2 RMLNLUJ (2010) 97

Judicial Delineation of Counter Terror Legislations: A Critical Study

by
Namrta Rastogi[*] and Anurag Deep[**]

Unlawful Activities (Prevention) Act 1967, as amended in 2008, is all likely to toe the similar route as travellled by earlier counter terror legislations i.e. TADA 1987 and POTA 2002. Judicial delineation of provisions of various combat terror legislations in India mainly appears to be surrounded by following important issues:

Constitutional Bent

Constitutional validity of several provisions of combat terror legislations seem to be a fashionable issue among human rights lawyers. The stand of the Supreme Court of India has fortunately been most consistent. The Supreme Court in all cases decided these provisions constitutionally valid. Mostly it has refrained from forming an opinion on desirability of counter terror legislations as it is a political question. At a few places, however, it has gone to the extent of upholding the desirability of these provisions and enactments, though they are obiter remarks. The opinion of the Supreme Court of India is in tune with the report of the Law Commission of India, (2000). The National Human Rights Commission, however, does not favour any counter terror legislations. It strongly opposed POTO and POTA in its various reports beginning from 2001. These arguments of the National Human Rights Commission, however, did not find appreciation in any judgments of the Supreme Court of India, probably because it was on desirability or feasibility issue which is a matter of policy.

Untraditional Bent

The counter terror legislations show bent in favour of the untraditional features [features not common to criminal jurisprudence, for example-presumption as to offence, confession before Police Officer admissible, etc.] though in form it appears to be like any penal legislation. In this context very

Page: 98

often the argument is taken that certain actions of authority e.g. competence of sanctioning authority (sanctions were not given, nor signed by the competent authority), validity of sanction (there was no proper application of mind by the authority granting the sanction), time of invocation of counter terror provisions (whether TADA 1987 or POTO 2001 or POTA 2002 or UAPA 1967 as amended in 2004, or as amended in 2008 should have been invoked by the Investigating Officer on the very first day when the FIR was registered or not), justification of addition of offences under various sections, admissibility of intercepted telephonic conversations, observance of certain safeguards from the point of view of the accused, charges are defective, charge does not set out in clear terms, etc., are ultra vires.

Definition of terrorism

Though terrorism has not been defined in any of the counter terror legislations, either in TADA 1987, POTA 2002 or modified provisions of UAPA 1967 enforced from 1-1-2009, they do describe terrorist act. One central issue in the Supreme Court of India remained that under what circumstances the definition of 'terrorists act' is applicable.

When is the definition of "terrorists act" applicable

To answer this ticklish question, the nature of the enactment has to be explored first.

Nature of counter terror legislations

The whole nature of counter terror legislations has been very well noticed by the Constitution Bench in *Kartar Singh case*[1] in the following words:

> … the Act tends to be very harsh and drastic containing the stringent provisions and provides minimum punishments and to some other offences enhanced penalties also. The provisions prescribing special procedures aiming at speedy disposal of cases, departing from the procedures prescribed under the ordinary procedural law…[2]

The Supreme Court admitted the hard fact of the criminal justice system that:

> … the prevalent ordinary procedural law was found to be *inadequate and not sufficiently effective* to deal with the offenders indulging in terrorist and disruptive activities…[3]

It added

> secondly that the incensed offences are arising out of the activities of

the terrorists and disruptionists which disrupt or are intended to disrupt even the sovereignty and territorial integrity of India or which may bring about or support any claim for the cession of any part of India or the secession of any part of India from the Union, and which create terror and a sense of insecurity in the minds of the people. Further the Legislature being aware of the *aggravated nature of the offences* have brought this *drastic change in the procedure* under this law so that the object of the legislation may not be defeated and nullified.[4]

(emphasis supplied)

In the case of *Hitendra Vishnu Thakur* v. *State of Maharashtra*[5] the Supreme Court of India propounded principles governing application of definition. This issue and this case has been examined earlier. We, therefore, skip this issue and switch over to other aspect *of Hitendra Vishnu Thakur.*

Describing terrorism: The *obiter*

Increased lawlessness and cult of violence may manifest in various forms. "Terrorism" is one of these manifestations. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. "Terrorism" is the height of revolt against civilised society. It is because of this hard reality that it is not possible to give a precise definition of "terrorism" or lay down what constitutes 'terrorism'.

Similarity between terrorism and crime

The Supreme Court of India attempts to describe it in following words:

> (Terrorism is) use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process …[6]

Dis-similarity between terrorism and crime

The similarity between terrorism and crime disappears here and distinction appears. Hon. Justice Anand finds several differences which may be formulated in following five[7] points:

1. The extent and reach of the intended terrorist activity travells beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land,

2. Its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity,
3. A "terrorist" activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travells beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law,
4. "Terrorism" (unlike crime) is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon,
5. What distinguishes "terrorism" from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation.
6. More often than not, a hardened criminal today takes advantage of the situation and by wearing the cloak of "terrorism", aims to achieve for himself acceptability and respectability in the society because unfortunately in the States affected by militancy, a "terrorist" is projected as a hero by his group and often even by the misguided youth.

After examining above reasons the court was satisfied that it is essential to treat a terrorist differently from an ordinary criminal.

Criminal* v. *Terrorist: Practical difficulty

Theoretically speaking above mentioned 6 differences can identify a criminal and a terrorist. It appears to be a quick formula to resolve the issue. This, however, is not so easier. There are following practical problems:

(*a*) The crime committed by a "terrorist" and an ordinary criminal would be overlapping.

(*b*) It is not the intention of the Legislature that every criminal should be tried under UAPA where the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity.

Every "terrorist" is a criminal but not vice versa. A criminal cannot be given the label of a "terrorist" only to set in motion the more stringent provisions of UAPA. The criminal activity in order to invoke UAPA must be committed with the requisite intention as contemplated by Section 15 of the Act by use of such weapons as have been enumerated in Section 15(*a*) and which cause or are likely to result in the offences as mentioned in the Section especially in Sections 15(*a*)(*i*)-(*iv*), (*b*) and (*c*).

Extension of detention period

This demand is often made before designated court by the prosecution. The legal position regarding this demand of "extension of detention period" is very well chalked out in following case:

Devenderpal Singh v. *Govt. of NCT of Delhi*[8]

Table—Fact sheet of Devenderpal Singh case

19-1-1993	Devinderpal Singh arrested on his arrival at New Delhi from Germany		
Charges of False passport.	Indian Penal Code	Sections 419/420/468/471	released on bail
	Passport Act		
Charges of Murder, Terrorist act, etc. On 11-9-1993 accused is said to explode car with RDX on Mr M.S. Bitta, who survived but 9 others killed in New Delhi[9].	Indian Penal Code	Sections 302/307/326/323/436/120 - B	remanded to judicial custody
	Terrorist and Disruptive Activities (Prevention) Act, 1987	Sections 3, 4 and 5	
	Explosive Substances Act	Sections 4and 5	

12-7-1995	application by Public Prosecutor	(*i*) For extension of time for completion of the investigation and (*ii*) for extending the period of detention of the appellant "D" beyond the period of 180 days.	
ISSUE	What is the exact procedure for extension of detention period		
The Designated Court No. II, Tis Hazari, Delhi	ORDER		[For ratio-see below] 12-7-1995
	(*i*) allow extension of period for another sixty days at the expiry of first statutory period of 180 days (*ii*) direction to positively complete the investigation by then.		
17-7-1995	180 days expired	appellant was produced before the Add. Chief Metropolitan Magistrate, N. Delhi	judicial remand extended for further period of 60 days
13-9-1995.	Challan filed under Section 173 CrPC		

12-7-1995 — Ratio decidendi of the designated court,

While allowing extension period the designated court provided following reasoning for the order:

(*i*) It has seen the entire file and progress of investigation.

(*ii*) It has heard the Learned Public Prosecutor.

(*iii*) The evidence has to be collected from Jaipur, Baroda, Ahmedabad against the accused persons.

(*iv*) Some of the offenders are yet to be arrested against whom some clues are received very recently.

(*v*) This is a fit case where extension of time as per provisions of Section 20(4)(*bb*) TADA Act (with amendment of 93), should be given.

On 17-7-1995 an application had been given by defence against designated court for bail.

Defence counsel argument: Grounds

Defence counsel advanced following grounds for bail:

(*i*) that the prosecution had failed to complete the investigation within the statutory period of 180 days;

(*ii*) that he was not produced before the designated court at the time of hearing of the application for extension on 12-7-1995;

(*iii*) that the order of extension was passed behind his back;

(*iv*) that no opportunity had been provided to show cause why the prayer for extension should not be allowed;

(*v*) that essential condition of sub-section (4)(*bb*) of Section 20 are not fulfilled.

(*a*) 1st essential requirement—that no independent report had been submitted by the designated public prosecutor regarding the progress of the investigation and

(*b*) 2nd essential requirement that no specific reasons have been provided for detaining the appellant beyond the statutory period of 180 days

(*vi*) that the principle laid down in *Hitendera Vishnu Thakur* v. *State of Maharashtra*[10], has not been followed;

(*vii*) that the order of extension was passed without any notice to the accused and without producing him before the court;

(*viii*) that the designated court was clearly in error in extending the time, even though the public prosecutor had failed to make a report as required by the statute; and

(*ix*) that the accused had acquired an indefeasible right to be released on bail in this case on account of the default of the prosecution.

State counsel arguments

The State concentrated its argument on "indefeasible right". It argued that

(*i*) in *Sanjay Dutt* v. *State*[11], it was laid down that there is an indefeasible right accrued to the accused to be released on bail, for non-compliance with the requirements of Section 20(4)(*bb*);

(*ii*) this was, however, enforceable only prior to the filing of the challan under Section 173 of the CrPC. Once challan is filed this indefeasible right neither survives nor enforced;

(*iii*) the appellant had failed to enforce his right before the challan was filed; and

(*iv*) therefore, he could not enforce this right any more now.

Three issues

A. Whether designated court should issue a written notice to accused?

B. Whether designated court erred in extending the time of detention?

C. Whether accused has any indefeasible right to be released on bail?

Judgment: The Supreme Court of India decided the three issues which can be illustrated as below—

Issues (questions)	A	B	C
Answer	NO	YES	NO

Ratio Decidendi:

The Apex court recalled the principle laid down in *Hitendera Vishnu Thakur*. According to the court following procedure has to be observed for seeking extension of time under clause 20(4)(bb):

(*i*) the investigating agency should request extension;

(*ii*) the public prosecutor should apply his mind independently;

(*iii*) public prosecutor should make a report indicating therein the progress of the investigation;

(*iv*) the report should also disclose justification for keeping the accused in further custody to enable the investigating agency to complete the investigation;

(*v*) his report, must disclose on the face of it that he has applied his mind;

(*vi*) public prosecutor was satisfied with the progress of the investigation;

(*vii*) he has considered grant of further time to complete the investigation;

(*viii*) the court should give notice to accused before extending detention period; and

(*ix*) accused should be heard before passing an order. [12]

Probative force of report of public prosecutor

The report of the public prosecutor, is not merely a formality. It is a very decisive report because the consequence of its acceptance affects the liberty of an accused. It must, therefore, strictly comply with the requirements as contained in clause 20(4)(*bb*). This report in its nature is not optional. The request of an investigating officer for extension of time is no substitute for the report. It is indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor.[13]

On the issue of notice: Written notice not required

The court observed that the "notice" contemplated in the decision in *Hitendra Vishnu Thakur case* before granting extension for completion of investigation is not to

be construed as a "written notice" to the accused. Only the production of the accused at the time of consideration of the report of the public prosecutor for grant of extension of the period for completing the investigation was being considered would be sufficient notice to the accused.

On "extended detention" order of the designated court: Erroneous

Without any report of the public prosecutor and without even the appellant being produced and informed by the Designated Court that question of grant of extension of the period for completing investigation was under consideration, any order granting extension would be erroneous and it cannot be sustained.

On the issue of "indefeasible right" to bail

This question was examined in *Sanjay Dutt case*[14]. It has been laid down that the right to be released on bail for failure to complete the investigation within the prescribed time is not automatic. Even if the right is "indefeasible" it has to be 'availed of by the accused at the appropriate stage. The court observed that:

> The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive of remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bailhas to be

considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by the Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply.[15]

The law propounded in these cases is still relevant as Unlawful Activities (Prevention) Act, 1967 at present contains similar provision. Section 43D(2)(*b*) contemplates modification in Section 167 CrPC and adds following proviso:

> Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with *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, extend the said period up to one hundred and eighty days.[16]
>
> (emphasis supplied)

All those principle laid down by the Supreme Court of India would hold good for this provision of Unlawful Activities (Prevention) Act, 1967 as amended in 2008.

Rajiv Gandhi Assassination case (*State of T.N.* v. *Nalini*)[17]

Issues: The conviction of the accused (and LTTE members) was based on the point of *mens rea* where the central issues moved around following two questions:

(*i*) Whether the accused intended, at any time, to overawe the Government of

India?

(*ii*) Whether the accused entertained an intention to strike terror in people or any section thereof?

Judgment of the Court

Decision: Both of these questions were answered in negative. The court held:

> In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.[18]

Ratio Decidendi

The accused did not intend to overawe the Government of India because the person killed i.e. Rajiv Gandhi, at the time of assassination, did not hold any office in the Government of India. The legal status of Rajiv Gandhi in context of requirement of provisions of counter terror law prevailing that time i.e. TADA has been explained by the Supreme Court of India in following words:

> However, there is plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But unfortunately Rajiv Gandhi was not then "a person bound by oath under the Constitution to uphold the sovereignty and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament.[19]

On the 2nd question the Supreme Court of India deduced its ratio decidendi in the following words:

> … Nor can we hold that the conspirators ever entertained an intention to strike terror in people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in people. We have no doubt that the aftermath of the carnage at Sriperumpudur had bubbled up waves of shock and terror throughout India. But *there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi*. Among

the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention of the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.[20]

(emphasis supplied)

Thus the court neither found any proof beyond reasonable doubts nor the confessional statements were enough to prove that the accused intended to strike terror in people or any section of the people. A considerable part of "reasons of decision" is based on the concept of intention and knowledge. Therefore, a brief review of the concept is pertinent.

Knowledge and Intention: The Conceptual Difference

The concept of intention is wider than knowledge for every intention covers knowledge but not vice versa. It is why intention is regarded as greater evil vis-à-vis

knowledge which is evident from the fact that an intended act attracts graver punishment than an offence committed with mere knowledge.[21] An accused may kill a person knowingly without intending to kill him but if he killed with intention he definitely possessed the knowledge to kill. In other words in case of intention knowledge is to be presumed but in case of knowledge intention can not be presumed. If an offence was intended, knowledge as an ingredient of that offence is taken for granted. However, if there is proof that a person committed a crime with knowledge, intention can not be taken for granted for he might have committed it with intention or without intention?

Knowledge and Intention: Application of the Conceptual Difference

The Supreme Court maintained this distinction between knowledge and intention in the next paras of the judgment:

Page: 109

> Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.[22]...

If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel.[23]

The accused must be aware (obviously *the knowledge*] that police personal and fans of Rajiv Gandhi would be killed but the accused did not *desire* to kill them. Legally speaking they *knew* their crime is going to kill various persons still they did not *intend to* kill them.

Motive of killing Rajiv Gandhi

Motive is practically very important in deciding the guilt though it is not theoretical necessity. Motive is not an essential part of proving the offence beyond reasonable doubts; however, it is relevant in the legal proceedings.[24] When the Supreme Court of India reached to the conclusion that terrorism and creating terror was not the motive behind Rajiv Gandhi assassination the curious question is what the motive was. The court disclosed that the motive was personal animosity. It recorded:

> ... we do not find any difficulty in concluding that evidence does not reflect that any of the accused entertained any such intention or had any of the *motive* to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabhakaran, supreme leader of LTTE had *personal animosity* against Rajiv Gandhi and LTTE cadre *developed hatred* towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA.[25]
>
> (emphasis supplied)

Page: 110

Criticism

It is respectfully submitted that the judicial approach in this case was very technical. If the idea of *personal animosity* can be equally imported in Indira Gandhi assassination *case* (*Kehar Singh*, supra) pretending that the blue star operation *developed hatred*. Similarly in *Parliament Attack case*, supra, one can argue that as the Government of India is not leaving its claim on Kashmir, it has *developed hatred* towards government. Therefore, an attack on Parliament and it was a case of *personal animosity* and not a terrorist act. Fortunately the double bench of the Supreme Court of India in *Parliament Attack case* did not trap in the brilliant arguments of defence counsels. It decided that the attack was a terrorist act. It decided it was a war on India. Moreover it utilised its wisdom to criticise one accused for his suspected conduct[26] who had to be acquitted for want of full proof evidence as per requirement of criminal jurisprudence. The following words deserve to be quoted:

> However, we would like to advert to one disturbing feature. Gilani rejoiced and laughed heartily when the Delhi event was raised in the conversation. It raises a serious suspicion that he was approving of the happenings in Delhi. Moreover, he came forward with a false version that the remark was made in the context of domestic quarrel. We can only say that his conduct, which is not only evident from this fact, but also the untruthful pleas raised by him about his contacts with Shaukat and Afzal, give rise to serious suspicion at least about his knowledge of the incident and his tacit approval of it. At the same time, suspicion however strong cannot take the place of legal proof. Though his conduct was not above board, the Court cannot condemn him in the absence of sufficient evidence pointing unmistakably to his guilt.[27]

(Emphasis supplied)

Concluding Observations

'U' turn in judicial delineation

It appears that the two cases on terrorism i.e. *Rajiv Gandhi Assassination case* and *Parliament Attack case* have at least one thing noticeable. It is "U" turn in the judicial delineation. In former case i.e. *Rajiv Gandhi* the court could not find the attack as terrorist one while in latter the court not only held the attack a terrorist act but made conscious remark on the conduct of suspect which is a rare feature in judgments of the Supreme Court of India.

Reasons of "U" turn

The judgment of a court is effected by various factors. Personal appreciation and orientation of judges matters very much. It is an issue where even devil do not dare to plunge. However, it is submitted that the judgment was influenced by unprecedented attacks by terrorists (especially Islamic terrorists) at international level and national level. The inspiration they cultivated, the design they applied, the planning they made, the way they executed, the motive they revealed, the systematic support they received, the guilt they confessed without any remorse all led to one conclusion, this terrorism is not terrorism of 20th century. The new millennium is going to face a new type of terrorism, terrorism never before, its sui generic; it's an entirely new enemy. New enemy cannot be faced by old techniques, the old traditional rules of criminal jurisprudence has to give way, new has to dent in Thankfully Indian judiciary has

revisited its approach. Recent attacks on various cities in our country especially 26/11 have indicated that the menace of terrorism can surprise us. Consistent and recent judicial techniques have to explore the ways to answer the threat with Human Rights noises.

———

* LLM (Meerut), UGC-NET, Pursuing PhD (Law) from Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur.

** BSc, LLM (BHU), Ph.D. submitted on "Analysis of Laws Regarding Terrorism and Violation of Human Rights…" under the supervision of Prof. Amrendra K. Mishra, Ex Dean, Faculty of Law, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur, U.P. Author is a senior lecturer in the university.law1871@gmail.com.

[1] (1994) 3 SCC 569, para 145.

[2] (1994) 3 SCC 569, para 145.

[3] (1994) 3 SCC 569, para 145.

[4] (1994) 3 SCC 569, para 145

[5] [1995] Date of Judgment 12/7/1994. The case was decided by double bench of Anand, AS J and Faizan Uddin J unanimously. The judgment was delivered by Hon. Justice Dr. Anand.

[6] *Hitendera Vishnu Thakur case*, (1994) 4 SCC 602 at para 7.

[7] *Hitendera Vishnu Thakur case*, (1994) 4 SCC 602 at para 7.

[8] (1996) 1 SCC 44. Date of Judgment 14-11-1995. it was a special leave petition, the Division Bench of the Supreme Court of India consisted of Hon. Sen, S.C. J and Anand, A.S. J. the judgment was unanimous and delivered by Hon. Justice Sen.

[9] This fact is not mentioned in the 1996 judgment (above). There is another judgment dated 22-3-2002, by Hon. Justice M.B. Shah, where whole fact is given. The judgment shows how carelessly the investigation and prosecution is lead by big officers. Their negligence in observing rules made in counter terror enactments (here TADA) provides ample scope to raise doubts. The Supreme Court reversed the conviction by designated court and acquitted accused, Devinderpal Singh. Confession before a police officer not below an SP was admissible in TADA. The voluntariness and truthfulness of confessional statements recorded were questionable. Its procedure as provided in Section 15, TADA was not followed and want of corroborative evidences became basis of acquittal. In Unlawful Activities (Prevention) Act 1967, as amended in 2008, there is no provision of relevancy and admissibility of confessions before a police officer., Therefore, 2nd case of *Devenderpal Singh*, is not useful for our discussion and this word does not examines it an more.

[10] (1994) 4 SCC 602. Dr. Anand, J. was one of the Judges, hereinafter referred as *Hitendra Vishnu Thakur.*

[11] (1994) 5 SCC 410,

[12] *Hitendra Vishnu Thakur case*, as quoted in *Devinderpal Singh case*, (1996) 1 SCC 44 at para 13.

[13] *Hitendra Vishnu Thakur case*, as quoted in *Devinderpal Singh case*, (1996) 1 SCC 44 at para 13.

[14] (1994) 5 SCC 410.

[15] (1994) 5 SCC 410.

[16] Proviso to Section 167 CrPC, as applicable to Unlawful Activities (Prevention) Act 1967, as amended in 2008.

[17] (1999) 5 SCC 253 : AIR 1999 SC 2640 : 1999 Cri LJ 3124. Date of Judgment: 11-5-1999. The three judge bench consisted of Syed Shah Mohammed Quadri, D.P. Wadhwa, and K.T. Thomas, JJ. It ranges between para 1-730. Hon. Justice Thomas wrote between para 1-357. Hon. Justice Wadhwa between 358-662 and Hon. Justice Quadri between 633-724. In this way three judgments were delivered. There are broad consensus on various issues, on some points of law, conviction and sentence there are dissenting opinion. Judgment of the court has been delivered by Hon. Justice K.T. Thomas. This judgment shows the weakness of drafting counter terror legislations because murder of Rajiv Gandhi could not be held to be a terrorist act. See also Moily's 8th report on Terrorism, pp. 40-41, para 4.1.6.2. [2008] "The need for a comprehensive anti-terrorism legislation cannot be better illustrated than by the judgment of the Supreme Court in *Rajiv Gandhi Assassination case*". Second administrative Reforms Commission (ARC) arc.gov.in/8threport/ARC_8th_report.htm.

[18] (1999) 5 SCC 253, Para 64.

[19] (1999) 5 SCC 253, Para 64 at Para 70.

[20] (1999) 5 SCC 253, Para 62.

[21] P1 see, Indian Penal Code 1860, Section 304 maintains this distinction.

Section 304—*Punishment for culpable homicide not amounting to murder*:

> Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

[22] Para 63.

[23] Para 69.

[24] Indian Evidence Act, 1872, Section 8. Motive, preparation and previous or subsequent conduct. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact…

[25] Para 555.

[26] *Navjot Sandhu* v. *State (NCT of Delhi)*, AIR 2005 SC 3820, para 368 : (2005) 11 SCC 600.

[27] Para 20 in internet edition in judis.nic.in.