namely, the definition of "High Court" and "Public Prosecutor" by way of paragraphs (ba) and (ca). With respect to the definition of the expression "High Court", it was pointed out in our Working Paper that the purpose behind this definition was not clear. It was pointed out that if the intention behind the said definition was to empower a judge of a special court to continue to try a matter which he may have been trying as a special judge, even after his elevation to High Court, then it would be appropriate to provide expressly for such a situation. If that is not the intention, the definition is unnecessary inasmuch as the said expression is already defined by clause (e) of section 2 of the Code of Criminal Procedure. We have been unable to find any provision in the Bill which says that a special judge trying a particular case shall continue to try it till its conclusion even if he is elevated to the High Court in the midst of a trial. According to us, therefore, either the said definition be dropped or may be appropriately defined to achieve the intention underlying it.

So far as the new definition of public prosecutor is concerned, we have nothing to add.

PART II OF THE CRIMINAL LAW AMENDMENT BILL

Part two of the Bill contains clauses 3 to 7. Clause 3 defines the expression "terrorist act" and also provides for punishment therefor and other allied provisions. It contains six sub-clauses. While sub-clause (1) defines terrorism, sub-clause (2) prescribes the punishment for terrorist activities. Sub-clause (3) punishes those conspiring, attempting, advocating, abetting, advising, inciting or knowingly facilitating the commission of a terrorist act. Sub-clause (4) deals with those who knowingly harbour terrorists while sub-clause (5) punishes the members of terrorist gangs and organisations. Sub-clause (6) declares the holding of proceeds of terrorism illegal.

Clause 3: The Official Amendments propose to substitute the opening words in sub-clause (1) of clause 3. In place of the words "whoever with intent to overawe the government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people, does", the following words "whoever with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people, does" are proposed to be substituted. A criticism levelled against the substituted definition was that any person questioning the unity and integrity of the country was sought to be branded as a terrorist. It was pointed out that if a person honestly believed and said that a particular part of the country should be made independent, he would come within the mischief of sub-clause (1) of clause 3. We do not think that this

criticism or apprehension is well founded. A reading of sub-clause (1) makes it clear that merely threatening the unity or integrity of India is not by itself sufficient to attract the offence in that sub-clause. What is necessary is that the person who threatens the unity, integrity, security or sovereignty of India also does an act or thing by using bombs, dynamite, etc. in a manner which causes or is likely to cause death of or injuries to any person or persons or loss of or damage to or destruction of property or disruption of any supplies or services essential to the life of the community or detains any person and threatens to kill and injure such person in order to compel the government or any other person to do or abstain from doing any act. These are serious matters and the apprehension of those opposed to this provision is unfounded.

In paras 5.3 and 5.4 of the Working Paper, the Law Commission had suggested the retention of the words "to overawe the government as by law established". The said suggestion was made in view of the fact that no good reason can be found for deleting the said words as proposed in the official amendments. These words were there in the original draft of the Bill and also in the TADA. On a consideration of the entire material placed before us, we are inclined to drop this proposal since the element of "overawing the government" can be said to be implicit in the sub-clause as modified/amended by the official amendments.

So far as the Law Commission's proposal to retain the words "or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people" in sub-clause (1) of clause 3 is concerned, we are dropping it also for the reason that the said words do not appear to fit into the sub-section once its direction is oriented towards threatening the unity, integrity, security or sovereignty of India.

The Law Commission has observed in para 5.6 that crimes in the field of electronics/computers are increasingly being used for international terrorism. Reference was made to section 805 of the U.S. Anti-terrorism and Effective Death Penalty Act of 1996, which provides deterrent sentence for any terrorist activity damaging a federal interest computer. In chapter three, the Commission had also referred to section 701 of the U.S. Act which defines the federal crime of terrorism, which is of very wide application taking in all violations of enactments dealing with aircraft, airports, biological weapons, nuclear material, destruction of government properties including communication lines, stations and systems and so on and so forth. The Law Commission is of the opinion that any damage to equipment installed or utilised for or in connection with defence or for any other purposes of the government is equally an act of terrorism if it is done

with intent to threaten the unity, integrity, security, sovereignty of India. We are, therefore, of the opinion that after the words "supplies or services essential to the life of the community", the following words may be added "or causes damage to or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of Government of India or any of its agencies". Sub-clause (1), may therefore be recast incorporating the above additions.

It would be seen that the definition of terrorist act in our Bill is put into one sub-clause viz., sub-clause (1) of clause 3, whereas the U.K. legislation defines "terrorism" in section 1 and "terrorist" in section 38 in more extensive terms. The definition of "terrorist" in the U.K. Act speaks of a person who has committed an offence under any of the sections 10, 11, 14 to 17, 52 and 54 to 56 of that Act. Sections 10 to 17 of U.K. Act deal with helping, raising funds or otherwise having connections with proscribed organisations, while section 52 and 54 to 56 speak of weapons training, directing terrorist organisations and possession of an article for the purpose connected with terrorist activities. It would be appropriate that our Act too contains provisions which make the membership of a banned organisation and/or raising funds for or otherwise furthering the activities of banned organisation, a terrorist act. Similarly, possession of unlicensed firearms and explosives and other weapons of mass destruction (in the notified areas) may also be treated as an act of terrorism. Indeed, section 5 of TADA did make possession of arms and ammunition in the notified areas punishable offence. We, therefore, recommend that existing sub-clause (1) may be numbered as paragraph (a) of sub-clause (1) and a new paragraph (b) be inserted therein. Sub-clause (1) will read as follows:-

"3. (1) Whoever,

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage to or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any

of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act,

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 or voluntarily does an act aiding or promoting in any manner the objects of such an association and is either in possession of any unlicenced firearm, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act."

Sub-clause (2) of clause 3 which speaks of punishment, in its present language, is comprehensive enough to cover both the paragraphs of sub-clause (1) and needs no change consequent upon the change in sub-clause (1).

The Government may also consider the desirability of introducing a new clause - which may be numbered as clause 4 - in terms of section 5 of TADA. The expression "notified area" may also be defined in the very clause.

We may also mention at this stage that we have examined the Maharashtra Control of Organised Crime Act, 1999 but find that its focus and objective is different from the present Act. It is meant to fight organised crime which may not necessarily amount to `terrorist activity' as defined in sub-clause (1) of clause 3 of this Bill, though in some cases they may overlap. We do not, therefore, think it necessary to deal with the definitions of "continuing unlawful activity", "organised crime" and "organised crime syndicate" occurring in the Maharashtra Act. So far as certain procedural provisions contained in the Maharashtra Act are concerned, they are referred to hereinafter at relevant places.

Sub-clauses (2) and (3) do not require any change.

Sub-clause (4) seeks to punish a person who "harbours or conceals or attempts to harbour or conceal any person knowingly that such person is a terrorist" (as proposed to be amended by "official" amendments). It was pointed out by certain participants at the seminar that this sub-section, as it stood now, would also take in the mother, father, sister or brother of a terrorist who came home to hide himself and that it would be wholly unjust to punish such relative of the terrorist merely because he was allowed to stay in the house by such a relative.

It was also pointed out by some other participants that such harbouring or concealing might be out of fear or under the threat of violence by the terrorists. It was pointed out that in such a situation, the person supposed to be harbouring or concealing a terrorist was himself a victim. On the other hand, certain other participants pointed out that the terrorists should not be provided any sanctuary and that any person who harboured or concealed a terrorist knowing that he was a terrorist, should be held guilty of the offence under sub-section (4). On a consideration of the rival submissions, we are of the opinion that it would be appropriate to add the word "voluntarily" after the word "whoever" and before the words "harbours or conceals". This would exclude a situation where a person harbours a terrorist under threat or coercion even though he may be knowing that that person is a terrorist. So far as the wife/husband harbouring the terrorist is concerned, we recommend addition of an Exception in terms of Exception to section 212 of I.P.C. to read:

"Exception.- This sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender".

We are also of the opinion that there should be a slight change in the minimum punishment provided by the sub-clause. Keeping in view of the provisions of sub-clause (2) as well as sub-clause (3) of clause 3, it would be appropriate to reduce the minimum punishment to three years from five years.

Sub-clause (5) requires no change. So far as sub-clause (6) is concerned, it is dealt with at a later stage.

In para 5.9 of its Working Paper, the Law Commission had recommended addition of sub-clause (7) in clause 3 in the following terms:

"(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine."

During the seminars or in the responses received by us pursuant to the Working Paper, no objection was taken to this proposal except in the written representation from the South Asia Human Right Documentation Centre (SAHRDC). We however see no reason to drop this proposal which is considered to be in the interest of a free and fair trial. Sub-clause (7) as recommended above, should therefore be incorporated in clause 3.

In para 5.10 of the Working Paper, the Law

Commission had also proposed addition of sub-clause (8) placing an obligation upon the persons receiving or in possession of information as to any terrorist activity to inform the Police as soon as practicable. It may be that when terror prevails, people may be afraid of speaking out. As a matter of fact, one of the prime objects of creating terror is to silence the people by instilling a psychosis of fear in them. At the same time it cannot also be forgotten that such an obligation has to be placed upon the citizens of this country for effectively fighting the terrorism. The incorporation of such a sub-clause does not mean that any or every person not giving information would necessarily be punished. If and when a person is prosecuted under the proposed sub-clause (8), the court will take into consideration all the relevant facts and circumstances and even where he is punished, the quantum of punishment to be awarded would be within the discretion of the court. It may even be a mere fine and that too of a small amount.

At the two seminars and in the responses received, an objection was raised that this would take in even a journalist/media person who interviews a terrorist and he would be obliged to disclose the information relating to the terrorist interviewed by him and that therefore this provision is not consistent with the freedom of Press and media. It may, however, be noted that in India, freedom of Press flows from sub-clause (a) of clause (1) of Article 19 of the Constitution of India and it has been repeatedly held by our Supreme Court that rights and privileges of the Press are no greater than that of any of the citizens of India. Even in UK and USA, no immunity in favour of journalists/Press is recognised which would be evident from the following statement of Law at page 203 of D.D. Basu's commentary "Law of the Press" (Third Edition).

"The same view, as in UK, has been arrived at by the American Supreme Court, recently, holding that the guarantee of freedom of the Press does not immunise the Press to render assistance to the investigation of crimes which obligation lies on every citizen. They are, accordingly, bound to disclose the information gathered by journalists, with their sources, even though such information may have been obtained under an agreement not to disclose, provided such information is relevant to the investigation, in a particular case, and they are not compelled to disclose more than is necessary for such purpose."

We are accordingly of the opinion that a new sub-clause (8) should be added in clause 3 to the following effect:

"(8) A person receiving or in possession of information which he knows or believes might be of material assistance -

(i) in preventing the commission by any other person of a terrorist act; or

(ii) in securing the apprehension, prosecution or conviction of any other person for an offence involving the commission, preparation or instigation of such an act,

and fails, without reasonable cause, to disclose that information as soon as reasonably practicable to the police, shall be punished with imprisonment for a term which may extend to one year or fine or both."

Clause 4: Clause 4 provides for punishment for disruptive activities. The clause occurring in Criminal Law Amendment Bill is proposed to be substituted in its entirety by the Official Amendments. We shall, therefore, deal with clause 4 as contained in the official amendments.

Sub-clause (1) of that clause says that "whoever questions, disrupts, whether directly or indirectly, the sovereignty or territorial integrity of India or supports any claim whether directly or indirectly for the cession of any other part of India or secession of any part of India from the Union, commits a disruptive act". The Explanation appended to sub-clause (1) defines the expressions "cession" and "secession". Paragraph (c) of the Explanation, however, excludes "trade union activity or other mass movement without the use of violence or questioning the sovereignty or territorial integrity of India or supporting any claim for cession of any part of India or secession of any part of India" from the purview of sub-clause (1). Sub-clause (2) seeks to punish those who commit, conspire or attempt to commit or abet, advocate, advise or knowingly facilitate the commission of any disruptive act or any act preparatory thereto. Sub-clause (3) seeks to expand the scope of disruptive activity. According to this sub-clause, "any action taken whether by act or by speech or through any other media or in any other manner whatsoever, which (a) advocates, advises, suggests or incites or (b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt the killing or the destruction of any person bound by or under the Constitution to uphold the sovereignty and integrity of India or any public servant" amounts to disruptive activity. Sub-clause (4) provides punishment for persons who knowingly harbour a disruptionist. A reading of clause 4 shows that it seeks to punish speech. Though sub-clause (3) uses the expression "act", it again appears to be confined to an act of speech. Shri K.G. Kannabiran, Shri H.D. Shourie and some others have suggested segregation of offences relating to disruptive activities from the provisions of the anti-terrorism legislation.

In our opinion, inclusion of mere offensive speech in this Bill is liable to be termed a case of over-reaction and a disproportionate response. We are not suggesting that such speech is either valid or that such speech should not be made punishable. All that we are suggesting is that such speech or its punishment should not find place in an anti-terrorism law. We, therefore, recommend that clause 4 be deleted altogether from the Bill or it may be redrafted so as to take in physical acts directed towards disturbing the integrity or sovereignty of India so as to take in acts other than those mentioned in clause 3. Mere offensive speech may be dealt with by another enactment - may be by amending the Indian Penal Code. This is a matter for the government to decide.

Clause 5: We have no comments to offer with respect to clause 5.

Clauses 6 & 7: Clauses 6 and 7 of the Bill, as prepared by the Government, read together, provide for the following:

(a) If an officer investigating an offence under the Act has reasons to believe that "any property in relation to which an investigation is being conducted" is property derived from terrorist activity and includes proceeds of terrorism, he shall seize/attach that property after making an order in that regard so that such property is not transferred or otherwise dealt with except with his permission or with the permission of the special court. The officer seizing/attaching such property has to inform the special court of the said fact within 48 hours and it shall be open to the court to either confirm or revoke the order.

(b) It is equally open to the special court trying an offence under this Act to attach properties belonging to the accused and where such trial ends in conviction, the property shall stand forfeited to the government free from all encumbrances.

(c) Where a person is convicted under the Act, the special court may, in addition to awarding any punishment, direct forfeiture of the properties belonging to him.

(d) If the property forfeited represents shares in a company, the company shall forthwith register the government as the transferee of such shares.

The Law Commission had suggested in its Working Paper that in addition to the provisions contained in clauses 6 and 7, there should be a parallel procedure providing for forfeiture/confiscation of proceeds of terrorism. The expression "proceeds of terrorism" was defined to mean "all kinds of properties which have been

derived or obtained from commission of any terrorist act or disruptive activity or has been acquired through funds traceable to terrorist act or disruptive activity". It was also proposed in the Working Paper that there should be a specific section declaring the holding of proceeds of terrorism itself as illegal and providing for their confiscation. It was suggested that there should be provisions prescribing the procedure following which proceeds of terrorism can be seized/attached and forfeited to the government. It was clarified that for this purpose it is not necessary that the person holding such proceeds or owning such proceeds or in possession of such proceeds should have been prosecuted under the Act.

The object behind the provision has been to reach the properties of the terrorists, who, for some reason or other cannot be arrested or prosecuted including for the reason that they are safely ensconced abroad. Reference was made to the fact that certain persons are said to be directing, controlling and carrying on terrorist activities within India while stationed outside the country. It was pointed out that attaching and forfeiting the properties belonging to such persons, irrespective of the fact in whose name and in whose possession they were held, would be an effective way of fighting terrorism. It was suggested that such attachment could be made only by an officer not below the rank of Superintendent of Police and that he should inform the special court of such seizure/attachment within 48 hours.

It was further provided that it shall be open to the officer seizing/attaching the properties to either produce them before the court where the person owning such properties is prosecuted under the Act or to produce the same before the designated authority (who shall be distinct from a designated court). If the property seized/attached is produced before the designated authority, he shall issue a notice to the person in whose name it is standing or in whose possession they are found, to show cause as to why the said properties should not be declared to be the proceeds of terrorism and forfeited/confiscated in favour of the government. It was further provided that in such a proceeding, the burden shall lie upon the person to whom a notice is issued to establish that the properties mentioned in the show cause notice do not represent the "proceeds of terrorism" or that they were earned by legitimate and lawful means. After making appropriate inquiry (which would naturally involve an inquiry into facts in case there is a dispute as to facts), the Designated Authority shall pass final orders either forfeiting such property in favour of the government or releasing it as the case may be. Detailed procedure on the lines of the procedure contained in SAFEMA (whose constitutionality has been upheld by a nine-judge Constitution Bench of the Supreme Court) was provided. The only objection which has been put forward in the course of seminars to these provisions is that the power to forfeit the properties should not be

vested in administrative authority like the Designated Authority but that it should vest in a court or a special court, as the case may be. Though it cannot be said that the said objection is totally without any substance, it is necessary to mention at the same time that even under SAFEMA, the power to forfeit is vested in an administrative officer and not in a court. More important - though the Designated Authority may be an administrative officer, once he is designated as a

Designated Authority, he becomes a tribunal for all purposes and would be obliged to observe the principles of natural justice while making the inquiry and while passing the final orders. In fact, an appeal is provided from the orders of the Designated Authority to the High Court directly. In such a situation, there can be no room for any valid apprehension that the proceedings under this parallel procedure would result in miscarriage of justice. Accordingly, we reiterate our proposals and recommend that provisions and modifications suggested in para 5.13.3 should be incorporated in the Bill. They read as follows:

"6. Holding of proceeds of terrorism illegal: (1) No person shall hold or be in possession of any proceeds of terrorism. (2) Proceeds of terrorism, whether they are held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act shall be liable to be forfeited to the Central Government in the manner hereinafter provided.

6A. Powers of investigating officers: (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act has reason to believe that any property in relation to which an investigation is being conducted is a property derived or obtained from the commission of any terrorist act or represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority, or the Special Court, as the case may be, before whom the properties seized or attached are produced. A copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority or, as the case may be, the Special Court, within forty-eight hours of the attachment of such property.

(3) It shall be open to the Designated Authority or the Special Court before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority or the Special Court, as the case may be, when the Investigating Officer so notifies in his report and places it at the disposal of the Designated Authority or the Special Court, as the case may be.

6B Forfeiture of proceeds of terrorism: Where any property is seized or attached in the belief that it constitutes proceeds of terrorism and is produced before the Designated Authority, it shall, on being satisfied that the said property constitutes proceeds of terrorism, order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act.

6C Issue of show-cause notice before forfeiture of proceeds of terrorism:

(1) No order forfeiting any proceeds of terrorism shall be made under section 6B, unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent to the Designated Authority to make an order, in

respect of property seized or attached, (a) in the case of a perishable property directing it to be sold: and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) in the case of other property, nominating any officer of the Central Government to perform the function of the Administrator of such property subject to such conditions as may be specified by the Designated Authority.

6D Appeal: (1) Any person aggrieved by an order of forfeiture under section 6B may, within one month from the date of the communication to him of such order, appeal to the High Court within whose jurisdiction the Designated Authority, who passed the order to be appealed against, is situated.

(2) Where an order under section 6B is modified or annulled by the High Court or where in a prosecution instituted for the violation of the provisions of this Act, the person against whom an order of forfeiture has been made under section 6B, is acquitted and in either case it is not possible for any reason to return the proceeds of terrorism forfeited, such person shall be paid the price therefor as if the proceeds of terrorism had been sold to the Central Government with reasonable interest calculated from the day of seizure of the proceeds of terrorism and such price shall be determined in the manner prescribed.

6E Order of forfeiture not to interfere with other punishments: The order of forfeiture made under this Act by the Designated Authority, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

6F Claims by third parties: (1) Where any claim is preferred, or any objection is made to the forfeiture of any property under section 6C on the ground that such property is not liable to such forfeiture, the Designated Authority or the Special Court, as the case may be, before whom such property is produced, shall proceed to investigate the claim or objection.

Provided that no such investigation shall

be made where the Designated Authority or the Special Court considers that the claim or objection was designed to cause unnecessary delay.

(2) In case claimant or objector establishes that the property specified in the notice issued under section 6C is not liable to be attached or confiscated under the Act, the notice under section 6C shall be withdrawn or modified accordingly.

6G Powers of the Designated Authority: The Designated Authority, acting under the provisions of this Act, shall have all the powers of a Civil Court required for making a full and fair enquiry into the matter before it.

6H Obligation to furnish information: (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, shall have power to require any officer or authority of the Central Government or a State Government or a local authority or a Bank, a company, a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such persons, on points or matters as in the opinion of such officer, will be useful for, or relevant to, the purposes of this Act.

(2) Failure to furnish the information called for under sub-section (1), or furnishing false information shall be punishable with imprisonment for a term which may extend to three years or a fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

(4) Any officer in possession of any information may furnish the same suo motu to the officer investigating an offence under this Act, if in the opinion of such officer such information will be useful to the investigating officer for the purposes of this Act.

6I Certain transfers to be null and void: Where after the issue of an order under section 6A or issue of a notice under section 6B(1), any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under

this Act, be ignored and if such property is subsequently confiscated, the transfer of such property shall be deemed to be null and void."

The above provisions suggested by the Law Commission are consistent with sub-clause (6) of clause 3; indeed these suggested provisions advance the objective underlying the said sub-clause.

PART III OF THE CRIMINAL LAW AMENDMENT BILL

Part III of the Bill under consideration comprises clauses 8 to 17. Clause 8 deals with constitution of Special Courts and the qualifications of the persons to be appointed as Judges/Addl. Judges of the special courts. We have nothing to add or comment upon this clause. In the Working Paper also, no change was suggested in this clause. Similarly, the Law Commission has nothing to add to or comment upon clause 9 (which deals with the place of sitting of special courts). Clause 10 of the Bill provides for jurisdiction of Special Court and transfer of cases from one Special Court to any other Special Court in another State, on motion being moved by the Attorney-General of India before the Supreme Court. We are of the opinion that the right of applying for transfer should also be given to the interested party as fair play. We therefore recommend that this clause be recast on the lines of sections 406 and 407 of Cr.P.C. Clause 11 again is an incidental provision of procedural nature to which no exception can be taken by any one. It provides that when trying an offence, a Special Court may also try any other offence with which the accused may, under the Code of Criminal Procedure, be charged at the same trial if the offence is connected with such other offence.

By Amendment 6 of the Official Amendments, a new clause, namely, clause 11A is sought to be introduced. It contains two sub-clauses. Sub-clause (1) says that "when a Police officer investigating a case requests the court of a Chief Judicial Magistrate or the court of a Chief Metropolitan Magistrate in writing for obtaining samples of handwriting, finger prints, foot prints, photographs, blood, saliva, semen, hair of any accused person reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the court of a Chief Judicial Magistrate or the court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the Police officer either through a medical practitioner or otherwise, as the case may be". Sub-clause (2) then says that "if any accused person refuses to give samples as provided in sub-clause (1) in a trial under this Act, the court shall presume until the contrary is proved that the accused person had committed such offence". In the Working Paper, the Law Commission had observed that in view of the decision of the eleven-Judge Constitution

Bench of the Supreme Court in State of Bombay v. Kathikalu, AIR 1961 SC 1808, a direction of the kind contemplated by sub-clause (1) of clause 11A cannot be held to contravene clause (3) of article 20 which declares that "no person accused of any offence shall be compelled to be a witness against himself". It cannot be denied that such a provision is necessary in an enactment designed to check terrorist activities. One must keep in mind the difficulty of procuring witnesses and the difficulty in the way of collecting independent evidence against the terrorists. [In this connection, reference may be made to a letter dated February 12, 2000 from Sri Veeranna Aivalli, Commissioner of Security(Civil Aviation), Bureau of Civil Aviation Security, addressed to Law Commission. He has stated that he has spent more than three decades in Jammu and Kashmir and on the basis of his experience, he has, inter alia, made the following comments: "Our experience of TADA in J&K has not been good. There has not been a single case, which has been decided by the Court of Law. The difficulties encountered have been with regard to the non-availability of witnesses to testify in the Courts of Law on account of fear of reprisal. There is another difficulty and that is the collection of evidence in cases where the search, seizure and arrest in areas where there is no habitation and many a time these have been by security forces. In such a case, the arrested persons' confession to the security forces leading to the recovery of arms and ammunition and explosives is the only thing, which can be brought on record. Even the security force personnel do not come forward for tendering evidence because they keep on moving from place to place for performance of their duties not only within J&K but even outside J&K and sometimes outside India. The security force personnel are reluctant to depose in any case as they feel that they are not attuned for this kind of exercise. In the last 15 years of militancy in J&K, thousands of people have been arrested, lakhs of weapons seized and millions of rounds collected and quintals of explosive material seized. These figures are real eye openers and the fact that not a single case has ended in conviction nor has there been any recording of evidence and even this itself is very disturbing. TADA had a provision that no arrested person could be released on bail without giving an opportunity to the State to present its viewpoints. In thousands of cases, the bails were granted in situations far from satisfactory and full of suspicion. The State High Court did not interfere in the matter on the ground that the appellate jurisdiction rested with the Supreme Court. The Supreme Court did not interfere in the matter nor did they take cognizance on the ground that no one has filed a petition before it in this matter... The High Court Bar Association had passed a resolution that no Member of the Bar should appear for the State and they wanted the judiciary to pass the orders ex-parte. Above facts are only indicators of the malady, which has been prevailing in J&K on account of

terrorism... Expression of honest opinion have become difficult on account of the damocles sword of contempt of court hanging on the heads of the people..."] The proposed clause 11A provides a legally permissible method of collecting evidence. It is only one method of collecting evidence and proving the offence. Indeed, if the accused is not guilty, such a provision would in fact help him in establishing his innocence. For the above reasons, the insertion of sub-clause (1) of clause 11A cannot be legitimately opposed. However, we propose to add the word "voice" after the word "hair" but before the words "of any accused" in sub-clause (1) so that sample of the voice of the accused can be obtained by the police officer.

Once sub-clause (1) is held to be necessary and constitutionally valid, no real objection can be taken to the presumption created by sub-clause (2) but it appears that the amptitude of presumption provided is disproportionate and excessive. Instead of presuming that the accused person had committed such offence, it would be appropriate and consistent with fair play and good sense to provide merely that on such failure, the Court would draw the appropriate adverse inference against the accused person.

Clause 12 of the said Bill deals with appointment and qualifications of public prosecutors/additional public prosecutors/special public prosecutors for the Special Courts. No comment is called for on this provision.

Clause 13 sets out the procedure and powers of Special Courts. Sub-clause (1) empowers the Special Court to take cognizance of any offence upon receiving a complaint of facts which constitute such offence or upon a Police report of such facts without the accused being committed to it for trial. Chapter XVIII of the Code of Criminal Procedure provides the procedure to be followed by the committal court in case of offences triable by a sessions court. This procedure is dispensed with in the case of offences under the Act by sub-clause (1) of clause 13. Sub-clause (2) of clause 13 empowers the special court to try an offence punishable with imprisonment for a term not exceeding three years or with fine or with both to try in a summary way in accordance with the procedure prescribed by the Code therefor. The two provisos to sub-clause (2) are enabling provisions. The minimum punishment that can be imposed in such summary trial is however restricted to two years. We may point out that even according to section 260 of the Cr.P.C., a magistrate of first class is empowered to try offences punishable for two years or less, which can not be said to be unreasonable, in view of the fact that the Special Court is manned by a District Judge. Sub-clause (3) clarifies that a special court shall have all the powers of a court of session while sub-clause (4) is a procedural provision to which no valid objection has been

or can be raised. Sub-clause (5) empowers the special court to proceed with the trial in the absence of the accused or his pleader and to record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination. This power is conferred upon the special court notwithstanding the provisions contained in the Code of Criminal Procedure. However, before exercising this power, the Special Court has to be satisfied that such a course is appropriate and is also obliged to record the reasons for adopting such a course. Not only no objection has been taken to this sub-clause by anyone, the incorporation of such a provision in an anti-terrorism law, is obviously designed in the interest of speedy trial and hence cannot be reasonably objected to. However, it does not appear necessary to exclude section 299 of the CrPC which provides for a special situation. Accordingly, sub-clause needs modification to make it clear that that section 299 is not excluded.

Clause 14 of the Bill contains provisions for protection of witnesses. Sub-clause (1) says that notwithstanding anything contained in the Code of Criminal Procedure, the proceedings under the Act may be held in camera if the Special Court so desires. It may not be fair to leave this discretion totally unregulated or unguided. It would be fair and proper to provide that the Special Court shall record its reasons for holding the trial in camera. Sub-clause has accordingly been modified. Sub-clause (2) empowers the special court to take appropriate measures for keeping the identity and address of a witness secret if it is satisfied that the life of a witness in any proceedings before it is in danger. Of course, the court has to record the reasons for taking such measures. This power can be exercised either on the application made by the witness or by the public prosecutor or suo motu. Sub-clause (3) of clause 14 specifies some of the measures contemplated by sub-clause (2). The measures specified in sub-section (3) are (a) holding of the proceedings at a place to be decided by the special court; (b) avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public; (c) issuing of any direction for securing that the identity and addresses of the witnesses are not disclosed and (d) passing orders to the effect that it is in the public interest that all or any of the proceedings pending before such a court shall not be published in any manner. In para 5.15 of its Working Paper, the Law Commission had opined that while it may be necessay to protect the witness by keeping his identity and address secret, the right of the accused to cross-examine such witness must also be protected at the same time. It was observed that there may be several methods by which effective cross-examination could yet be undertaken without disclosing the identity and address of the witness. Accordingly, it was suggested that paragraph

(c) of sub-clause (3) of clause 14 may be substituted by the following:

"(c) The making of necessary arrangements for securing that the identity and address of the witness is not disclosed even during his cross-examination".

At the seminars, two conflicting view points were projected. One set of participants submitted that no effective cross-examination was possible unless the identity of the witness was known to the accused and his counsel and that therefore concealing the identity of the witness would really mean denying to the accused an effective opportunity to cross-examine the witness. The proponents of this view emphasised the absolute necessity of affording to the accused a reasonable opportunity to cross-examine the witness. On the other hand, certain other participants stressed the necessity of concealing the identity of the witness from the accused and his counsel in cases where such a course was necessary for protecting the life or safety of the witness and his relatives. They also emphasised the practical difficulty in procuring witnesses in such matters and submitted that if a person yet came forward as a witness but apprehended danger to his life on that account, it was the duty of the court and the State to provide him protection.

We have considered both the points of view. Sub-clause (3) is indeed illustrative of the provision contained in sub-clause (2). In other words, sub-clause (3) is not an independent provision but a continuation and elaboration of sub-clause (2). This means that before taking any of the steps elaborated in sub-clause (3), the special court has to be satisfied that the life of a particular witness is in danger and must also record reasons for formation of such satisfaction. The requirement of law that the court must be satisfied that the life of the witness was in danger and the further requirement that the special court is bound to record its reasons for forming such satisfaction are adequate safeguards against abuse of the power conferred by sub-clause (2) upon the special court. Sub-clause (2) is based upon the doctrine of necessity, a cruel necessity. It obviously takes note of the fact that the life of witnesses deposing against terrorists may be in danger in many cases and provides for such cases. Sub-clause (2) which in reality includes sub-clause (3) within its fold, is an exception rather than the rule. Since the power is given to the court, apprehension of its misuse cannot be lightly presumed. Indeed, so far as the right of cross-examination of the accused is concerned, it is undoubtedly a very valuable and effective instrument enabling the accused to defend himself appropriately and effectively, but this right of the accused has to be balanced against the interest of the society and may have to be modified where the interest of society does call

for such modification. All this discussion only means that if the court is satisfied that for the reasons mentioned in the sub-clause, it is necessary to keep the identity and address of the witness secret, it may have to take appropriate measures and make necessary arrangements for ensuring both the right of cross-examination and the protection of the witness. In this behalf, it may be relevant to notice the judgment of the Supreme Court in Kartar Singh, (1994) 3 SCC 569, at pages 688-689 sub-para 11 of the summary in para 368. We are also of the opinion that the power of the court to take appropriate measures to permit cross-examination even while protecting the identity of the witness must be deemed to be implicit in sub-clauses (2) and (3) as they are found in the Bill. It is not really necessary to amend any of the paragraphs in sub-clause (3) as proposed in para 5.15 of our Working Paper inasmuch as the Bill does not propose to take away the right of cross-examination. The suggestion for substitution of paragraph (c) in sub-section (3) made by the Law Commission in the said para is accordingly withdrawn keeping in view the opinions expressed in the seminars.

Sub-clause (4) is merely consequential to sub-clause (3) in the sense that it provides for punishing the person violating a direction issued under sub-clause (3).

Clause 15 provides that the trial by special courts shall have precedence over the trial of any other case against the accused in any other court (not being a special court). It also provides that the trial of such other case shall remain in abeyance pending disposal of the trial before the special court. This provision cannot again be reasonably objected to, particularly in view of the fact that we are suggesting elsewhere a time limit within which the special court should conclude the trial. It is hoped that in course of time, the special courts will develop expertise in dealing with terrorism-related offences, thus enabling speedy disposal of the cases.

By way of official amendments a new clause 15A is sought to be introduced. Sub-clause (1) of this clause makes the confession made by a person before a police officer not lower in rank than a Superintendent of Police admissible in evidence provided it is recorded in accordance with the provisions of the said clause. The proviso to sub-clause (1) further provides that a confession made by a co-accused shall be admissible in evidence against other co-accused. This provision overrides the provisions to the contrary in the Code of Criminal Procedure and the Indian Evidence Act. Sub-clause (2) provides that a police officer shall, before recording any confession, explain to such person in writing that he is not bound to make confession and that if he makes any confession, it could be used against

him. The provisio to sub-clause (2) says that if such person prefers to remain silent, the police officer shall not compel him or induce him to make any confession. Sub-clause (3) says that the confession shall be recorded in an atmosphere free from threat or inducement and shall be recorded in the same language in which it is made. Sub-clause (4) creates an obligation upon the police officer, who has recorded a confession under sub-clause (1), to produce the person along with the confessional statement, without unreasonable delay, before the court of a Chief Metropolitan Magistrate or the court of a Chief Judicial Magistrate. Sub-clause (5) is a continuation of sub-clause (4). Sub-clause (5) provides that the Magistrate before whom the person is so produced, shall record the statement, if any, made by the person so produced and get his signature thereon. It provides further that if there is any complaint of torture by such person, he shall be directed to be produced for medical examination before a medical officer not lower in rank than an Assistant Civil Surgeon. In our opinion, clause 15A, hedged in as it is by several safeguards, is a necessary provision in such a law. It is not as if the confession made before a police officer is made admissible without anything more. Not only is the police officer under a duty to record a confession in the same language in which it is made and if possible by employing mechanical devices like cassettes, tapes or sound tracks, he is also under an obligation to explain in writing to the person that any confession made by him will be used against him. But the more important and truly effective safeguard is the one contained in sub-clauses (4) and (5) which sub-clauses, it is evident have been inserted in the light of and in pursuance of the observations made by the Supreme Court in Kartar Singh's case while dealing with section 15 of TADA. Sub-clauses (4) and (5) read with sub-clause (1) do mean that unless a confession is recorded in accordance with the several provisions contained in clause 15A, including sub-clauses (4) and (5), such confession will not be valid and admissible. As already stated, sub-clauses (4) and (5) require that soon after recording of confession by the police officer, the person shall be produced before a Chief Metropolitan Magistrate or a Chief Judicial Magistrate along with the recorded confession and such magistrate is required again to record the statement of the person and take his signature thereon and further, if the person complains of any torture, it is obligatory upon the Magistrate to send him to medical officer not lower in rank than a Assistant Civil Surgeon for medical examination. It is difficult to find any legitimate objection to such a provision in an anti-terrorism law. As has been repeatedly pointed out during the course of seminars and the responses received, in an extraordinary situation (such as the India is facing on account of external and internal threats of terrorism), an extraordinary law is called for. In fact, during the seminars, no serious objection was taken to

this provision except the general objection that confessions made before the police officers should not be made admissible because in that event they will resort to third degree methods to obtain confessions and as an excuse for their inability to investigate the crime effectively. In the light of the safeguards contained in clause 15A and, in particular, the safeguards contained in sub-clauses (4) and (5) read with sub-clause (1) thereof, the said criticism must be held to be untenable.

So far as the proviso to sub-clause (1) of clause 15A is concerned, a little explanation would be in order. In the TADA (Act 28 of 1987), clause (c) of sub-section (1) of section 21 provided that the confession of a co-accused was admissible. However, by virtue of the 1993 amendment to TADA, clause (c) in sub-section (1) of section 21 was omitted and at the same time clause 15(1) was amended by introducing the words "are co-accused, abettor or conspirator" after the words "trial of such person". In sub-clause (1), a proviso was also introduced which read: "provided that co-accused or conspirator is charged and tried in the same case together with the accused". The effect of the 1993 amendment was that unless the co-accused was charged and tried in the same case together with the accused, his confession was not admissible or relevant against the accused. Though this aspect was not considered in Kartar Singh's case, it was considered in Kalpnath Rai v. State, 1997(8) SCC 732 by a two-Judge Bench and later by a three-Judge Bench in State v. Nalini, 1993 SCC (Cri.) 691. In Nalini's case, the majority (Wadhwa and Quadri JJ.) held that because of the clear and unambiguous language employed in section 15 and, in particular, having regard to the non-obstante clause with which the sub-section opens, there is no reason to read any limitation upon the admissibility of confession of co-accused as indicated in Kalpnath Rai's case. They opined that overall decision in Kalpnath Rai's case and rationale thereof practically brings back section 30 of the Evidence Act into TADA by a back door. The majority held that the confession of the co-accused is substantive evidence and though it may not be substantial evidence in the sense that the value to be attached to such evidence is a matter of appreciation of evidence in a given case, it is wrong to say that it requires to be re-corroborated before it is made admissible. At the same time, the majority cautioned that as a matter of prudence, the Court may look for some corroboration if the confession is to be used against the co-accused.

It is evident that the proviso to sub-clause (1) of clause 15A (sought to be introduced by Official Amendment in the Criminal Law Amendment Bill) is in effect a reproduction of the provision obtaining in TADA as amended by the 1993 Amendment Act. The question, however, still remains whether such a provision is desirable. It is one thing for the Court to uphold its

validity because the Court looks at the provision from the point of view of its constitutional validity and it is altogether a different thing when the question arises about its desirability. We are here concerned with the desirability of such a provision. In our opinion, if this provision is retained, the very concept and necessity of the provision regarding approver's evidence may become unnecessary. Since the evidence of a co-accused is ordinarily not admissible, necessity arises for giving pardon to one of the accused and make him an approver so that his evidence may be relevant and admissible against the other co-accused. Section 30 of the Evidence Act which merely says that the evidence of a co-accused can be taken into consideration against the other accused is based upon good reason. It does not appear necessary to enlarge upon the principle of section 30 of the Evidence Act. We are, therefore, of the opinion that proviso to sub-clause 15A(1) as suggested in the Official Amendment should be dropped.

Clause 16 provides for transfer by the special court of an offence to an ordinary court where the special court finds it is not an offence triable by it. This is a necessary procedural provision and no objection has also been taken thereto. Clause 17 which is the last clause in Part III provides for an appeal against the orders of the special court. As originally provided, the appeal was provided to a High Court both on facts and law and it was further directed that such an appeal shall be heard by a Bench of two Judges. An appeal against an interlocutory order was, of course, barred. The period of limitation for filing an appeal was prescribed as 30 days but the High Court was given the power to condone the delay on proof of sufficient cause. By way of Official Amendments, the forum of appeal is sought to be substituted. Instead of a High Court, the appeal is sought to be provided to the Supreme Court. The proviso to sub-clause (1) which is sought to be inserted by Official Amendments, however, says that if the person tried by special court for an offence under this Act is convicted for any other offence (and is acquitted for any offence under this Act), he can file an appeal before the High Court. The second proviso to sub-clause (1) sought to be introduced by the Official Amendment provides that if in such a case, an appeal is preferred by the State against the order of acquittal in respect of an offence under this Act, the State can apply to the Supreme Court to withdraw the appeal, if any, filed by the accused in the High Court for being heard along with the State's appeal in the Supreme Court. As a consequence of this amendment, sub-clause (2) of clause 17 as originally drafted is sought to be deleted. Several participants in the seminars and others have expressed the opinion that provision of an appeal to the Supreme Court as suggested by the Official Amendments makes the said remedy almost unavailable inasmuch as many accused may not be in a position to approach the Supreme Court having regard to

the cost involved and, in many cases, the distance and other inhibiting factors. We are of the opinion that the amendment proposed by Official Amendments ought to be dropped and that clause 17 as originally drafted in the Bill should remain unchanged.

CHAPTER V
PART IV OF THE CRIMINAL LAW AMENDMENT BILL

Part IV of the Bill contains clauses 18 to 24. The Official Amendments not only propose to amend several provisions in this part but also propose to add one more clause, namely, clause 25. Clause 18 provides for certain modifications in the Code of Criminal Procedure in its application to the offences under the Act. Sub-clause (1) provides that every offence punishable under this section shall be deemed to be a "cognizable offence" and a "cognizable case". Sub-clause (2) while providing that section 167 of the Code of Criminal Procedure shall apply in relation to a case involving an offence punishable under this Act, provides for extension of several periods mentioned in sub-section (2) of section 167. A proviso is also sought to be added by which the special court is given the power to extend the period further in case it is not possible to conclude investigation within such extended period. The second proviso sought to be added enables the police officer to ask for police custody of a person who may be in judicial custody if such a course is found necessary. Sub-clause (3) of clause 18 of the Bill provides that while section 268 of the Code shall apply in relation to a case involving an offence punishable under the Act, such application shall be subject to the modifications provided in the said sub-section. The modifications are more or less formal in nature. Sub-clause (4), as originally drafted, provided that sections 366, 367, 368 and 371 of the Code shall apply to a case involving an offence triable by special court subject to the modification that for the expression "Court of Session", it shall be read as "Special Court". By way of official amendments, sub-clause (4) is sought to be substituted. The said substitution was probably thought of as a consequence of changing the forum of appeal in clause 17. (We have already expressed our opposition to the proposal to change the forum of appeal). Sub-clauses (5), (6), (6A) (proposed to be inserted by Official Amendments) and sub-clause (7), constitute and represent a single scheme dealing with the grant of bail. Sub-clause (5) says that section 438 of the Code of Criminal Procedure shall not apply to a person accused of having committed an offence punishable under this Act. Sub-clause (6) says that no person accused of an offence under this Act shall be released on bail or on his own bond unless the public

prosecutor has been given an opportunity of opposing the application for bail. Sub-clause (6A) sought to be inserted by Official Amendments provides that "where the public prosecutor opposes the application of the accused for release on bail, no person accused of an offence punishable under this Act or any rule made therein shall be released on bail until the court is satisfied that there are grounds for believing that he is not guilty of committing such offence". Sub-clause (7) provides that the limitations of granting a bail specified in sub-clause (6) and sub-clause (6A) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

There was a good amount of debate and discussion on these provisions in both the seminars. In the responses received by the Law Commission also, these provisions have either been defended or opposed. One set of objections was that the provison in sub-clause (6A) to the effect that no bail shall be granted unless the court is satisfied that "there are grounds for believing that he is not guilty of committing such offence" makes it almost impossible for any accused to get bail. In our opinion, there is no substance in this objection inasmuch as this is the very language which was used in sub-section (8) of section 20 of TADA and which has been the subject-matter of elaborate discussion and decision by the Supreme Court in Kartar Singh's case. The Supreme Court has pointed out that the language of sub-section (8) of section 20 of TADA is in substance no different from the language employed in section 437(1) of the Code, section 35 of the Foreign Exchange Regulation Act, 1976 and section 104 of the Customs Act, 1962. The Supreme Court accordingly upheld the validity of sub-section (8) of section 20 of TADA holding that the respective provisions contained therein are not violative of Article 21 of the Constitution. Be that as it may, having regard to the purpose and object underlying the Act and the context in which the Act has become necessary, these restrictive provisions may not be likely to be assailed on any reasonable basis. The objection, therefore, is unacceptable.

However, certain other useful suggestions were made to which a reference is necessary.

Justice J.S. Verma, Chairperson, National Human Rights Commission suggested that for the purpose of bail, the offences in the Act should be classified on the lines indicated by the Supreme Court in its decision in Shaheen Welfare Society's case [1996 (2) JT 719 (SC)]. This view was supported by Shri P.P. Rao, Senior Advocate, who emphasised that a routine refusal of bail was unacceptable. He added that since the normal rule was bail, any restriction placed thereon in an anti-terrorism law should not be disproportionate, making the very provision for bail meaningless. Several other

participants also supported this line of reasoning which we find eminently reasonable and acceptable.

In Shaheen Welfare Society's case (supra), the Supreme Court has suggested categorisation of offences under TADA into four categories for the purpose of bail. The following observations are relevant:

"For the purpose of grant of bail to TADA detenus, we divide the undertrials into four classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting sections 3 and 4, but by virtue of sections 120B or 147, IPC and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under section 5 of TADA.

Ordinarily, it is true that the provisions of sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity of the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complaints, the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. Those falling in group (b), when released on bail, may be released on bail of not less than Rs.50,000/- with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30,000/- with one surety for like amount, subject to the following terms:

(1) the accused shall report to the concerned police station once a week;

(2) the accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;

(3) the accused shall deposit his passport, if any, with the Designated Court. If he does not hold a passport, he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities, if it deems it necessary;

(4) The Designated Court will be at liberty to cancel the bail if any of those conditions is violated or a case for cancellation of bail is otherwise made out.

(5) Before granting bail, a notice shall be given to the public prosecutor and an opportunity shall be given to him to oppose the application for such release. The Designated Court may refuse bail in very special circumstances for reasons to be recorded in writing.

These conditions may be relaxed in cases of those under groups (c) and (d) and, for special reasons to be recorded in the case of group (b) prisoners. Also these directions may not be applied by the Designated Court in exceptionally grave cases such as the Bombay Bomb Blast Case where a lengthy trial is inevitable looking to the number of accused, the number of witnesses and the nature of charges unless the court feels that the trial is being unduly delayed. However, even in such cases it is essential that the Review Committee examines the case against each accused bearing the above directions in mind, to ensure that TADA provisions are not unnecessarily invoked."

Although the Court observed in the said judgment that the aforesaid directions were "a one-time measure meant only to alleviate the current situation", the spirit and principle behind the said observations should serve as guidelines to the Special Courts while dealing applications of bail of persons accused of offences under the Act, for the purposes of bail.

Though we would like very much to incorporate the said classification in sub-clauses (5) to (7) of clause 18, we find it difficult to do so in view of the difficulty in incorporating the various ideas contained in the above judgment. For example, the Court has said that their classification is not applicable to "exceptionally grave cases such as Bombay Bomb Blast Case ..." What is an exceptionally grave case has to be left to be determined by the special court in a given case. In view of this drafting difficulty, we have not chosen to suggest an amendment to the said provisions. It may

be noted that the decision of the Supreme Court is binding on all courts by virtue of Article 141 of the Constitution and hence it can be presumed that even in the absence of specific provisions in the Act on the lines indicated in the judgment, the ratio and the spirit of the said judgment shall be followed by the special courts. However, a new sub-clause may be added in clause 18 providing that in case of foreign terrorists, bail should not be granted except in exceptional circumstances. The sub-clause may read as follows :

"(8) Notwithstanding anything in sub-section (7), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen, except in very exceptional circumstances and for reasons recorded therefor."

Clause 19 deals with cognizance of offences under the Act. As originally drafted, the Bill provided that notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of an offence under this Act shall be recorded by the Police without the prior approval of the District Superintendent of Police. By way of Official Amendments, for the expression "District Superintendent of Police", the words "Inspector General of Police or, as the case may be, the Commissioner of Police" are sought to be substituted. Sub-clause (2) of section 19 as originally drafted in the Bill provided that "No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be the Commissioner of Police". By way of Official Amendments, the words "Inspector General of Police or as the case may be the Commissioner of Police" are sought to be substituted by the words "State Government or as the case may be the Central Government". It was pointed out by several participants at the seminars that the requirement of "prior aproval" for recording an information about the commission of an offence under the Act was an impractical provision and that therefore the requirement of prior approval may be removed and in its place a subsequent approval or ratification may be provided for. Indeed, the Law Commission has recommended in its Working Paper the insertion of clause 7A in Part II of the Bill providing that the police officer recording information in respect of an offence under this Act shall promptly forward copies of all the material including the FIR and its accompaniments to the DGP and the Review Committee. It was further provided that it shall be open to the DGP or the Review Committee to call for such further information as they may deem necessary from the Police or any other person before approving or disapproving the action taken by the subordinate authority. It was further recommended to be provided that if the DGP did not approve the recording of aforesaid information within ten days or if the Review Committee did not approve of the same within

30 days, the recording of information shall become null and void and no further action shall be taken on that behalf and the accused, if in custody, shall be released forthwith.

Certain participants in the Seminar submitted that the requirement of the approval of the DGP and the Review Committee is not an effective one. So far as taking of approval of court is concerned, the suggestion is misconceived and unacceptable. It is not part of the functions of the court to approve FIRs, either before or after they are registered. So far as approval of any other independent authority is concerned, we have not been able to find any such authority, now in existence, whose approval can be provided for at this stage. This is a stage where the investigation too has not yet begun; it beings with and after registration of FIRs. The suggestion is, therefore, impracticable and inappropriate. We are of the opinion that the provision suggested by us is more appropriate and at the same time more effective than the one contained in sub-clause (1) of section 19. Accordingly, we recommend that sub-clause (1) of section 19 be substituted by the following sub-section:

"(1) The police officer recording information in respect of an offence under this Act shall promptly forward copies of all the material including the FIR and its accompaniments to the Director General of Police and the Review Committee.

(2) It shall be open to the Director General of Police or the Review Committee to call for such further information, as they may deem necessary, from the police or any other person before approving or disapproving, as the case may be, the action taken by the subordinate authorities.

(3) If the Director General of Police does not approve the recording of the aforesaid information within 10 days or if the Review Committee does not approve the same within 30 days, the recording of the said information shall become null and void with effect from the tenth day or the thirtieth day, as the case may be, and all proceedings in that behalf shall stand withdrawn and if the accused is in custody, he shall be released forthwith unless required in connection with some other offence.

(4) Any action taken or any order passed under forgoing sub-sections shall be in addition to and independent of the review of pending cases by the Review Committee under section 27 of this Act.

Sub-clause (2) of section 19 provides that no

court shall take cognizance of an offence under the Act without the previous sanction of the State Government or, as the case may be, of the Central Government (as amended by Official Amendments). In our opinion, this is a very salutory provision and an effective safeguard against frivolous or unfounded prosecutions.

By way of Official Amendments, a new clause, namely, clause 19A is sought to be inserted dealing with arrest. Sub-clause (1) of the proposed new section provides that "whenever a person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or to a relative of such person by telegram, telephone or by any other means which shall be recorded by the police officer under the signature of the person arrested". Sub-clause (2) directs that where a police officer arrests a person, he shall provide a custody memo of the person arrested, while sub-clause (3) provides that "during the interrogation the legal practitioner of the person arrested shall be allowed to remain present and the person arrested shall be informed of his right as soon as he is brought to the police station". In its Working Paper, the Law Commission had supported the provisions in all the three sub-clauses of clause 19A. In particular, we were appreciative of the provision contained in sub-clause (3) which was evidently put in, in the light of the decision of the Supreme Court in Nandini Satpathy's case. However, certain participants in the seminar including Mr. K.T.S. Tulsi, former Additional Solicitor General, opposed the provision contained in sub-section (3). They submitted that it is an impractical provision and is likely to hinder the proper interrogation of the accused. Mr. Tulsi also submitted that subsequent decisions of the Supreme Court had explained the observations in Nandini Satpathy's case. Be that as it may, we do not think it appropriate to recommend the deletion of this provision which has been designedly introduced by the Government of India.

A suggestion was put forward by Mr. U.R. Lalit, Senior Advocate, Supreme Court that this protection should be confined only to Indian citizens and should not be made available to non-citizens. He pointed out that today, the foreign mercenaries and the foreign terrorists outnumber local terrorists, particularly, in Jammu and Kashmir and that on account of their activities, a situation of proxy war is prevailing in Jammu and Kashmir. Learned counsel suggested that classifying the foreign terrorists for the purpose of sub-clause (3) of clause 19A as a separate group and denying them the said protection would be a case of reasonable and valid classification. The suggestion is not only very attractive and appealing, there is good amount of justification in Mr. Lalit's contention that the entry in large numbers (according to certain estimates there are already 5000 foreign terrorists in Jammu and Kashmir

and another 15000 to 30000 terrorists are waiting to enter the State with a view to creating conditions of total anarchy and chaos) is certainly creating a situation which is unparalleled anywhere in the world. The more disturbing factor is that the neighbouring country whose hostile intentions towards India are not a secret, is actively training, arming, directing and helping the foreign terrorists in all possible ways. In such a situation, classifying the foreign terrorists as a distinct category from the local terrorists and restricting the protection in sub-clause (3) of clause 19A only to local terrorists i.e., who are citizens of

India, may not be either unreasonable or unconstitutional. In this connection, it is highly relevant to notice that the Constitution itself makes such a distinction which would be evident from the following position: Clause (1) of article 22 says that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". Clause (2) of the said article says that "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate". But clause (3) of the very same article says that "Nothing in clauses (1) and (2) shall apply- (a) to any person who for the time being is an enemy alien". In other words, the very significant constitutional safeguards contained in clauses (1) and

(2) of article 22 are not available to enemy aliens. Indeed, the requirement in clause (1) of article 22 and more particularly the one in sub-clause (1) of clause 19A is not possible of compliance in the case of a foreign terrorist, inasmsuch as "a family member" or "a relative" of such foreign terrorist may not be in India and may also be difficult to locate. We, therefore, suggest that the requirement of informing the family member or relative shall be confined only to the person arrested if he is an Indian citizen.

Clause 20 specifies the officers who alone shall be competent to investigate an offence under this Act. Fairly high ranking officers are specified under this section which is again an assurance against abuse or misuse of the powers under the Act.

Clause 21 of the Bill creates certain presumptions in respect of the offences under the Act. Sub-clause (1) reads as follows:

"(1) In a prosecution for an offence under

sub-section (1) of section 3, if it is proved-

(a) that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence."

In our opinion, such a presumption cannot be said to be uncalled for in an anti-terrorism law. However, on the analogy of disproportionate and excessive amplitude of presumption as drawn in respect of sub-clause (2) of clause 11A (introduced by Amendment 6 of the Official Amendment) discussed above, we recommend the similar modification here also. Sub-clause (2) creates yet another presumption. It says that "in a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of or reasonably suspected of an offence under that section, the special court shall presume, unless the contrary is proved, that such person has committed an offence under that sub-section" (as modified by the Official Amendments). No objection has been taken to these proposals by any of the participants in the seminars. However, as stated above, the disproportionate and excessive amplitude of presumption should not be allowed to be drawn. We, therefore, recommend to substitute the words "shall presume... under that sub-section" in the sub-clause (2) by the words "shall draw the adverse inference against the accused."

Clause 22 clarifies that the jurisdiction of the courts or authorities under the laws relating to naval, military, air force or other armed forces of the Union are not affected by this Act. It also clarifies that a special court under the Act shall be deemed to be a court of ordinary criminal jurisdiction.

Clause 23 gives overriding effect to the Act which again is unobjectionable. Sub-clause (1) of clause 24 provides for indemnity in favour of Central Government, State Government or any of their officers or authorities on whom powers have been conferred by the Act in respect of acts done or purported to be done by them in good faith. This is a usual provision in such enactments and no objection can be taken thereto.

However, with a view to make the indemnity effective and complete, the following proviso be added to

sub-clause (1) of clause 24 of the Bill:-

"Provided further that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the Armed Forces or other para military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism".

Sub-clause (2) of section 24 makes it an offence for a police officer to take proceedings against any person for any offence under the Act for corrupt or malicious reasons. It is sought to be modified in certain minor respects by Official Amendments. This provision again is a very salutory addition and is to be welcomed.

In this context, it may be appropriate to provide a remedy to the person who has been arrested and or proceeded against for offences under the proposed law for corrupt, extraneous or malicious reasons by the police officers. Provision of such a remedy is bound to act as a check upon the propensity of the police/investigating officer to misuse their powers and rope in innocents. The person so dealt with unlawfully should be awarded monetary compensation appropriate in the circumstances by the State itself. Indeed, if the exercise of power by the police or investigating officer is found to be actuated by corrupt, extraneous or malicious considerations, the monetary compensation to be awarded to the person concerned should be levied upon the concerned police/investigating officers. It is true that while ratifying the International Covenant on Civil and Political Rights (1996) (ICCPR), the Government of India filed a specific reservation against article 9(5) of the said Covenant on the ground that the Indian legal system did not recognise a right to compensation for victims of unlawful arrest or detention, but the Supreme Court held in D.K. Basu v. State of West Bengal (1997 SCC (Cri) 92 at page 112) that the said reservation "has lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen". Be that as it may, a provision of such a remedy would be not only fair and just but also consistent with the democratic and developing concepts of criminal jurisprudence.

Clause 25 sought to be introduced by Official Amendments empowers the Supreme Court to make rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to special courts. We are of the opinion that such a power should be conferred upon the High Courts in the country (and not upon the Supreme Court) in view of the fact that we are suggesting that an appeal against the judgment and order of the special court should lie to the High Court concerned and not to the Supreme Court.

Clause 26 sought to be inserted by Official Amendments confers rulemaking power upon the Central Government to carry out the purposes and provisions of the Act. Sub-section (2) elucidates the purposes and provisions mentioned in sub-section (1).

Clause 27 which is also proposed to be inserted by Official Amendments provides for constitution of Review Committees. Sub-clause (1) says that the Central Government shall constitute a Review Committee consisting of the Home Secretary, Law Secretary and Secretaries of the other concerned Ministries, if any, to review, at the end of each quarter in a year the cases instituted by the Central Government under this Act. The Review Committee shall be competent to give such directions as it may think appropriate with respect to the conduct and continuance of any case or a class of cases, as the case may be. Sub-clause (2) contemplates constitution of similar committees by the State Governments. The Review Committee to be constituted by a State Government shall consist of the Chief Secretary to the Government, Home Secretary, Law Secretary and Secretaries of the other concerned departments.

CHAPTER VI
SUGGESTIONS FOR INCLUSION OF CERTAIN ADDITIONAL PROVISIONS IN THE BILL

(a) It was suggested by Mr. Prashant Bhushan, Advocate, Supreme Court that there should be a provision for appeal against an order refusing bail. We are inclined to agree with this plea. But the appeal should be not only against an order refusing bail but also against an order granting bail. Accordingly, it is recommended that the following provision be inserted as sub-section (5) in section 17 of the Act:

"(5) Notwithstanding anything contained in the Code, an appeal shall be to the High Court, against an order of the Special Court granting or refusing bail."

(b) Mr. P.S. Rao, Joint Secretary in the Ministry of External Affairs, Government of India mentioned during his presentation that the foreign governments, especially Western governments, were objecting to special courts and special laws to deal with terrorism in India and that this factor was giving rise to complications

in the matter of extradition requests from India. So far as the special law is concerned, we do not see how it can constitute a ground for objection when western democracies like U.S. and U.K. too have enacted (and are enacting) anti-terrorism laws. So far as special courts are concerned, their creation has become necessary because of the extraordinary heavy load upon our criminal courts and the delays endemic to our criminal judicial system. It may, however, be seen that there is no qualitative difference between the general criminal procedure applicable to ordinary criminal courts and the criminal procedure applicable to special courts. The principle and perhaps the sole object behind creation of special courts is the anxiety to have these cases disposed of expeditiously. We cannot, therefore, see any valid ground for objection on this score. It is of course a matter of policy for the government to decide whether they wish to dispense with the special courts, while retaining the procedural changes provided by this Act and invest the jurisdiction to try these offences on ordinary criminal courts with a direction to give precedence to the trial of offences under this Act.

Some participants suggested that a new chapter be included in this Act itself providing for banning of terrorist organisations. If the Government accepts this proposal, a new chapter may be introduced providing for banning of terrorist organisations and making their membership an offence. It should also be provided that any person rendering any assistance to such banned organisations including raising of funds shall be an offence. In this context, the provision of Unlawful Activities (Prevention) Act, 1967 may be kept in view, which Act does provide for declaring an association unlawful and the consequences flowing therefrom. It is because of the existence of the said Act that we have not ourselves suggested a new chapter providing for banning of terrorist organisations. But inasmuch as certain participants felt that the said 1967 Act is not adequate, we are mentioning the said fact here. Sub-section (5) of Section 3 has also to be kept in view in this behalf as also Clause (b) of sub-section (1) of Section 3, suggested by us.

Shri Prashant Bhushan, Advocate was of the view that special training should be imparted to investigators, prosecutors and special judges without which terrorist activities cannot be countered. Further, for effective implementation of these suggestions sufficient finance must also be provided. It is for the government to take a decision in this matter.

Brig. Satbir Singh, Institute of Defence Studies

also projected his experience in North East, J & K and Punjab. He was of the view that special courts should be constituted in North-Eastern States to deal with terrorist activities. Besides, there should be speedy trial of such cases. He suggested that defence personnel and para-military forces personnel should also be empowered to investigate the cases dealing with terrorist activities. It is for the Government to take a decision in these matters.

We recommend accordingly. Besides the other measures recommended, for the sake of convenience, we are appending the `Prevention of Terrorism Bill, 2000' (Annexure II) which also incorporates the recommendations set out above.

(MR.JUSTICE B.P.JEEVAN REDDY) (RETD.)
CHAIRMAN

(MS.JUSTICE LEILA SETH)(RETD) (DR.N.M.GHATATE) (MR.T.K.VISWANATHAN)
MEMBER MEMBER MEMBER-SECRETARY

Dated: 13.04.2000

ANNEXURE II

DRAFT BILL AS RECOMMENDED BY THE LAW COMMISSION OF INDIA

THE PREVENTION OF TERRORISM BILL, 2000

A BILL to make provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith.

BE it enacted by Parliament in the Fifty-First Year of the Republic of India as follows:-

PART I
PRELIMINARY

1. Short title and extent.- (1) This Act may be called the Prevention of Terrorism Act, 2000.

(2) It extends to the whole of lndia, and it applies also to --

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

(3) It shall remain in force for a period of five years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect -

(a) the previous operation of, or anything duly done or suffered under this Act, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) `proceeds of terrorism' shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to terrorist act and shall include cash, irrespective of in whose name such proceeds are standing or in whose possession they are found;

(c) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets;

(d) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 23 and includes any person acting under the directions of the Public Prosecutor;

(e) "Special Court" means a Special Court constituted under section 18;

(f) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(g) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

PART II
PUNISHMENT FOR, AND MEASURES FOR COPING WITH, TERRORIST ACTIVITIES

3. Punishment for terrorist acts.- (1) Whoever,-

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or distribution of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of

such association and in either case is in possession of any unlicenced firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine.

Exception.- This sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said

intent, shall be punishable with imprisonment which may extend to three years and fine.

(8) A person receiving or in possession of information which he knows or believes to be of material assistance -

(i) in preventing the commission by any other person of a terrorist act; or

(ii) in securing the apprehension, prosecution or conviction of any other person for an offence involving the commission, preparation or instigation of such an act,

and fails, without reasonable cause, to disclose that information as soon as reasonably practicable to the police, shall be punished with imprisonment for a term which may extend to one year or fine or with both.

4. Possession of certain unauthorised arms, etc., in notified areas.- Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation.- In this section "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

5. Enhanced penalties.- (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

6. Holding of proceeds of terrorism illegal.- (1) No person shall hold or be in possession of any proceeds of

terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be forfeited to the Central Government in the manner hereinafter provided.

7. Powers of investigating officers.- (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, constitutes proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority, or the Special Court, as the case may be, before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority or, as the case may be, the Special Court, within forty-eight hours of the seizure or attachment of such property.

(3) It shall be open to the Designated Authority or the Special Court before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority or the Special Court, as the case may be, when the Investigating Officer so notifies in his report and places it at the disposal of the Designated Authority or the Special Court, as the case may be.

8. Forfeiture of proceeds of terrorism.- Where any property is seized or attached in the belief that it constitutes proceeds of terrorism and is produced before the Designated Authority, it shall, on being satisfied that the said property constitutes proceeds of terrorism, order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act.

9. Issue of show-cause notice before forfeiture of proceeds of terrorism.- (1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is

proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent to the Designated Authority to make an order in respect of property seized or attached,-

(a) in the case of a perishable property, directing it to be sold and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) in the case of any other property, nominating any officer of the Central or State Government to perform the function of the Administrator of such property subject to such conditions as may be specified by the Designated Authority.

10. Appeal.- (1) Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the communication to him of such order, appeal to the High Court within whose jurisdiction the Designated Authority, who passed the order to be appealed against, is situated.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the violation of the provisions of this Act, the person against whom an order of forfeiture has been made under section 8, is acquitted such property shall be returned to him and in either case if it is not possible for any reason to return the proceeds of terrorism forfeited, such person shall be paid the price therefor as if the proceeds of terrorism had been sold to the Central Government with reasonable interest calculated from the day of seizure of the proceeds of terrorism and such price shall be determined in the manner prescribed.

11. Order of forfeiture not to interfere with other punishments.The order of forfeiture made under this Act by the Designated Authority, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

12. Claims by third party.- (1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to such seizure, the Designated Authority, or as

the case may be, the Special Court, before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority or the Special Court considers that the claim or objection was designed to cause unnecessary delay.

(2) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be attached or confiscated under the Act, the said notice shall be withdrawn or modified accordingly.

13. Powers of the Designated Authority.- The Designated Authority, acting under the provisions of this Act, shall have all the powers of a Civil Court required for making a full and fair enquiry into the matter before it.

14. Obligation to furnish information.- (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, shall have power to require any officer or authority of the Central Government or a State Government or a local authority or a Bank, company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, as in the opinion of such officer, will be useful for, or relevant to, the purposes of this Act.

(2) Failure to furnish the information called for under sub-section(1), or furnishing false information shall be punishable with imprisonment for a term which may extend to three years or fine, or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

(4) Any officer in possession of any information shall furnish the same suo motu to the officer investigating an offence under this Act, if in the opinion of such officer such information will be useful to the investigating officer for the purposes of this Act.

15. Certain transfers to be null and void.- Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Act, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

16. Forfeiture of property of certain persons.- (1) Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, produced before the Courts and belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances.

(2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Act, and where such trial ends in conviction, the properties so attached shall stand forfeited to the Government free from all encumbrances.

17. Company to transfer shares to Government.- Where any shares in a company stand forfeited to the Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Government as the transferee of such shares.

PART III
SPECIAL COURTS

18. Special Courts.- (1) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section(1), and a notification constituting a Special court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases, and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision thereon shall be final.

(4) A Special Court shall be presided over by a

judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of a Special Court of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

(9) A Designated Court constituted under sub-section (1) of section 9 of the Terrorist and Disruptive Activities(Prevention) Act, 1987 for any area or areas or any case or class or group of cases shall be deemed to be a Special Court for the purposes of this Act.

19. Place of sitting.- A Special Court may, on its own motion or on an application made by the Public Prosecutor, and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

20. Jurisdiction of Special Courts.- (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 7.

(2) If, having regard to the exigencies of the situation prevailing in a State,-

(i) it is not possible to have a fair, impartial or speedy trial; or

(ii) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the judge of the Special Court or any of them; or

(iii) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State.

(3) The Supreme Court may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by affidavit or affirmation.

21. Power of Special Courts with respect to other offences.- (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

22. Power to direct for samples, etc.- (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of hand writing, finger prints, foot prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided in sub-section (1), in a trial under this Act, the court shall draw adverse inference against the accused.

23. Public Prosecutors.- (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public

Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for

not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

24. Procedure and powers of Special Courts.- (1) Subject to the provisions of sub-section (5) of section 31, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) Subject to the other provisions of this Act, a

Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under section 20 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in, but subject to the provisions of section 299, of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

25. Protection of witnesses.- (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witnesses or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include -

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

26. Trial by Special Courts to have precedence.- The

trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court(not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

27. Certain confessions made to Police officers to be taken into consideration.- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1) explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within 48 hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, scrupulously record the statement, if any, made by the person so produced and get his signature and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

28. Power to transfer cases to regular courts.- Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of

the offence.

29. Appeal.- (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation - For the purposes of this section, High Court means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section(1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

30. Modified application of certain provisions of the Code.- (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause(c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),-

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" , respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety

days,the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Act, requests for police custody from judicial custody of any person, for the purposes of investigation, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that-

(a) the reference in sub-section (1) thereof-

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modifications that the reference to "Court of Session", whereever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release.

(7) Where the public prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the court is satisfied that there are grounds for believing that he is not guilty of committing such offence.

(8) The limitations on granting of bail specified in sub-sections (6) and (7) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in sub-sections (6), (7) and (8), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen except in very exceptional circumstances and for reasons to be recorded therefor.

31. Cognizance of offences.- (1) The police officer recording information in respect of an offence under this Act shall promptly forward copies of all the material including information given to the police under section 154 of the Code and its accompaniments to the Director General of Police and the Review Committee.

(2) It shall be open to the Director General of Police or the Review Committee to call for such further information, as they may deem necessary, from the police or any other person before approving or disapproving the action taken by the subordinate authorities.

(3) If the Director General of Police does not approve the recording of the aforesaid information within ten days, or the Review Committee does not approve the same within thirty days, the recording of the said information shall become null and void with effect from the tenth, or as the case may be, the thirtieth day and all proceedings in that behalf shall stand withdrawn and if the accused is in custody, he shall be released forthwith unless required in connection with some other offence.

(4) Any action taken or any order passed under this section shall be in addition to and independent of any action taken by the Review Committee under section 39.

(5) No court shall take cognizance of any offence under this Act without the previous sanction of the State Government, or as the case may be, the Central Government.

32. Officers competent to investigate offences under this Act.Notwithstanding anything contained in the Code, no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Calcutta, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause(a) or clause (b), of a Deputy Superintendent of Police or a police

officer of equivalent rank,

shall investigate any offence punishable under this Act.

33. Arrest.- (1) Whenever any person, who being a citizen of India, is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or to a relative of such person by telegram, telephone or by any other means which shall be recorded by the police officer under the signature of the person arrested.

(2) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

(3) During the interrogation, the legal practitioner of the person arrested shall be allowed to remain present and the person arrested shall be informed of his right as soon as he is brought to the police station.

34. Presumption as to offences under section 3.- (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved-

(a) that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw the adverse inference against the accused.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw the adverse inference against the accused.

35. Saving.- (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a

court of ordinary criminal justice.

36. Overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

37. Protection of action taken in good faith and punishment for corruptly or maliciously proceeding against any person under this Act.- (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act:

Provided further that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the Armed Forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

(2) Any police officer exercising powers under this Act, who knows that there are no reasonable grounds for proceeding under this Act and yet corruptly or maliciously proceeds against any person, for an offence under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

38. In any proceedings under this Act, if the Special Court is of opinion that any person has been corruptly or maliciously proceeded against, the court may award such compensation as it deems fit to the person, to be paid by the officer, person, authority or Government, as may be specified in the order.

39. Review Committees.- (1) The Central Government shall constitute a Review Committee consisting of the Secretaries in charge of the Ministries of Home, Law and Justice and the other concerned Ministries, if any, to review, at the end of each quarter in a year, the cases instituted by the Central Government under this Act.

(2) The Review Committee shall be competent to give such directions, as they may think appropriate, with respect to the conduct and continuance of any case or a class of cases, as the case may be.

(3) Every State Government shall also constitute a Review Committee consisting of the Chief Secretary to the Government and the Secretaries in charge of the Departments of Home, Law and the other concerned Departments, if any, to review, at the end of each quarter in a year, the cases instituted by the State Government under this Act.

(4) The Review Committee shall be competent to give such directions, as they may think appropriate, with respect to the conduct and continuance of any case or a class of cases, as the case may be.

40. Power of High Courts to make rules.- The High Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Special Courts.

41. Power to make rules.- (1) Without prejudice to the powers of the High Courts to make rules under section 39, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,-
(i) any vehicle, vessel or aircraft;
or
(ii) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;
(c) conferring powers upon,-

(i) the Central Government;
(ii) a State Government;
(iii) an Administrator of a Union Territory under Article 239 of the Constitution;
(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or
(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or cope with terrorist acts;
(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;
(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both.
(f) providing for the seizure and detention of any property in respect of which such contravention, attempt

or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.