(14) The aforesaid observations are squarely applicable to the facts and circumstances of the present case.

(15) Learned counsel for the respondent-H.S.E.B. had strongly relied on the judgment of the Hon'ble Supreme Court in ***Kedar Nath Sood's*** case (supra). The aforesaid judgment is wholly inapplicable in the facts of the present case. In that case, the Hon'ble Supreme Court was dealing with Rule 54(14) (b) (i) of C.C.S. (Pension) Rules, 1972, according to which father will not be a member of the family or dependent to get family pension. Interpreting the aforesaid rule, it was held that the father would not be entitled to the family pension. It was, however, also observed that it is time for the government to consider the amendment of the Rules to cover the situation similar to the one that appears in this case. The facts in the present case are almost identical to the facts in the case of ***Kharak Singh*** (Supra). Family pension cannot be denied to the appellant in view of the law laid down therein. The aforesaid judgment has subsequently been followed in similar circumstances in ***Jaswinder Kaur*** and ***Lichhami Devi's*** cases (supra). The aforesaid judgments are binding on this Court.

(16) In view of the above, the present Regular Second Appeal is allowed with costs which are quantified at Rs. 5000. The judgment and decree of the learned lower Appellate Court are set aside and the judgment and decree of the learned trial court are restored. The respondents-H.S.E.B. are directed to make the payment in accordance with the judgment and decree of the learned trial Court together with interest mentioned therein within a period of two months from the date of receipt of a certified copy of this order.

J.S.T.

Before Jawahar Lal Gupta & N.K Sud, JJ

SIMRANJIT SINGH MANN—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 6827 of 2002

21st May, 2002

Constitution of India, 1950—Arts. 14, 21 & 226—Prevention of Terrorism Act, 2002—Ss. 3(5), 30, 32 & 49(7)—Increase in the acts of terrorism—Law Commission recommending a permanent anti-terrorist law to fight terrorism—Promulgation of the 2002 Act by the Govt. to preserve the sovereignty & integrity of the nation—Provisions of the 2002 Act empower the Court to impose effective penalties on the terrorists in the commitment of the heinous crime—Whether provisions of the Act suffer from the vice of discrimination as envisaged under Art. 14 of the Constitution—Held, no—Provisions of the Act embody a fair procedure, ensures a fair & speeedy trial and provides adequate safeguards to the rights of an individual at every stage—No constitutional or legal infirmity—Provisions of the Act held to be valid.

Held, that :—

1. The reights to equality, life and liberty are guaranteed under our Constitution. These are the touchstone on which every law has to be tested. A law depriving a person of his liberty. irrespective of the fact that it provides for punitive or preventive detention, has to satisfy the test of reasonableness. It must conform to the provisions of the Constitution. The prescribed procedure, which should not be arbitrary or oppressive, has to be followed. The letter of law has to be strictly and scrupulously observed. But, in its search for fairness, the court ignore the policy behind the law.

2. The security of the State is of paramount importance. The Sovereighty and Integrity of the nation have to be preserved at all costs. The individual's rights are subservient to the larger interests of the society.

3. The prevailing circumstances in the country pose a threat to the nation's integrity and sovereignty. A law to protect the the people and their property was necessary. The matter had been duly considered before POTA was promulgated. The enactment of the impugned Act was a national imperative. There is clear rationale for the Act.

4. Liberty does not mean license. It only implies freedom to do what one ought to do. The terrorist causes a terrible trauma to the people. His actions disentitle him to claim parity of treatment with an ordinary criminal. In today's world, the terrorist has to thank himself for forging his 'own fetters'. In the existing scenario, he cannot complain that the provisions of the impugned Act suffer from the vice of discrimination. The challenge based on the guarantee of equality in Art. 14 cannot be sustained.

5. Laws are made to protect the innocent and to punish the wicked. These are a bad man's danger and a gentleman's safety. The good have nothing to fear. The tyrant should have no reason to complain of tyranny. If the protagonists of the right to liberty were to respect the other man's right even half as much as their own, the laws like POTA would automatically become obsolete.

6. The punishment provided under the Act has a clear rationale. The efficacy of law often lies in the penalty attached to it. The state needed to arm itself with adequate authority to protect the liberty of the law abiding. The existing laws were not enough to fulfil the desired objective. Thus, the impugned Act was made. This is a good man's shield. Also his sword. There is a clear basis for granting protection to the witnesses ; varying the normal procedure to a limited extent ; permitting the confession recorded by an officer not below the rank of a Superintendent of Police to be used against the accused and in placing a restriction on the grant of bail to a person charged with an offence under the Act. It does not violate the constitutional mandate.

7. There are definite safeguards in the statute. The mere possibility of the power being abused is not enough to annul the Act. The door has to be kept open for trial and error. In any event, even if some authority acts arbitrarily, the law's arms are long enought to reach

it. The Act provides adequate remedy against the acts of arbitrarinese.

8. The Act contains a detailed mechanism for investigation by senior officers. It ensures a fair and speedy trial by an officer not below the rank of a Sessions Judge. The aggrieved person has the remedy of appeal to a Division Bench of the High Court. There are adequate safeguards at every stage. In any event, the provisions for judicial review ensures justice.

9. The crime and punishment come out of the same stem. The criminal should have no cause for complaint against the punishment. His sin is the seed. Punishment is for prevention. The terrible terror created by the terrorist is a cause for concern to the society. Certainty and speed are essential for ensuring the efficacy of punishment. Crime is reduced not by making punishment familiar but formidable. Death penalty may not correct the man who is hanged. But it provides a deterrent for others like him. And for the unjust, strict punishment is the justice. The Act rightly aims at reducing the procedural tangles and arms the Court with the power to impose effective penalties on the terrorist as well as even on those who are his partners in the commitment of heinous crime against man and his kind. Danger of losing ill-gotten property can also be a definite deterrent.

(Para 93)

Ranjan Lakhanpal, Advocate *for the petitioner.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner was a member of the Indian Police Service. He is now a Member of Parliament. He questions the constitutional validity of the Prevention of Terrorism Act, 2002.

(2) What is the petitioner's case ? He alleges that "its draconian provisions infringe the basic rights of people of India i.e. right to life and liberty as enshrined in Article 21 of the Constitution..." Under

Section 3 (5), a "person who is a member of a terrorist organization...can be arrested and punished...with life imprisonment and a fine up to Rs. Ten lacs." Section 49(5) of the Act provides that the provisions of Section 438 Cr. P.C. are not available for those "to whom the Act applies." Section 49(7) denies bail to person arrested under the provisions of the Act unless "the Special Judge comes to the conclusion that the accused has not committed the crime...." The "benevolent provisions of Section 167 of Cr. P.C. that a person can be granted bail if a challan is not presented within 60 days /90 days has also been denied to persons accused under the Act and the period has been extended to 180 days under Section 49(2) of the Act." Under section 32, a confession made before the police has been made admissible. It "amounts to giving absolute power in the hands of the police and on the testimony of the police witness a person can be convicted under the Act where the punishment are very severe...."

(3) The petitioner cites an instance. He refers to the caste of Devinder Pal Singh who has been sentenced to death in a case under TADA. The Apex Court has "upheld the death sentence even though there is no corroborative evidence." This penalty has been awarded "on the basis of confessional statement alleged to have been made before the police." The provision in the Act "amounts to giving absolute power to the police and enables the police officer to sign anybody's death warrant."

(4) The petitioner alleges that "police brutalities are a matter of routine and not an exception in our country. Custodial deaths due to police torture are not unknown. Every police station has a torture chamber in this part of the country. Different tools are used to torture people....Where torture in police stations is the rule and not an exception, to allow a confessional statement in police station to hang a person is nothing but a travesty of justice and allowing the police officer to decide whether to give death sentence or not. Such absolute power is impermissible in the eyes of law..." Under Section 30, the identity of a witness can be withheld. This is against the basic principles of natural justice. Draconian lawas like MISA and TADA have not helped in curbing terrorism. Such laws have been counter-productive. With passage of time, these laws only alienated the general public and the people saw their misuse. Police use it to extract money from well-to-do-families. These have "resulted in grave injustice."

Even "the limited experience under POTA too has been no different. It has been applied only on minorities till date and not even in one case against a Hindu. It was applied on Afroz in Mumbai and later on withdrawn." The petitioner asserts that the provisions of the Act are *ultra vires* Art. 21 of the Constitution. These are, thus, void.

(5) On 24th October, 2001, the Prevention of Terrorism Ordinance, 2001 was promulgated by the President. A Second Ordiance was introduced on 30th December, 2001. Finally, on 26th March 2002, the bill was passed in joint session of both the houses of Parliament.

(6) What are the provisions of the impugned Statute ? It has six chapters. The first one gives the short title, extent, application, commencement and duration of the Act. Section 2 defines various expressions used in the Act. Chapter II consists of Sections 3 to17. Section 3 has seven clauses. Sub-section 1 defines a "terrorist act." Clause 2 prescribes the penalty. Clause 3 provides for punishment of persons who conspire or attempt to commit or advocate, abet, advise or knowingly facilitate "the commission of a terrorist act or any act preparatory to terrorist act." Clause 4 provides for penalty to the persons who voluntarily harbor or conceal or attempt to harbor or conceal "any person knowing that such person is a terrorist." This provision does not appy "to any case in which the harbor or concealment is made by the husband or wife of the offender." Clause 5 provides for punishment "which may extend to imprisonment for life or with fine which may extend to Rs. 10 lacs or with both" to any person "who is a member of the terrorist gang or a terrorist organization..." The holding of the proceeds of any terrorist act is made punishable under Clause 6. Sub-section 7 is intended to ensure a free and fair trial. It provides for the award of penalty to a person who threatens a witness or any other person in whom such witness may be interested, with violence or wrongfully restrains or confines such person/s. Unauthorized possession of arms or ammunitions in a notified area, or bombs, dynamite of hazardous explosive susbstances or other lethal weapons capable of mass destruction or a biological or chemical substance of warfare is made punishable under section 4. Contravention of the provisions of the Explosive Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952, the Arms Act, 1959 with an "intent to aid any terrorist" is made "punishable with imprisonment

for a term which may extend to imprisonment for life" and also fine under section 5. Holding of proceeds of terrorism has been made illegal and these are made liable to be forfeited under Section 6. Section 7 gives the powers of the Investigating Officers and provides for appeal against the orders of the designated authority. Section 8 provides for the forfeiture of proceeds of terrorism. Under section 9, provision for issued of show cause notice before an order for forfeiture of proceeds of terrorism is passed, has been made. Section 10 provides for an appeal to the High Court against an order of the Special Court, which passed the order for forfeiture. Under section 11, it has been provided that the order of forfeiture shall not debar the award of any other punishment. Section 12 deals with the claims of third parties. Section 13 confers the powers of a civil court on the designated authority for the purpose of "making a full and fair enquiry into the matter before it." Section 14 makes it obligatory for the named authority to furnish the information sought by an investigating officer.

(7) Section 15 provides that transfer of property after the issue of an order under section 7 or notice under Section 9 is liable to be ignored. Section 16 authorises attachment and forfeiture of property belonging to a person who has been convicted of an offence punishable under the Act. Under section 17, it has been made incumbent upon a company to transfer shares to the Central or State Government.

(8) Chapter III consists of Sections 18 to 22. It deals with terrorist organizations. Chpater IV (Sections 23 to 35) provides for the constitution of special courts the place of sitting, jurisdiction, powers, the public prosecutors, procedure, protection of witnesses, admissibility of confessions made to police officers, transfer of cases to regular courts, appeal and transfer of pending proceedings etc.

(9) Chapter V (Sections 36 to 48) arms the authority with power of interception of electronic communications etc. Chpater VI consists of Sections 47 to 64. It contains miscellaneous provisions in regard to procedure, cognizance of offences, officers competent to investigate, arrest, permissible presumptions, bar of jurisdiction of civil courts, exclusion of proceedings before courts or other authority under any law relating to naval, military, air force and other armed forces of the Union. Section 56 gives over-riding effect to the provisions of the Act. Section 57 protects the Government and its officers in respect

of action taken in good faith. Section 58 provides for punishment and compensation for malicious action. The passport and arms license of a person charge-sheeted under the Act is "deemed to have been impounded for such period as the special court may deem fit under Section 59." Section 60 provides for the constitution of review committees. The High Courts have been empowered to frame rules by notification in the Offical Gazette for carrying out the provisions of the Act relating to special courts within their territories. A similar power to frame rules for carrying out the purposes of the Act has also been conferred on the Central Government. Under Section 63, the orders and rules made by the Central Government have to be placed before the Parliament. Section 64 repeals the Ordinance and saves any action taken thereunder.

(10) The Schedule to the Act enlists the Terrorist Organizations.

(11) The qualifications for appointment etc. of the Chairperson and the Members of the Review Committee have been prescribed under the "Review Committee (Qualifications for Appointment and other conditions of service of the Chairperson and Members) Rules 2002."

(12) These are broadly the provisions of the Statute. The issue is—Are the provisions of the Act invalid ?

(13) Mr. Lakhanpal, learned counsel for the petitioner, contended that the Act was not needed. He referred to the provisions of sections 3(5), 30, 32 and 49(7) and submitted that these are unfair, unjust, unreasonable and violative of Article 21. The power has been abused. Thus, the said provisions should be annulled.

(14) The two questions that arise for consideration are :—

(i) Is there a rationale for the Act ? Do the impunged provisions of the Act as contained in Sections 3(5), 30, 32 and 49(7) conform to the Constitutional mandate ?

(ii) Has the Act been abused ?

Reg. (I) Is there a rationale for the Act ? Do the impunged provisions of the Act conform to the Constitutional mandate ?

(15) Promulgation of a statute is purely a matter of policy. It lies within the exclusive domain of the appropriate legislature. The courts are not concerned. The process of judicial review is primarily confined to the validity and not the need for the Act. However, the questions haveing been raised, we have to deal with it.

(16) 'Terror', 'Terrorism' or 'Terrorist' have not been defined in the impunged legislation. But these are not terms of art. The plain meaning as given in the dictionary should suffice. In this sense, 'terror' means "a state of intense fright or apprehension ; stark fear." similarly, 'terrorism' means "the systematic use of terror as a means of coercion; an atmosphere of threat or violence." A 'terrorist' is "an advocate to practitioner of terror as a means of coercion; one who panics or causes anxiety." However, this term was duly defined in S. 2 (1)(h) of the Terrorist Affected Areas (Special Courts) Act, 1984.

(17) Terrorism and violence are not a recent phenomenon. We live in a world that has crucified Christ, assassinated Abraham Lincoln, killed Kennedy and murdered Mahatama Gandhi. Today, as noticed by their Lordships of the Surpeme Court in ***Kartar Singh* vs. *State of Punjab (1),*** the terrorist "are waging a domestic war against the sovereignty of their respective nations or against a race or community in order to crrate an embryonic imbalance and nervous disorder in the society either on being stimulated or instigated by the national, trans-national or international hard-core criminals or secessionists etc. Resultantly, the security and integrity of the countries concerned are at peril and the law and order in many countries disrupted....The cult of the bullet is hovering the globe completely robbing off the reasons and ryhymes."

(18) In India, different parts of the country have continued to remain disturbed for a long time. The States in the North, Northeast and South are still witnessing violence against men and materials. Thousands of innocent men and women have been murdered. Tons of arms and ammunition have been recovered. The States and the Centre have periodically promulgate various statutes. Yet, the evil has not been eradicated. The situation continues to be bad. It is a matter of concern for the citizen and the society.

(1) J.T. 1994 (2) SC 423

(19) In view of the prevailing security situation in the country, it is not surprising that the Government of India had requested the Law Commission to "undertake a fresh examination of the issue of a suitable legislation for combating terrorism and other antinational activities..." In pursuance to this request from the government, the Commission had undertaken a study. A Working Paper was prepared and circulated. While dealing with the security situation in different parts of country, it was *inter-alia* noticed by the Commission that :—

(i) There have been 45182 incidents of terrorist violence in the State of Jammu & Kashmir during the period from 1988 to March 1999. In this violence, 20506 persons had lost their lives. There were numerous cases of abductins, robberies, extortions, explosions, arson and killings. Security forces personnel, friendly militants and political activists were the priority targets of the militants. Most of the militants were of foreign origin. Mercenaries and fanatic fundamentalist terrorists from Afghanistan, Sudan, Pakistan and other countries are being inducted increasingly into this movement. The terrorism of India has become a part of international terrorism and India one of its prime targets.

(ii) The State of Punjab remains vainerable to sporadic terrorist actions by the remnants of the militants who appear to be under pressure to revive the separatist movement. The militant bodies are funded and equipped mainly by the overseas activists.

(iii) Northeast Region: Militant activities of various insurgent and extremist groups and ethnic tensions have kept the conditions disturbed in large areas of the North East. Details regarding the role of specific groups in different areas were noticed.

(iv) The religious militancy, which had first raised its head in 1993 with bomb explosions in Mumbai, continues to make its presence felt. In 1997, there were 23 blast in Delhi. 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.

(v) The SIS sponsored terrorism and proxy war has resulted in deaths of 29151 civlians, 5101 security personnel and 2730 explosions. Property worth Rs. 2000 crores is reported to have been damaged. Almost 437600 kg. Of explosives, mostly RDX, had been inducted and 61900 sophisticated weapons had been smuggled into India. It is estimated that the security related costs in countering ISI's activities have totaled an amount of Rs. 64,000 crores.

In view of these reasons (which have been culled out from the report) the Commission had agreed with the opinion of the Government that India too requires "a permanent anti-terrorist law." Thus, the paper was prepared and circulated by the Law Commission.

(20) The release of the Working Paper was followed by "the hijacking of the Indian Airline Flight IC-814, the release of three notorious terrorist by the Government of India to save the lives of innocent civilians and the crew of the said flight..." The Commission conducted seminars. Divergent views were expressed during discussions. The representatives of the Human Rights Organizations had "questioned the very necessity" of a "legislation to combat terrorism." It was contended that "TADA was widely abused and misused by the police authorities...it had not succeeded in checking terrorism....if TADA could not successfully counter terrorism...how could the present legislation succeed." The existing laws like the Indian Penal Code were enough to effectively deal with even the prevailing situation.

(21) On the other hand, supporters of the law "pointed out that today India was threatened not only with external terrorism but also with internal terrorism. The Indian Penal Code was not conceived and not meant for fighting organised crime; it was designed only to check individual crimes and occasional riots at local level. Crime perpetrated by highly trained and armed fanatical elements who are trained, financed, armed and supported by the hostile foreign countries and agencies had to be fought at a different level than as an ordinary law and order crime."

(22) The Law Commission considered the matter. Even the views expressed on behalf of the National Human Rights Commission were noticed. On a detailed examination of the views, the Law Commission in its 173rd report concluded that "a legislation to fight terrorism is today a necessity in India." this report was submitted to the Government in April, 2000.

(23) The government did not rush. The Act was not promulgated in haste. However, the situation in the country showed no signs of improvement. In fact, the acts of violence were on the increase. The attack on the World Trade Centre on the morning of 11th September 2001, bears testimony to the fears expressed by the protagonists of a law for prevention of terrorism. The senseless attack on the Indian Parliament could have reinforced the view. Organized acts of terrorism are no longer confirmed to a particular place or country. The threat is global. And it is on the increase. Despite, the fact that America has attacked Afghanistan with the most effective means of destruction. Thus, the need for the impunged Act.

(24) Mr. Lakhanpal contended that such laws have never proved productive. Even this Statute shall prove of no avail. Is it so ?

(25) It is true that Acts for preventive detention, maintenance of internal security and curbing terrorism have been periodically promulgated. Despite that, the evil has not been eradicated. Still, we cannot raise our hands in despair. The country cannot give up. Efforts to control the menance have to continue. The impunged legislation is a step in that direction.

(26) It needs to be noticed that in Para 8 of the petition, the petitioner has himself acknowledged that "terrorism is a scourge which has affected everybody in one-way or the other. There is no way one can defend." Yet, he questions the need for the statute. And that too, without suggesting any alternatives means or method for solving the problem.

(27) The 'upsurge of terrorist activities,' intensification of cross-border' terrorism, the violence perpetrated by the 'insurgent groups' are an existing reality and a global phenomenon. The 'modern means of communication' and other facilities enable the terrorist 'to strike and

create terror at will.' The existing justice delivery system was not equipped to deal with the 'heinous crimes.' Thus, imperative need 'to make provisions for the prevention of and for dealing with terrorist activities and for matters connected therewith.' The 'aims and objects' disclosed at the time of introduction of the Bill and the 'peramble' provide a clear answer and the real rationale for the promulgation of the Act by the Parliament.

(28) The promulgation of a statute is primarily a question of policy. It has to be decided by the legislature. Defence of India is a matter of national concern. It is not an issue for debate. The present matter lay clearly within the province of the parliament. It has promulgated the Act. And we are not the only people to have felt the need for such a law. The United States of America had promulgated the 'Anti-terrorism and Effective Death Penalty Act, 1996." Similarly, in the United Kingdom, different Acts have been periodically promulgated. One of these being, "The Criminal Justice (Terrorism and Conspiracy) Act, 1998."

(29) If various countries have felt a need for statutes to combat terrorism, there appears to be no reason to accept the contention that India could have done without it. There is clear rationale for the Act. The contention of the Counsel is wholly without merit. Consequently, it is rejected.

(30) The next limb of the argument relates to the constitutional validity of the impunged provisions of the Act. Do these conform to the Constitutional mandate ? Mr. Lakhanpal contended that the provisions of the Act viz. Sections 3(5), 30, 32 and 49(7) do not conform to the provisions of Article 21 of the Constitution.

(31) While considering this question, it has to be remembered that there is always a presumption in favour of constitutionality. The Parliament is presumed to be aware of the needs of the people as made manifest by experience. It is the "experience of evil" that provides the essential cause for any legislation including the impugned enactment. Thus, the court has to proceed on the assumption that the Statute is valid.

(32) Another fact, which deserves notice at the outset is that neither in the petition nor during the course of arguments it has been

even suggested that the Statute is not within the legislative competence of the Parliament. The counsel had probably adopted this course in view of the authoritative pronouncement of the Supreme Court in Kartar's Singh case wherein it was held that laws like TADA fall within Entry 1 of List I. Thus, even this aspect need not be gone into.

(33) Now the core of the controversy.

(34) The statute is undoubtedly wide in its sweep. But that is the need. Stringent provisions are necessary to meet the menance. The issue is - Do the provisions impinge upon the constitutional mandate ? The Act has to be primarily tested on the touchstone of Articles 14 and 21.

(35) The state is under a duty to protect the people, their person and property. This duty is as sacred and sacrosanct as the guarantee of a person's right to equality, life and liberty. And then, every right carries with it a duty. The need to synthesise right with duty so as to achieve the objective of a cohesive community, has been historically recognized. The French Convention of 1793 records that "common happiness" is the aim of society. The basic purpose of law is to ensure "the greatest happiness of the greatest number." In this context, W. Friedmann in 'Legal Theory' (5th Ed.) has said that :—

> "The relation of the rights of the individual to those of his fellow individuals in the community has gradually led to a profound modification of the legal values of the modern democracy. It has *increasingly tempered individual right by social duty*...Democratic communities have universally, though with varying speed and intensity, accepted *the principle of social obligiation as limiting individual right."* (emphasis supplied)

(36) Every right rests upon some degree of restriction. Social obligations limit the individual's liberty. The society has its own science. Liberty can never mean licence. It does not mean doing what one likes. Nor can it lie in destorying the rights of others. In a civilized society, liberty should only ensure that a person is able to do what he ought to be doing. Every man has to respect the rights of others

before he can be justifiably assert his own. Liberty has to be earned before it can be enjoyed. Men of "intemperate habits cannot be free. Their passions forge their fetters." While advocating the cause of 'Human Rights.' this basic truth has to be remembered.

(37) The terrorist causes a terrible trauma to the innocent. His acts pose a threat to the human society. A person who "with intent to threaten the integrity, security or sovereignty of India or to strike terror in the people or any section of people does any act or thing by using bombs, dynamite or other explosive susbtances..." of a hazardous nature or by any other means whatsoever..." or "is and continues to be a member of an association declared unlawful under" a statute cannot justifiable complain of discrimination when he is treated differently from another who commits a breach of law under totally different circumstances. A person who threatens the sovereignty and integrity of the country is certianly different from a person who merely threaten an individual. The two are not similarly situate. Unequals cannot complain of inequality. In the present case, the differential treatment rests upon a valid foundation. The provisions of the Act do not suffer from the vice of discrimination as envisaged under Art. 14 of the Constitution. In fact, a similar argument was categorically negatived in Kartar Singh's case.

(38) Mr. Lakhanpal contended that the provisions are 'draconian.' These are arbitrary and unfair. Is to so ?

(39) The Constitution guarantees individual's liberty. No one can be deprived of his life or liberty except in accordance with procedure prescribed by law. The prescribed procedure must not be arbitrary, fanciful, unfair, unjust or whimsical. It must be reasonable. This is the mandate of Arts. 14 and 21. It has to be scrupulously followed in letter and spirit.

(40) What is the position in the present case ?

(41) A perusal of the provisions of the Act shows that at every stage the powers under the Act have been conferred on high authorities. The Act contemplates a 'desiganted authority.' It is defined under Section 2(b) to mean an officer "of the Central Government nor below the rank of Joint Secretary to the Government or....of the State Government not below the rank of Secretary" as may be specified "by

a notification published in the Official Gazette." The 'Authority' has to make an enquiry. Under Section 13 of the Act, the authority has been armed with "all the powers of a civil court required for making a full and fair enquiry into the matter before it." Under Section 18, provision in respect of terrorist organisations has been made. These are listed in the Schedule. The Central Government has the power to add to or remove an organization from the Schedule. Even an application can be filed to the Central Government for the removal of an organization from the schedule. The order of the Central Government can be reviewed by the Review Committee in exercise of the powers under Section 19(5) and 19(6). Provision for the Constitution of Review Committee has been made in Section 62. Not only that. Even rules governing the appointment etc. of the Chairperson and Members of the 'Review Committee' have been duly promulgated. Under Rule 3, a person who has been or is a sitting Judge of the High Court can be the Chairperson has to be the rank of a Secretary in the Government.

(42) Then, there is a complete machinery for the judicial process. Section 23 of the Act provides for the constitution etc. of the Special Courts. Clause 4 provides that "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." By virtue of clause 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." every offence punishable under the act can be tried " only by the Special Court...constituted for trying such offence under Section 23." The case pending before a "special court can be transferred to any other special court within the State by the High Court. The Supreme Court can transfer a case even outside a State. Such order of transfer can be passed in cases where it is "not possible to have a fair, impartial or speedy trial; or 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 a judge of the Special Court or any of them" or in the interest of justice. Section 29 provides the procedure and powers of Special Courts. It ensures the grant of a reasonable opportunity to the accused.

(43) Section 34 provides that an appeal shall lie from "any judgment sentence or order, not being an inter-locutory, order of a special court to the High Court both on facts and on law." Such appeals have to be "heard by a Bench of two judges of the High Court." Even when the special Court grants or refuses bail, a provision for appeal to the High Court has been made.

(44) Even investigation has been entrusted to senior officers. Section 51 *inter alia* provides that an officer investigating the case under the Act shall not be below the rank of Deputy Superintendent of Police.

(45) The Act makes a clear provision to ensure that the procedure is fair. Under Section 52, it is obligatory for the police officer who arrests a person to inform him "of his right to consult a legal practitioner as soon as he is brought to the police station." Information of his arrest has to be "immediately communicated by the police officer to a family member or in his absence to a relative of such person, by telegram, telephone or by any other means and this fact" has to be "recorded by the police officer under the signature of the person arrested." During the course of interrogation, the person arrested has to be "permitted to meet the legal practitioner representing him."

(46) A perusal of the provisions shows that keeping in view the seriousness of the offence involved and the rights of the individual, provisions for investigation by Senior Officers, trial by persons of the rank of Sessions Judge and appeal to the High Court have been made. Safeguards have been provided at every stage.

(47) The Statute takes within its fold the terrorist as well as the terrorist organizations. It provides for penalty not only to the persons indulging in a terrorist act but also for the forfeiture of the property. Section 7 empowers the Investigating Officer not below the rank of a Superintendent of Police to make an order for attachment or seizure of the property. However, even this provision has inbuilt safeguards. Firstly, the Investigating Officer should have "reason to believe." Secondly, he has to seek prior approval in writing of the Director General of Police of the State in which the property is situated. Thirdly, the Investigating Officer has to "inform the designated authority as defined under Section 2(i)(b) within 48 hours of the seizure or attachment of the property." Thereafter, the designated

authority has to give an "opportunity of making a representation" to the "person whose property is being attached." The designated authority can either confirm or revoke the order of attachment. Thereafter, a person aggrieved by the order of the designated authority has the right to file an appeal before the Special Court. Similarly, under Sectioin 8, the property that "constitutes proceeds of terrorism can be ordered to be forfeited by the special court." Even in this behalf, Section 9 provides for the issue of a show cause notice before passing any adverse order for the forfeiture of property. Under Section 10, an appeal lies against the order of the Special Court to the High Court.

(48) The obvious object is to reach the property of the terrorist who often finds a safe haven abroad and eludes the process of law. In any event, the provisions embody a fair procedure and ensure an adequate opportunity.

(49) A 'terrorist act' is defined in S.3. The penalties vary from fine, forfeiture of property, and life imprisonment to death sentence. However, there are adequate safeguards. The power is vested in high authorities. There is provision for grant of adequate opportunity at every stage. The Act postulates a fair trial. The order passed by the 'Designated Authority' or the 'Special Court' can be questioned by way of an appeal against an order of conviction passed by the special court lies to the High Court. Still further, the safeguards as envisaged by their Lordships of the Supreme Court in Kartar Singh's case (supra) while considering the constitutional validity of TADA have been clearly provided.

(50 Mr. Lakhanpal contended that the punishment contemplated under Section 3(5) is highly excessive. The provision provides as under :—

> "(5) Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life, or with fine which may extend to rupees ten lakh, or with both.
>
> Explanation—For the purposes of this sub-section, 'terrorist organization' means an organization which is concerned with or involved in terrorism."

(51) A perusal of Section 3 shows that a person who threatens the unity, integrity, security or sovereignty of India or continues to be a member of an unlawful association can be awarded the punishment of death or imprisonment for life. The members of organizations, which are involved in the terrorist acts are also considered guilty of the offence. For that too, a deterrent punishment of imprisonment, which may extend to a term for life or/and fine, which may extend to Rs. 10 lakhs, has been provided.

(52) The quantum of punishment is primarily a question of policy. It is for the parliament to prescribe it. The Court can interfere only if the provision is arbitrary and, thus, unconstitutional. A perusal of the provision shows that the punishment can "extend to imprisonment for life." The statute does not provide the minimum. It cannot be said to be arbitrary. It vests a clear discretion in the court. This is all the more so in view of the fact that the offence under the Act is heinous and the power has been vested in special courts. Still further, the remedy of appeal etc. before a Division Bench of the High Court provides for judicial review of the decision. And then the constitutional remedies before the Apex Court are also there. In this context, the observations of Krishan Aiyar J. in ***Sunil Batra*** vs. ***Delhi Administration(2),*** may be noticed—

> A 'prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials, the law will respond to his distress signals through writ aid. The Indian human has a constant companion—the Court armed with the Constitution.'

(53) Resultantly, it is clear that there are adequate safeguards for the accused.

(54) The counsel then submitted that the provision contained in Section 30 hides the identity of the witness from the accused. Thus, it denies a fair trial. Is it so?

(55) The provision provides as under :—

> "30. Protection of witnesses—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reason to be recorded in writing, be held in camera if the Special Court so desires.

(2) 1980 3 SCC 488

(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 witness 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) a decision 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 decision or 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."

(56) The provision does not in terms say that the identity of the witness shall not be disclosed to the accused in any case. Thus, the claim as made by the counsel that the provision denies a fair trial cannot be sustained. Still further, the provision is primarily meant to protect the witness. That too, when it is satisfied that there is a good reason for it. Nothing more.

(57) A perusal of the provision shows that the Special Court can, for reasons to be recorded in writing, order that the proceedings be held in camera. Under Clause 2, a witness or the Public Prosecutor

can make an application. The court can proceed even *suo motu*. If it finds "for reasons to be recorded in writing" that "the life of such witness is in danger" then it can take "such measures as it deems fit for keeping the identity and address of such witness secret." Clearly, the provision is only intended to provide a sense of security to the witness. Not to deny a just and fair opportunity to the accused. It is only in a case where the court is satisfied that there is danger to the life of the witness that his identity and address can be kept secret. The provision only promotes the interest of justice. It is meant to guarantee that the witnesses are able to appear and depose without fear of retribution at the hands of terrorists or the other members of their gangs. The legislative intent is clear. The real purpose of the provision becomes obvious on a perusal of the provision in Clause 3 whereby the Special Court is empowered to hold the proceedings at a place it consideres appropriate. The names and addresses of the witnesses may not be recorded in the orders, judgments or placed on record of the case, which may be accessible to public. The Court is empowered to issue directions to ensure that the identity and address of the witness are not disclosed. In the larger interest of public, the publication of the proceedings can be regulated. Violation of an order of the court has been made punishable with imprisonment.

(58) The provision is not arbitrary or unfair. It has a purpose to serve. It seeks to ensure a fair trial for the accused and to protect the life of the witness. The existing circumstances and the past experience justify it. There is no infraction of any right or law.

(59) Mr. Lakhanpal then contended that under Section 32, a confession made before a police officer can be used against an accused. The police in our country is bad. The provision is unfair and unconstitutional.

(60) Firstly, a word about the police.

(61) In a society governed by the rule of law, the policeman plays an important role. The car driver does not see the red light till there is a cop. No body observes any speed limit when there is no patrol car. The burglar is kept at bay, even if there is a retired old man in uniform. The policeman is the guardian of the individual's person and property. He is the guarantor of the citizen's freedom. The presence of the policeman is essential to maintain law and order.

(62) Today, the human society faces a devaluation of values. A spiritual impoverishment. A social collapse. Criminality. Whatever by the cuase, we are all a part of the system. Every one of us is a product of the society that we live in. When the 'wood is crooked, the furniture cannot be straight.'

(63) People criticize the police everday. In one voice. At all levels. The chorus is - It does not have "a License to kill. Police needs paradigm-shift." The Bench and the Bar, the Citizen and the Criminal, the Press and the Politician, the Rogue and the Reformist' denounce the police. The cant of criticism is continuous. Is it fair ?

(64) No one can please everyone. Such an attempt shall spell a formula for failure. No one can be perfect. Perfection is still an enigma. A few aberrations shall occur everywhere. But a few black sheep, who may exist in all sections of society, cannot blacken the face of the whole force. Nor can individual errors justify a generalization.

(65) The criticism of the police may be justified. But there is also a need to notice the difficulties that the policeman faces. We have to develop a respect for the man in uniform. He is the symbol of state's authority. He has to discharge onerous duties. He must be supported and trusted. Only then he would gain in confidence and have a proper sense of responsibility. Distrust of the policeman can only destroy the fading morale of the force. We need to change our perception. The present provision appears to be a step in that direction.

(66) Secondly, it is by now evident that trials under TADA have moved at a tardy pace. It is difficult to find witnesses who may be willing to withstand the fear of reprisals and depose fearlessly in court. Resultantly, the guilty have often gone unpunished.

(67) Then the Act aims at a speedy trial. The impugned provision in the Act appears to have been made with that object in view. At the same time, adequate safeguards have been provided.

(68) What are the safeguards?

(69) Only an officer who is not below the rank of a Superintendent of Police can record the confession. It has to be recorded in writing or on any mechanical or electronic device like cassette, tape

or sound track. Before recording the confession, the accused person has to be warned. The concerned officer has to explain to the accused in writing that "he is not bound to make a confession and that if he does so it may be used against him." The accused has the option to remain silent. The police officer cannot compel him to make any confession. Still further, the confession has to be recorded "in an atmosphere free from threat or inducement and" has to be "in the same language in which the person makes it." The matter does not end here. There is a further safeguard. The person making confession has to be "produced before the court of a Chief Metropolitan Magistrate or the court of a Chief Judicial Magistrate alongwith the original statement of confession written or recorded on mechanical or electronic device within 48 hours." The Magistrate has to "record the statement . . . .made by the person so produced and get his signature or thumb impression . . . " In case of "any complaint of torture", the person has to be produced "for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon." The person has then to be sent to the judicial custody. It is clear that the provision provides enough protection to the person.

(70) The impugned section does not embody anything unknown to the civilized society. Various countries accept confession made before a police officer. It has various safeguards. It is not arbitrary. The accused in case of complaint has the right to inform the Chief Judicial Magistrate etc. Medical examination eliminates chance of extraction of confession by inducing fear or inflicting torture etc.

(71) It is undoubtedly true that under the Evidence Act, 1872, the statement made before a police officer is not treated as substantive evidence. However, the departure from the provision under the Indian Evidence Act does not vitiate the provision. In fact, the issue has to be considered in the context of the problem that confronts the country. If the innocent people have to be saved from the terrible trauma caused by terrorists, a departure from the archaic rules of evidence is essential.

(72) And then a similar provision had been made TADA. It was upheld in Kartar Singh's case. It was invoked. The petitioner has referred to the case of Devinder Pal Singh. The death sentence based

on confession made by the accused before a police officer was sustained by their Lordship of the Supreme Court in ***Devinder Pal Singh*** **Vs.** ***State N.C.T. of Delhi and another(3).*** By majority, the court had held that "Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law." Thus, the provision is not unknown to law or the courts.

(73) The petitioner alleges that the police stations have torture chambers. Different tools are used to torture people. To allow the use of a confessional statement in a police station is 'nothing but a travesty of justice.'

(74) The petitioner has been a member of the premier police service of the country. He is virtually an insider. He must be having first hand knowledge. But even he does not suggest that these interrogation rooms are a recent phenomenon. Did he find them useful? Were these used to torture? What did he do? The petition does not say anything. Vague allegations are not enough to vitiate the provision. In any case, the confession does not automatically lead to conviction. The matter has to be examined by the court. The circumstances of the case have to be considered. The Act has safeguards that should allay all fears.

(75) Mr. Lakhanpal then contended that provision contained in Section 49(7) makes the grant of bail virtually impossible. Thus, the provision should be struck down.

(76) It is undoubtedly true that in cases of ordinary crime, 'bail and not jail' is the normal rule. Liberty of the citizen is important. However, as already stated, the terrorist belongs to a totally different class. A stringent provision regarding the grant of bail is only intended to preserve public peace. It is to ensure that there is no recurrence of the crime. Thus, the court has been empowered to deny bail unless it is "satisfied that there are grounds for believing that he is not guilty." Grant of bail is always a matter of discretion with the court. Guidance for the exercise of the undoubted discretion cannot be said to be arbitrary or unreasonable. This is all the more so in the context of the malaise that the Statute aims to check.

(3) JT 2002 (3) SC 264

(77) Though the provisions have been broadly considered, yet, a fact that deserves mention is that provisions similar to those as challenged in this petition were considered by their Lordships of the Supereme Court in Kartar Singh's case. A brief resume shall be useful.

(78 The petitioner has impugned Ss. 3(5), 30, 32 and 49 of POTA. The provision corresponding to S. 3(5) of POTA was added to S. 3 of the 1987 Act by the 'Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993. It provided as under :—

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

(79) While considering the challenge to the provision of Ss. 3 and 4, their Lordships were pleased to observe :—

> Para 160— "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 are evidently for the reasons 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, 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 secession 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 or nullified."

(80) Thus, the provision was upheld. It was so despite the fact that the provision prescribed a minimum sentence of imprisonment and to that extent, it did not leave any discretion with the court.

(81) The petitioner's next target is S. 30. It relates to the protection of witnesses. The corresponding provision, which did not have various safeguards as now provided, was contained in S. 16. The Supreme Court observed thus :—

Para 304 "Notwithstanding the provisions of the Evidence Act and the procedure prescribed under the Code, there is no imposition of constitutional or statutory constraint against keeping the identity and address of any witness secret if any extraordinary circumstances or imperative situations warant such non-disclosure of identity and address of the witness."

Para 305 "There are provisions in some local laws e.g. Section 56 of Bombay Police Act, 1951 the constitutional validity of which has been approved as well as observations of this Court in various decisions touching the question under consideration."

Para 311 "Generally speaking, when the accused persons are of bad character, the witnesses are unwilling to come forward to depose against such persons fearing harassment at the hands of those accused. The persons who are put for trial under this Act are terrorists and disruptionists. Therefore, the witnesses will all the more be reluctant and unwilling to depose at the risk of their life. The Parliament having regard to such extraordinary circumstances has thought it fit that the identity and addresses of the witnesses be not disclosed in any one of the above contingencies."

(82) And ultimately, in Para 313, they said :—

"Therefore, in order to ensure the purpose and object of cross-examination, we feel that as suggested by the full bench of the Punjab and Haryana High Court in ***Bimal Kaur,*** the identity, names and addresses of the

witnesses may be disclosed before the trial commences; but we would like to qualify it observing that it should be subject to an exception that the Court for weighty reasons in its wisdom may decide not to disclose the identity and addresses of the witnesses especially of the potential witnesses whose life may be in danger."

(83) The above noted observations clearly show that the claim as made by the petitioner is untenable.

(84) The petitioner also complains against the provision in S. 32. It inter-alia provides that the confession made by the accused before a police officer, not below the rank of a Superintendent of Police, can be used against him. The provision which fell for consideration of the Supreme Court was contained in S. 15.

(85) After a detailed consideration of the matter, their Lordships recorded the conclusion in Para 284 and laid down certain 'guidelines' in Para 285. It is clear that the impugned provision meets with the parameters prescribed by the Court. Thus, it does not appear to be necessary to quote the relevant observations at length.

(86) Lastly, the petitioner impugns S. 49(7). The provision generally modifies the procedure applicable to the trials under the Act. Clause (7) relates to the grant of bail. The corresponding provision was contained in S. 20(8). Their Lordships observed that :—

".....the Courts while dispensing justice in cases like the one under the TADA, should keep in mind not only the liberty of the accused but also the interest of the victims and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution."

(87) After a detailed analysis, the Court declared only the last part of the provision which read: 'and that he is not likely to commit any offence while on bail, ultravires. The present provision does not contain the condemned condition. In fact, it appears that while drafting the Act, the decision in Kartar Singh's case was particularly kept in view.

(88) Mr. Lakhanpal also cited certain decisions of the Supreme Court. No. particular observations were referred to. However, since similar provisions have already been specifically considered in Kartar Singh's case and upheld the necessity of referring to the other decisions is obviated.

Reg. (ii) Has the Act been abused ?

(89) Mr. Lakhanpal contends that the provisions of the Act have been abused. He referred to the decision of their Lordships of the Supreme Court in ***Devinder Pal Singh's*** case (supra).

(90) The contention is totally unwarranted. A perusal of the decision of their Lordships in ***Devinder Pal Singh's*** case (supra) clearly shows that the provisions of the Act are justified.

(91) The petitioner has also averred that the Act is directed against the minorities. Hindus have not been detained. Mr. Lakhanpal did not raise the plea at the hearing. Yet, we have examined the averments in the petition. On consideration of the matter, we find that the allegation is totally vague. No instance has been quoted. In any event, man and mischief are old companions. Mere possibility of abuse cannot be a basis for annulling the Act. The "door has to be left open for trial and error". The Supreme Court of the country has repeatedly expressed this view. On the pleadings in the present case, it cannot be said that the Act has been abused or misused. Thus, the plea cannot be sustained.

(92) No other point has been raised.

'The Conclusions'

(93) In view of the above, it is held that :—

1. The rights to equality, life and liberty are guaranteed under our Constitution. These are the touchstone on which every law has to be tested. A law depriving a person of his liberty, irrespective of the fact that it provides for punitive or preventive detention, has to satisfy the test of reasonableness. It must conform to the provisions of the Constitution. The prescribed procedure, which should not be arbitrary or oppressive,

has to be followed. The letter of law has to be strictly and scrupulously observed. But, in its search for fairness, the court cannot ignore the policy behind the law.

2. The security of the State is of paramount importance. The sovereignty and Integrity of the nation have to be preserved at all costs. The individual's rights are subservient to the larger interests of the society.

3. The prevailing circumstances in the country pose a threat to the nation's integrity and sovereignty. A law to protect the people and their property was necessary. The matter had been duly considered before POTA was promulgated. The enactment of the impugned Act was a national imperative. There is a clear rationale for the Act.

4. Liberty does not mean license. It only implies freedom to do what one ought to do. The terrorist causes a terrible trauma to the people. His actions disentitle him to claim parity of treatment with an ordinary criminal. In today's world, the terrorist has to thank himself for forging his 'own fetters.' In the existing scenario, he cannot complain that the provisions of the impugned Act suffer from the vice of discrimination. The challenge based on the guarantee of equality in Art. 14 cannot be sustained.

5. Laws are made to protect the innocent and to punish the wicked. These are a bad man's danger and a gentlemen's safety. The good have nothing to fear. The tyrant should have no reason to complain of tyranny. If the protagonists of the right to liberty were to respect the other man's right even half as much as their own, the laws like POTA would automatically become obsolete.

6. The punishment provided under the Act has a clear rationale. The efficacy of law often lies in the penalty attached to it. The state needed to arm itself with adequate authority to protect the liberty of the lawabiding. The existing laws were not enough to fulfil

the desired objective. Thus, the impugned Act was made. This is a good man's shield. Also his sword. There is a clear basis for granting protection to the witnesses; varying the normal procedure to a limited extent; permitting the confession recorded by an offficer not below the rank of a Superintendent of Police to be used against the accused and in placing a restriction on the grant of bail to a person charged with an offence under the Act. It does not violate the consitutional madate.

7. There are definite safeguards in the statute. The mere possibility of the power being abused is not enough to annul the Act. The door has to be kept open for trial and error. In any event, even if some authority acts arbitrarily, the law's arms are long enough to reach it. The Act provides adequate remedy against the acts of arbitrariness.

8. The Act contains a detailed mechanishm for investigation by senior officer. It ensures a fair and speedy trial by an officer not below the rank of a Sessions Judge. The aggrieved person has the remedy of appeal to a Division Bench of the High Court. There are adequate safeguards at every stage. In any event, the provision for judicial review ensures justice.

9. The crime and punishment come out of the same stem. The criminal should have no cause for complaint against the punishment. His sin is the seed. Punishment is for prevention. The terrible terror created by the terrorist is a cause for concern to the society. Certainty and speed are essential for ensuring the efficacy of punishment. Crime is reduced not by making punishment familiar but formidable. Death penalty may not correct the man who is hanged. But it provides a deterrent for others like him. And for the unjust, strict punishment is the justice. The Act rightly aims at reducing the procedural tangles and arms the Court with the power to impose effective penalties on the terrorist as well as even on those who are his partners

in the commitment of the heinous crime against man and his kind. Danger of losing ill-gotten property can also be a definite deterrent.

(94) In view of the above conclusions, we find that there is no constitutional or legal infirmity in the impugned provisions. Thus, these cannot be invalidated by the issue of a writ, order or direction. There is no merit in this petition. It is, consequently, dismissed in *limine*.

J.ST.

Before S.S. Nijjar, J

VIJAY KUMAR & ANOTHER—*Petitioners*

versus

DURGA ASHRAM CHARITABLE TRUST (REGD.) & OTHERS—*Respondents*

C.R. No. 2637 of 2002

22nd May, 2002

Code of Civil Procedure, 1908—0.41 Rls 23, 25 and 33—East Punjab Urban Rent Restriction Act, 1949—S. 13—Public premises—Non-payment of rent —Trust filing eviction petition—Rent controller finding the existence of relationship of landlord & tenant between the parties—Petitioners claiming to be owner of the property on the basis of two sale deeds—Dispute regarding title of the property pending between the parties—Rent Controller holding the eviction application of the Trust not maintainable and the sale deeds binding on the Court—Whether the question of the title of the property can be seen while deciding such an eviction application—Held, yes—Petition dismissed while upholding the order of the appellate Court.

Held, that the Rent Controller had failed to exercise its jurisdiction and wrongly held that sale deeds are binding on the Rent Controller. The Appellate Authority has rightly held that the question whether the Trust was the landlord of Karori Mal. It is always open to the Rent Controller or the Appellate Authority under the Rent Act to adopt any of the provisions contained in any procedural laws,