

The UK Law on Terrorism and the British Muslim Kashmiri Communities

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The candidate confirms that the work submitted is her own and that appropriate credit was given where reference has been made to the work of others.

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Abstract

Contemporary terrorism is linked to Islam, and thus the focus of counter terrorism work is on Muslim communities especially as far as the UK is concerned following the events of July 2005. The objective of this thesis is to analyse how, if at all terrorism and counter terrorism has affected British Muslims both according to law and according to their perceptions.

The study focuses on a sample of British Kashmiri Muslims and seeks their perceptions of terrorism and the British counter terrorism policies and legislation. The study employs qualitative fieldwork techniques, alongside scholarly research on legislation and socio-legal literature. The findings contribute original analysis and fieldwork data to the academic literature and discussions on counter terrorism in general, and on the British Kashmiri Muslim community in particular.

The thesis analyses the tensions between the government's counter terrorism agenda and the community's perception of those. This thesis highlights that some counter terrorism policies such as *Prevent* are effective in encouraging community co-operation, whilst other areas of active policing create anxiety and thus hinder community co-operation. In addition there is a clash of perceptions about what constitutes terrorism, especially regarding activities abroad, and it is this 'clash' that has to be addressed by those working with these communities. The research further identifies the potential vulnerability within this group and their social status within the society they live in. The findings emphasise that despite the anxieties related to the counter terrorism legislation, the interviewees accept national security requirements at home, but struggle to accept that foreign policy affairs in Kashmir should be affected by the United Kingdom's security laws.

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The Law against Terrorism and Islam

1.1 Background

Terrorism has become a major focus of, and is viewed as a major threat to, contemporary democratic societies. The events of 11 September 2001 not only shocked the nations, but created a global 'war on terror' according to some world leaders. This in turn created an upheaval in 'political systems' which prioritized national security and thus allowed counter terrorism agendas to prevail.¹ In conjunction with the new counter terrorism policies is the strong focus as potential risks or even suspects on Islam and Muslim communities that reside in the UK and other Western nations. The nature of attacks undertaken by those professing the Islamic faith on September 2001, and July 2005 has intensified the perception in the United Kingdom that the 'war on terror' is being fought at home as well as abroad.

The focus in this thesis on British Kashmiri Muslims is fitting because of their connection with the turbulent situation in Kashmir itself, and the allegation that Kashmiri militants receive some of their financial contributions from the British Muslims of Kashmiri origin. This situation perpetuated anxiety following the events of September 11 2001, and deepened the concerns that Kashmir is contributing towards the creation of global terrorism. Moreover, Tanweer, one of the July 2005 bombers had 'spent time at a training camp near the Kashmir border run by Harkat ul-Mujahedin ("Movement for Holy Warriors")'.² Thus, it is also fitting that the nature of terrorism, indeed the terrorist's self proclaimed agenda in the name of Islam, will inevitably find Islam and those practicing it under scrutiny. However, the imperative issue as described by Leigh, should be that of 'balanced targeting'.³ Hence, in discussing 'the credentials of Islam in the context of

¹ Moran J. (2008) 'Politics, Security, Intelligence and Liberty after 9/11' in Moran J. & Phythian M. (eds.) *Intelligence, Security and Policing Post - 9/11.* Hampshire. Palgrave MacMillan at p.15.

² Phythian M. (2008) 'In the Shadow of 9/11 Security, Intelligence and Terrorism in the UK', in Moran J. & Phythian M. (editors) op cit at p.39.

³ Leigh I. (2008) 'National Security, Religious Liberty and Counter terrorism', in Moran J. & Phythian M. (eds.) op cit at p.116.

terrorism',⁴ there has to be the balance between the recognition that there exists violent discourse in the interpretation of Islam, and that the majority of British Muslims are opposed to terrorism. In this way, 'the most effective responses to acts of terror, in short, are thoughtful, measured ones, not reactions driven by fear and emotion.'⁵ These 'thoughtful, measured' responses recognize 'the sophisticated, secretive and committed nature of terrorist groups,'⁶ that requires counter terrorism policies that are dependant not only on counter terrorism legislation but on the 'elevated importance' of community co-operation.⁷ Consequently, an understanding of the community dynamics specifically in relation to counter-terrorism legislation is a vital step towards achieving the ultimate goal of co-operation and thereby counter-terrorism. These ideas will be applied in this thesis to selected Kashmiri communities in the UK.

1.2 Summary of the Problem

As suggested by the preceding discussion, the threat from terrorism is a perpetual concern, and those implementing their agenda in the name of Islam have brought Muslim communities within the core focus of counter-terrorism. Indeed it was the radicalization of 'home - grown' young Muslim men that led to the atrocities of July 2005. The present government's counter terrorism policies aim to eliminate terrorism by various strategies including community involvement. However, the problem lies in the fact that there is insufficient research on the views, attitudes and behaviour of the Muslim communities in relation to terrorism and counter terrorism legislation. Therefore, it is unclear whether the government's policy is viable. It is proposed that this thesis will attempt to redress this void to some extent in relation to selected Kashmiri communities, whose co-operation is deemed vital for the elimination of the terrorist threat.

⁴ Rehman J. (2005) *Islamic State Practices, International Law and the Threat from Terrorism. A Critique of the 'Clash of Civilisations' in the New World Order*. Oxford: Hart Publishing at p.221.

⁵ Forst B. (2009) *Terrorism, Crime and Public Policy*. Cambridge: CUP at p.297.

⁶ Walker C. (2011) *Terrorism and the Law*. Oxford: OUP at p.55.

⁷ Walker C. (2011) *op cit* at 55.

1.3 Objectives of the Research

The purpose of the thesis is to question whether the legal conception of terrorism and the implementation of key aspects of counter-terrorism laws, as applied in the UK, are necessarily in conflict with the culture of British based Kashmiri communities or whether the apparent clashes between the two arise more from the manner of implementation of British law or the embedded culture combined with Islamic beliefs. In addition, research will be undertaken as to whether the perceptions of contemporary terrorism are affected by the historical and political violence in their ancestral land, of Kashmir. To test these questions, the research will examine the substantive counter-terrorism policies and laws and will, in addition, conduct qualitative fieldwork to provide an insight into the views of a sample of the Muslim community (of Kashmiri origin) in the UK in relation to terrorism and the policies and law on terrorism. The study will explore to what extent the UK's anti-terrorism laws are viewed as 'acceptable' and adequate, or as giving rise to perverse outcomes such as creating sympathy and even support for terrorism, or at least negative outcomes in terms of non-cooperation. This study is particularly important since it has been held that 'excessive'⁸ legislation can 'inflare rather than deter extremism.'⁹ It is also original for no such survey of British Kashmiris has previously been undertaken.

1.4 Overview of the Thesis

Part One of the thesis will include three chapters. Chapter One will provide the background to the thesis, the summary of the problem, and an overview of the thesis and Chapter Two will provide an overview of the selected sample, namely the British Kashmiri community. Both chapters are necessary for clarification, and understanding of the subject matter. In addition, Chapter Two provides a 'background' for the fieldwork. It emphasizes an analysis of the history of Kashmir, the current political situation, and the British Kashmiri Muslim's role in Kashmir and the UK. It allows insight as to how this important selected group perceive the 'terrorists' groups in Kashmir, and how this background belief affects their views about the British

⁸ Walker C. (2009) *Blackstone's Guide to The Anti-Terrorism Legislation*. Oxford University Press: Oxford at 206.

⁹ *Rahman, R v Mohammed* [2008] EWCA Crim 1465 at para 8.

government's counter-terrorism policies within the UK. Chapter Three will discuss the methodology and the execution of fieldwork. It will offer an analysis of the research process.

Part Two of the thesis will analyze and discuss the concepts of, terrorism and Islamic jurisprudence. Chapter Four will consider the definition of terrorism; categories of terrorism; contested perceptions of terrorism; the role that politics and religion fulfill in terrorism. This study is imperative because terrorism is a defining issue at the present time. It raises political, legal, ethical and other issues of great difficulty.¹⁰ Chapter Four will provide a background to the proposed primary research. Hence, it will explore what is the definition of terrorism in the opinions of the selected sample of British Muslims?

It is argued that one of the primary reasons why terrorism is difficult to define is that the meaning changes within social and historical contexts. Like crime, it is socially defined, but it is also influenced by political, cultural, historical and social factors much more than crime.¹¹ This hypothesis can be applied to the situation in Kashmir, where the social and historical contexts have affected the meaning of 'terrorism'. This thesis will not reach a conclusion about the moral justifications of terrorism. However, the perceived justifications will be discussed in the context of the Kashmir situation. Jenkins¹² calls terrorism the use of threatened force designed to bring about a political change, and many western commentators and governments would argue this description applies Kashmir. Do British Kashmiris share this ascription? Hence their views on the meaning of 'terrorism' will be presented in this chapter.

Chapter Five provides an explanation of Islamic jurisprudence, specifically in relation to terrorism. It is argued that Kashmiri culture is affected by Islamic beliefs; its influence on Kashmiri perceptions and attitude to terrorism highlights the need for the in depth discussion on Islam. Therefore, consideration is given to the basic teachings of Islam; Islam and 'Jihad'; and Islamic views on 'war'. The views of the selected sample on Islam and terrorism will be considered alongside the secondary literature.

¹⁰ Arden M. (2005) "Human Rights in the Age of Terrorism" *L.Q.R* 2005, 121 (Oct), 604-627, at p.604.

¹¹ White J.R. (2003) *Terrorism 2002 Update*. 4th edition. Thomson Wordsworth., at p.4.

¹² Jenkins B. (1984) *The Who, What, Where, How & Why of Terrorism*. Paper presented at Detroit Police Department Conference on "Urban Terrorism: Planning or Chaos": Detroit.

Part Three of the thesis will discuss aspects of anti-terrorism law and its application, as understood and identified by the interviewees - limited to selected features of the policing of terrorism. Chapter Six will consider stop and search powers. In addition CONTEST's Pursue and Prevent policies¹³ will be considered. Chapter Seven will discuss anti-terrorism laws on political expression and association, namely, membership, financing and glorification. Both chapters will consider the findings from the fieldwork.

The selected aspects in Chapters Six and Seven are chosen because these elements of the law may affect 'ordinary' British Kashmiris. Literature has highlighted that the selected sample are vulnerable to recruitment; some have assisted in the financing of terrorist activities in Kashmir, and some have encouraged others to do so. It is beyond the scope of this thesis to consider all potential impacts of the anti-terrorism legislation.

Chapter Eight will offer conclusions. It will provide some recommendations for further research and for intervention with the said community on aspects of counter terrorism. Whilst the participants' specific views will be discussed in Chapters Four to Seven, the concluding chapter will identify the broad typologies obtained from the data analysis. These typologies are not developed fully until Chapter Eight because the individual views of the participants are necessary to evaluate the concepts, and the counter terrorism policies and law. Hence, the typologies are reserved for final Chapter since they form and are part of the conclusion. These typologies are an overview of the participants' attitudes as identified by the fieldwork analysis. The typologies include six groups, which are: 'The Dismissive', who have no interest in Kashmir; 'The Advocates of Kashmir', who not only have increased knowledge on the situation in Kashmir, but also feel compelled to advocate on their perception of the Kashmir situation; 'The British Patriots' view their loyalty to Britain as a priority over any other issue; 'The Advocates of Ummah' believe that the international Muslim perspective is a priority; 'The Seekers' search for knowledge on Islam; 'The Guardians' are keen to protect their neighbourhood, and thus, for them the 'problems' in their neighbourhood take precedent over any counter terrorism work.

¹³ H.M.Government (March 2009) *Pursue Prevent Protect Prepare The UK's Strategy for Countering International Terrorism*. London: Crown copyright. Cm. 7541.

In summary, this thesis will enable the reader to understand factually and within a legal policy context the views of a sample of British Muslims of Kashmiri origin concerning terrorism, and policies and laws around counter-terrorism. It will contribute to the current literature and discussion surrounding the counter terrorism policies and legislation alongside the British Kashmiri Muslim community. This is important especially following the bombings of July 7th 2005 in London – understanding of the perceptions of minorities can enable society to work on suitable designs for effective legislation or at least to avoid designs in legislation which make the matter worse.¹⁴

The law and the events in this thesis are up to date as of 1 June 2012.

¹⁴ HMSO (2008) *The National Security Strategy of the United Kingdom*. Cm 7291. March 2008, at p.8.

Chapter Two Overview of the British Kashmiri Community

2.1 Introduction

Chapter One provided the objectives of the thesis. This chapter will aim to identify the group selected for the fieldwork, and their origins. This is imperative for the foundation of the thesis. Kashmir has been described as 'the intractable bone of contention,'¹ that has prolonged for over sixty years between India and Pakistan. It has attracted attention and concern from the international community including the UK.² However, the British Kashmiri Muslim community was selected not simply because of the ongoing dispute in Kashmir, although that has considerable significance particularly in relation to their views on terrorism; their selection is also because of the focus on this group prior to and following the events of July 2005. The British Kashmiri Muslims form 70 per cent of the British Pakistani population, and are of Mirpur origin. They are a Muslim community that is 'marginalised',³ and has become the focus of the government's CONTEST agenda.⁴ This focus is essentially justified by the knowledge that 'the families of the three Leeds - based bombers were originally, in all likelihood from Mirpur, part of Pakistani Kashmir.'⁵ It is proposed that this thesis will contribute to the understanding of the counter terrorism legislation specifically in relation to the British Kashmiri Muslims, and also contribute to the existing literature on this subculture.

In summary, the first purpose of this chapter is to provide an understanding of the Kashmiri dispute, historically and politically in order that background perceptions of the British Kashmiri Muslims can be fully understood. The discussion will give consider alleged human rights violations against individuals and the collective community. Terrorist groups in Kashmir will be discussed, and their link if any to the British Muslims of Kashmiri origin. The final part of the chapter will consider the ethnography of the British Kashmiri Muslims.

¹ Dixit J. N. (2002) *India-Pakistan in War and Peace*. London: Routledge, at p.307.

² Hilali A.Z. (2005) 'Confidence and Security – Building Measures for India and Pakistan' *Alternatives; Global, Local, Political* 30:2, p.191.

³ Bolognani M. (2006) *A 'Community Criminology' Perceptions of Crime and Social Control amongst Bradford Pakistanis*. (PhD Thesis) School of Sociology and Social Policy. University of Leeds. November 2006.

⁴ H.M.Government (March 2009) *Pursue Prevent Protect Prepare The UK's Strategy for Countering International Terrorism*. London: Crown copyright. Cm. 7541.

⁵ Bunting M. (2005) 'Orphans of Islam'. *The Guardian*. Monday 18 July 2005.

<http://www.guardian.co.uk/uk/2005/jul/18/july7.religion>. (last visited November 2011).

2.2 Background to the Dispute in Kashmir

The international community including the United Kingdom, has to date unsuccessfully tried to 'persuade that parties that any resolution of the dispute over Kashmir should not come from the barrel of a gun but from negotiation and dialogue.'⁶ Nevertheless, Pakistan continues to believe that Kashmir is a prime adverse factor in its relations with India, a view that is reciprocated by India, which views Kashmir as an essential symbol of its secularism, and indeed its very 'existence'.⁷

2.2.1 Historical Dispute

The consequence of independence from the colonial power of Britain created division in India – namely, India and Pakistan.⁸ The process of granting independence from the British rule required that the 'princely states', had to choose whether they would integrate with Pakistan, or remain as India.⁹ The state of Jammu and Kashmir was the fourth most populace,¹⁰ of the 562 principalities which had encompassed the map of India prior to the partition of 1947.¹¹ As a result, 'integration of Jammu and Kashmir with India was not a smooth affair'¹² and Kashmir has been a subject of dispute since 1947.¹³ Consequently, Pakistan and India have had three wars over Kashmir, in 1948-1949, 1965, and 1971, as well as a battle in 1999 in Kargil, in the Indian controlled Kashmir.¹⁴ Kashmir is India's only Muslim majority state¹⁵ and has become 'one of the largest running and the most intractable problem challenging the United Nations.'¹⁶

The Kashmir region has been described as an historical 'chessboard,' that has acquired differing victors. In 1819 the Indian Sikhs with British assistance 'invaded' Kashmir then under the

⁶ Hilali A. Z. (2005) op cit at p.307.

⁷ Dixit J. N. (2002) op cit at 309.

⁸ Trehan J. (2002) 'Terrorism and the funding of terrorism in Kashmir'. *Journal of Financial Crime* Feb 2002, 9:3 at 201.

⁹ Ibid.

¹⁰ Cayland, Sir, R. (1945) "India: A Restatement" Oxford University Press. p. 301.

¹¹ Crecher, M. (1953) "The struggle for Kashmir". Ryerson Press, p. 1.

¹² Trehan J. op cit at 201.

¹³ House of Commons (2002) Hansard Debates, col.596. Jack Straw (The then Foreign Secretary). 10 June 2002. See also International Crisis Group (2003a) *Kashmir: The View from Islamabad*. 4 December 2003. ICG Asia Report No.68. Islamabad / Brussels.

¹⁴ House of Commons (2002), op cit at col. 596. Jack Straw.

¹⁵ Evans, G. (1995) "Kashmir the Intractable Conflict" *Contemporary Review* Vol 267: 1157. Oct 1995. p. 178.

¹⁶ Evans G. (1995), ibid at 178.

traditional rule of the Muslim Moguls. In 1847, Kashmir was sold by the British with 'land and people' to Gulab Singh, the Hindu Maharajah for approximately seventy five million dollars.¹⁷ Despite the British 'sovereignty' the maharajah ruled over Kashmir until 1947.¹⁸ Under the command of Lord Louis Mountbatten, Sir Cyril Radcliffe was given 36 days to redraw 'the map of India', described as 'a procrustean task that was completed hastily and haphazardly.'¹⁹ Thus, under the Indian Independence Act of 1947, Kashmir now had to choose between joining Pakistan or India.²⁰ The basis for deciding whether a State would join India or Pakistan was determined by its religious composition. Historians assert that the Maharajah Singh did not wish to join either State, he wanted independence.²¹ However, the Hindu ruler, alarmed by the threat of tribal invasion acceded to India, understanding that 'naturally they cannot send help asked by me without my State acceding to the Dominion of India'.²² It seemed an 'unusual choice' because of Kashmir's large Muslim majority.²³ Consequently, Muslims attempted to capture it. The invasion was halted by the India army, however Pakistan had seized a third of the State, named Azad (Free) Kashmir.²⁴ A United Nations resolution²⁵ for a 'plebiscite' was then accepted by India and Pakistan. However, it was never held. It is now opposed by India, which considers Kashmir to be an integral part of the India Union.

The Inspector General of the Indian Police Service observes that it was India's confidence in the United Nations that resulted in the idea of a plebiscite. India was of the firm opinion that the United Nations would resolve the Kashmir discourse in its favour, but now believe that the matter cannot be resolved because 'to date, Pakistan has not vacated what is today called 'Pakistani occupied Kashmir''. So, this 'boundary' discourse continues with India, though

¹⁷ Tkacik J.H. (2002) 'Kashmir: A 50 Year Controversy – Hindu and Muslim Hatreds Run Too Deep to be Resolved by Governments either in New Delhi or Islamabad.' *World and I* May 2002, 17:5 at 20.

¹⁸ Ibid.

¹⁹ Tkacik J.H. *ibid* at 20.

²⁰ Evans G. (1995), *op cit* at 178.

²¹ Hewitt, T. (1997) "Kashmir the Unanswered Question". *History Today* Vol 47, Issue 9, September 1997. p. 607.

²² Korbelt, J. (1956) "The Danger in Kashmir". Princeton University Press. pp. 80-83.

²³ Significantly, Kashmir was Nehrus' homeland, he was responsible for its accession, who considered it 'land of enchantment and beauty' Nehrus' determination to encompass Kashmir within India is emphasized by Percival Spear 'his heart, can almost literally be said more than the lovely and fatal vale of Kashmir'. Spear T. (1955) *A History of India*. Penguin Books, Baltimore, p.253.

²⁴ Evans G. (1995), *op cit* at 178.

²⁵ UNSC Resolution 47 (1948) Resolution of 21 April 1948 [s/726]. It was held: 'Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite, . . .' In addition UNSC Resolution 80 (1950) Resolution of 14 March 1950 [s/1469], commends both countries for resolving the crisis via peaceful means.

Pakistan 'gave away' some of the Kashmiri territory it occupied to China in 1962. Thus 'the situation, as of today, is that 45.7 per cent of the 222,336 square kilometer area of Jammu and Kashmir is with India, 35.1 per cent is with Pakistan and 19.2 per cent is with China.'²⁶

2.2.2 Political Dispute

The underlying dispute about sovereignty continues to cause the political unrest in Kashmir. Since the late 1980's, there has been serious outbreaks of political unrest within Indian administered Kashmir.²⁷ The immediate cause is said to be the suspicion that Indian State elections have been rigged.²⁸ India's response to the violence has been to increase military and political pressure, and thus direct rule was imposed. There has been since then an increased military and Indian security presence within Kashmir.²⁹

The Indian Government had steadfastly held that Kashmir is undisputedly an integral part of India.³⁰ The Indians view Kashmir as a smaller Pakistan. With Kashmir, India adds credence to its belief in secularism, and continuously seeks to convince Muslim communities in the rest of India that Hindu Government adheres to 'fair administration'.³¹ However, Kashmir was and is of vital importance to Pakistan, economically, politically, and socially. One justification offered to its citizens by the Pakistani government is that all the five rivers of the Punjab, flowing from the valley of Kashmir, are the lifeline of Pakistan for the entire network of its irrigational systems.³²

The Pakistani case for claiming Kashmir is based on the 'two nation theory'. It is argued that Muslims require their own State because they are not represented within Indian National Congress and are culturally different from the Hindu traditions.³³ Pakistan's historical stance was and continues to remain that Kashmir is its integral part especially since it has a Muslim majority

²⁶ Trehan J. (2002) op cit at 201.

²⁷ Hewitt, T. (1997), op cit at 607.

²⁸ Evans G.(1995), op cit at 178.

²⁹ Evans G. (1995), op cit at 178.

³⁰ Bhatt, S. (2003) "State Terrorism versus Jihad in Kashmir" *Journal of Contemporary Asia*. Vol 33, Issue 2. p. 215.

³¹ Bhatt, S.(2003), ibid at 215.

³² Ahmad, S. S. (2004) *History of Pakistan and Role of the Army*. Karachi, Royal Book Company. p. 72. See also: International Crisis Group (2003) *Kashmir: The View from Islamabad*. Brussels Islamabad: ICG Asia Report No. 68 at p.11 and Malik I (2002) *Kashmir: Ethnic Conflict, International Dispute*. Oxford: Oxford University Press at p.208.

³³ Hewitt T. (1997), op cit at 607.

population.³⁴ Indeed, it has been held by those justifying the partition that led to the creation of Pakistan that the religious differences between the Muslims and the Hindus were paramount in the creation of the two states,³⁵ and they have continuously used this basis of religious differences to acquire support.

However, the 'scholars have argued that partition was a product of the differential impact of religious institutions and new opportunities for economic mobility.'³⁶ It is asserted that the economic disadvantage that the Muslims experienced under the British rule led to the 'creation of Pakistan.'³⁷

It has also been submitted that 'Islam was not the basis of elite mobilization is illustrated by the eventual secession of East Pakistan, now Bangladesh. . . .'³⁸ It was insufficient for the Bengali to have senior positions with limited power, since the actual power for the civil service and military rested with the central federal government.³⁹ The secession of Bangladesh in 1971 emphasises that the concept of the two nation theory was used by the creators of Pakistan and those perpetuating the Kashmir conflict, as a political tool rather than a factual claim.⁴⁰

The next Pakistan claim is that the Instrument of Accession of Kashmir to India is not legitimate. They assert the Hindu leader was not representative of the majority Muslim State, and there was an indigenous rebellion in Poonch District against the Maharajah. The Poonch rebellion is used

³⁴ House of Commons (2006/07) *South Asia Foreign Affairs Select Committee. 4th Report with proceedings, evidence and appendices*, at para 109: p.40.

³⁵ Muhammad Ali Jinnah, the first leader of Pakistan states in 1940 that, 'Islam and Hinduism . . . are not religions in the strict sense of the word, but are in fact different and distinct social orders. . . . They neither inter-marry, nor inter-dine together and, indeed, they belong to two different civilizations which are based mainly on conflicting ideas and conceptions . . . derive their inspirations from different sources of history. They have different epics, their heroes are different. . . . Very often, the Hero of one is a foe of the other and likewise their victories and defeats overlap. To yoke together two such nations under a single state, one as a numerical minority and the other as a majority, must lead to a growing discontent and final destruction of any fabric that may be so built up from the government of such a state. Cited in Choudhry S. (2009) 'Managing linguistic nationalism through constitutional design: lessons from South Asia.' *ICJL* 2009, 7(4), 577-618 at 600; see also Brass P. (1974) *Language, Religion and Politics in North India* Cambridge University Press: Cambridge.

³⁶ Choudhry S. (2009), op cit at 601.

³⁷ *Ibid.*

³⁸ Choudhry S.(2009) op cit at 612-613; see also: Qudus M.A. (1981) *Pakistan: A case study of a Plural Society*'. Minerva Associates: Pakistan at 110-120.

³⁹ *Ibid.*

⁴⁰ Choudhry S.(2009) op cit; Chenoy K. (2006) 'Contending Nationalisms: Kashmir and the Prospects for Peace.' *Harvard International Review* 2006, 28(3) at 24; Trehan J. (2002), op cit.

as evidence by Pakistan that it did not orchestrate an invasion of Kashmir, but that fellow tribal Muslims spontaneously went in aid of their 'Muslim Brothers'.⁴¹ It has been suggested that 'the Indian army were already in Kashmir before the signature of the instrument of accession. This adds weight to the allegations that it was Indians that acted illegally, and that their intervention into Kashmir was planned and executed before it was legitimized by the Maharajah signature.'⁴²

Following the partition in 1947, Article 370 of the Indian Constitution, incorporated by India in 1949, initially enabled Kashmir to govern under its own constitution. But this ceased four years later. Hence since 1953, it is administered exclusively by the Indian federal government. Similarly in Pakistani administered Kashmir the Northern areas of Baltistan and Gilgit have 'scarce' political representation. Furthermore Pakistan dictates to the Pakistani administered Kashmir as to who is the Premier, often contrary to the wishes of the public.⁴³

The European Union⁴⁴ has considered the dispute because of Baroness Emma Nicholson's report on Kashmir. Baroness Nicholson pointed to Pakistan's unwillingness to consider a democratic electoral system in Pakistani administered Kashmir. They were critical of Pakistan assigning its own people for all official roles in the region, and stated that it 'disapproves of the provision in the 1974 Interim Constitution which forbids any political activity that is not in accordance with the accordance with the doctrine of Jammu and Kashmir as part of Pakistan and obliges any candidate for a parliamentary seat in AJK to sign a declaration of loyalty to that effect.'⁴⁵

The European Union elaborates to state that it '[v]ery much regrets the continuing ambivalence of the current Government of Pakistan with regard to the ethnic identity of Gilgit and Baltistan.'⁴⁶ It was recognized that 'the people of Gilgit and Baltistan are under the direct rule of the military.'⁴⁷ Thus, Baroness Emma Nicholson emphasized the urgent and imperative 'need' to

⁴¹ Hewitt T. (1997), op cit at 67.

⁴² Hewitt T. (1997), op cit at 67.

⁴³ Chenoy K. (2006) 'Contending Nationalisms: Kashmir and the Prospects for Peace.' *Harvard International Review*, 28(3), 24.

⁴⁴ *Official Journal of the EU: 'Kashmir: present situation and future prospects.'* (24/04/2008); European Parliament resolution of May 24, 2007 on Kashmir. (2005/2242 (INI) C102E/473.

⁴⁵ Ibid: C/102E/473-474.

⁴⁶ Ibid.

⁴⁷ Ibid.

'secure an independent justice system to address the situation of the people of AJK and Gilgit and Baltistan.'⁴⁸

It is significant that prior to the debate on Baroness Emma Nicholson's report on Kashmir, at the European Parliament, she responded to a letter she had received from Ambassador Saeed Khalid, Pakistan's Ambassador to the European Union. Ambassador Khalid asserted that the 'Northern areas of Pakistan were never a part of Jammu and Kashmir.' In response, Baroness Nicholson stated 'that she had rigorously revisited her earlier research on the geography and history of the region, including checking of maps, treaties, historic documents and speeches from 1846 till date' when providing her submissions and asserting her case.⁴⁹ Baroness Nicholson, provided supporting evidence to her preceding claims, and included 'an official map of the region as it existed in 1909,' which showed Gilgit and Baltistan as part of Kashmir.⁵⁰

The evidence clearly emphasizes that both India and Pakistan have failed to provide a 'democratic process' that is equitable for the Kashmiri people, leading Kamal Chenoy to conclude that 'both Pakistanis and Indians must realize that no country that oppresses others can itself be free.'⁵¹

It has been highlighted via 'anthropological examinations' for 'ethnographic research' in the Indian administered Kashmir and observed that 'Kashmiris today to use the language of self determination as a way of demanding an opportunity to express their collective will in relation to

⁴⁸ Quoted in *Big News Network.com*; May 24, 2007 last visited: 13/12/2009.

⁴⁹ The Report concluded: 'All the evidence points to the fact that Gilgit and Baltistan region were consistent parts of Jammu and Kashmir by 1877; They were under the sovereignty of Maharaja of Jammu and Kashmir and remained in this princely domain till the date of accession on October 26, 1947; The assertion that the Northern Areas were independent of Jammu and Kashmir in August 1947 was incorrect, as the British had only leased a small part of the territory from the Maharajah (Hari Singh) on March 29, 1935, to provide a strong defense and security provision against persistent Russian invasion of the State; The lease did not take away the sovereignty of Jammu and Kashmir. Ownership remained fairly and squarely with the ruler. The lease came to an end on August 1, 1947 in preparation for partition on August 15, 1947, thus giving the ruler full powers to decide which two emerging nations would this state join.'

⁵⁰ Also provided "an extract of the leasehold agreement of 1935, an extract of the Instrument of Accession of October 26, 1947 and a letter from Maharaja Hari Singh giving reasons for his decision to accede the State of Jammu and Kashmir to the Dominion of India.' *Big News Network.com*, May24, 2007, last visited 13/12/2009.

⁵¹ Chenoy K. (2006) 'Contending Nationalisms: Kashmir and the Prospects for Peace', *Harvard International Review*, 28(3) at 24.

their own political future.’⁵² One solution provided by a commentator on Kashmir is for both India and Pakistan to uphold the international human rights and humanitarian law. Others elaborate to acknowledge that this does not create a democratic autonomous Kashmir, but it meets some of the ‘demands’ for ‘azaadi.’ Consequently such a ‘peace process’ may create a climate for the region that is presently unforeseeable.⁵³ It is conceded that ‘these ideas seem to be no more than a wish list.’ However, ‘the same was true for the Indian struggle for independence against Britain and again during the struggle for Pakistan.’⁵⁴

2.3 Kashmir and the concept of Self determination

To understand the Kashmiri predicament, it is important to address the issue of self determination and whether it is a legitimate argument or whether it is used to advance the foreign policy of Pakistan, in its proxy war with India.⁵⁵ Indeed, ‘the argument has been put forward that Pakistan’s army and its Inter Service Intelligence agency (ISI) do not want progress on [any] peace process because Kashmir bolsters their position within Pakistan.’⁵⁶ The International Crisis Group found that the military in Pakistan had a perpetual ‘self-indoctrination process’ which provided that foregoing Kashmir would threaten Pakistan’s identity and its ‘existence’.⁵⁷ They observed that the ‘Kashmir issue’ is used to justify the ‘high’ economic expenditure of the army and the Inter Services Intelligence.⁵⁸ Nevertheless, there is the alleged propaganda that Kashmir seeks independence, and thus campaigns for self determination.

The campaign for self determination is referred to as ‘*tehreek*’, an Arabic word utilising the Urdu and Kashmiri linguists, with the aim of ‘*azaadi*’ - independence. The ultimate aim is identified by the yearning to eliminate ‘*ghulami*; (servitude) such as has occurred through successive occupations, such as the Moghuls, Sikhs, Dogras and Afghans.’⁵⁹

⁵² Duschinski H. (2009) ‘Destiny Effects: Militarization, State Power, and Punitive Containment in Kashmir Valley.’ *Anthropological Quarterly* 2009, 82(3); 691.

⁵³ Cheney K. (2006), op cit at 24.

⁵⁴ Cheney K. (2006), *ibid*.

⁵⁵ As emphasized in House of Commons (2006/07) HC 55, South Asia. Foreign Affairs Select Committee 4th Report, op cit at p.50.

⁵⁶ *Ibid* at 46.

⁵⁷ International Crisis Group (2003) *Kashmir: The View From Islamabad*. Brussels/Islamabad. ICG Asia Report No.68. 4 December 2003, at p.12.

⁵⁸ *Ibid* at p.11.

⁵⁹ Duschinski H. (2009) op cit at 691.

It has been successfully asserted that self determination 'has numerous layers of meaning. This includes a right to democratic participation for individuals which can be derived from the doctrine of self determination, group rights and certain additional human rights entitlements for minorities, and for indigenous peoples.'⁶⁰ The power and implementation of law lies with the governments. In order to maintain their status quo, governments, whilst portraying the 'myth of statehood' ensure that succession against their state should not occur.⁶¹ Such is the position of India, whose primary aim for Kashmir is 'absorption'.⁶² In addition, Ramanathan analyses India's rationale in abstaining from the Statute for an International Criminal Court in July 1998 as being 'explained, in part, by anxieties about how investigation [about Kashmir], prosecution and justice in the Indian system may be judged by the international court. . . . [In addition t]he inclusion of armed conflict not of an international character in defining 'war crimes' in Article 8 of the Statute for an ICC has met with resistance from the Indian establishment. . . . The situation of conflict that persists in Kashmir, . . . explains the reasons for the state's anxiety that this manner of violence could be referred to the ICC.'⁶³ Hence the allegations of human rights violations may be represented to the ICC and thus create a predicament for India and its rule in Kashmir.⁶⁴

India's absence from the ICC and its 'goal of absorption' for Kashmir strengthens the hypothesis advocated by Weller that 'the right to self determination can be exercised only within the boundaries established by the colonial power. . . . As soon as a colony has gained independence, it will itself start defending its own territorial integrity with utmost vigor. There is no secession from secession.'⁶⁵

To summarize, the concept of self determination is confused by all the issues discussed here. Kashmir was always part of India in a pre-1947 sense. Kashmir consists not only of the Muslim majority in the Valley, but also has the Hindu dominated Jammu and the Buddhist dominated

⁶⁰ Weller M. (2009) 'Settling self-determination conflicts: recent developments.' *EJIL* 2009, 20(1), 111-165 at 112.

⁶¹ Weller M. (2009), *ibid* at 112.

⁶² Ratner S.R. (2005) 'Foreign occupation and international territorial administration: the challenges of convergence.' *EJIL*, 695 at 698.

⁶³ Ramanathan U. (2005) 'India and the ICC.' *J.I.C.J* 2005, 3(3), 627-634.

⁶⁴ *Ibid*.

⁶⁵ Weller M. (2009) *op cit* at 113.

Ladakah,⁶⁶ and thus it is argued should receive the same status as Hyderabad province which also has a vast Muslim population, and is an integral part of India. One solution might lie in integrating what remains of Kashmir with India, and treating its citizens humanely, but any such solution would lack international legitimacy and fails to take account of the equal aspirations of Pakistan.

2.4 Human Rights Violation

Human rights violations are reported to be at such a level in Kashmir that their occurrence has become 'anomalistic'.⁶⁷ The people of Kashmir have found themselves in the middle of the ongoing conflict between India and Pakistan. Thousands have lost their lives, with many people displaced.⁶⁸ Indeed, under the 'rubric' of the fight against militancy and terrorism, there is evidence that suggests that the federal government in India has subjected the Kashmiri people to perpetual human rights abuse.⁶⁹

2.4.1 Human rights violations on individuals

It is alleged that the civilians in Kashmir are inevitable victims. Hundreds have been incarcerated 'on the slightest doubt of suspicion, and then tortured and killed', with dead bodies thrown outside the victims homes.⁷⁰ Custodial deaths further highlight the unjust administrative system of India. In an interview, Dr. Ashok Bhan, head of police in Srinagar, in 2003, talked of the numerable cases of rape, 'you have to understand the psychology of the soldiers. He has been away from the home for two to three years. If he sees a young woman in a house he might try to have a chance with her.'⁷¹ Interestingly, Bhatt found that the militants 'rarely ever indulged in rape against their own women'.⁷² Others document that such violations often are met with a 'charter of impunity' for the offenders.⁷³

⁶⁶ International Crisis Group (2003b) *Kashmir: The View From New Delhi*. Brussels/New Delhi: ICG Asia Report No. 69 at p.12.

⁶⁷ Bhatt S. (2003), op cit at 215.

⁶⁸ House of Commons (2002) *Hansard Debates*. Jack Straw. Col. 596-604.

⁶⁹ Haque S. (2003b), *The Amnesty International, Rights at Risk*. Amnesty's International Concerns Regarding the Security Legislation and Law Enforcement Measures. London, Amnesty International, 2002, at p. 5.

⁷⁰ Bhatt S. (2003), op cit at 215.

⁷¹ Quoted in Bhatt S.(2003), op cit at 215.

⁷² Bhatt S. (2003), op cit at 215.

⁷³ Beer L. (1995) 'Human Rights – The forgotten fight – the human rights defenders who have themselves been victims of violence and discrimination.' *LS Gaz*, 24 May 1995, 92 (22); see also: Geelani S.A.R. (2009) *Committee*

The alleged human rights abuses are said to 'occur with regularity.'⁷⁴ The International Crisis Group recognised that the reality of the conflict for the civilians is blurred by official (Indian) reports.⁷⁵ They observed that the 'enforced or involuntary disappearances' were formally acknowledged by the then Chief Minister, who stated that '3,744 are missing between 2000 and 2002, 1533 persons got (sic) disappeared in 2000. 1586 went missing in 2001 and 605 in 2002.'⁷⁶

2.4.2 Human Rights violations on the 'collective' community

Examples of collective human rights violations include operations whereby a group of the military border security force seals off an area at night and at daybreak all the able-bodied men are apprehended. Targets are identified by 'Cats' (concealed apprehension techniques) agents whose faces are hidden, each man who is identified by the 'cats' is taken away and many do not return alive.⁷⁷ The United Nations Special Rapporteur observed that 'torture, killings and custodial deaths' are undertaken by the police and the paramilitary organisations.⁷⁸ This corroborated earlier findings in 1995 when the international commission for Jurists, found that 'the Indian troops, the Pakistani Government, and local militant groups' all violated human rights. Indians were found to have committed rape, arson, routine torture, extra judicial executions. Pakistan equally had no consideration for rights in Azad Kashmir and supported the militant groups.⁷⁹

From the Indian viewpoint, the situation in Kashmir is a consequence of Pakistan's interference. In a press release to the *Washington Times* the Indian embassy wrote in 1999 that 'problems that have occurred in Kashmir in the last decade have been chiefly sponsored by Pakistan.... If the human rights of the people of Kashmir have been violated, then the blame for these violations

for the Release of Political Prisoners at <http://bkaf.org.uk/article3.html> visited on 11/12/2009; Das D.K. (2005)

'From the Editor – in – Chief' *Police Practice and Research* (An International Journal), May 2005, 6(2), 95-97.

⁷⁴ International Crisis Group (2003b) op cit at p.2.

⁷⁵ Ibid.

⁷⁶ The statement was made in the State Legislative Assembly on 25 February 2003; cited in International Crisis Group (2003b) op cit at p.2; see also Showkat A. & Motta H.A. (2003) "Declare 'em Dead: Families of disappeared men appeal [to] PM." *Srinagar Times*, 18 April 2003.

⁷⁷ Evans G. (1995), op cit at 178.

⁷⁸ United Nations (2012) *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggyg*. Mission to India (10-12 January 2011). A/HRC/19/55/Add.1. 6 February 2012, at p.11, para 57.

⁷⁹ Evans G.(1995) op cit at 178.

rests squarely on the terrorist elements....'⁸⁰ This is also emphasized by others who observe that the Indian government regularly overlooks its responsibility or role in any of the abuse, and project the blame solely on Pakistan. Such 'demonization' enables both Pakistani and Indian public to accept the agenda offered by their governing bodies.⁸¹ The Indian case is further aided by the fact that there are around '350 000 Kashmiri Hindus (Pandits) who have been internally displaced by violence since 1989.'⁸²

Another aggravating factor is that there are 'rigged' elections, and 'that twice a democratically elected government was dismissed by the central government, [so] there is no evidence to suggest that democratic institutions are functioning in Kashmir. The lack of any democratic process makes the government's abuses all the more disastrous because there is no legal recourse through which victims can advance their grievances and receive redress.'⁸³ In addition the 'non responsiveness of the 'state' is perpetuated by the knowledge that the Indian and the Western media have little interest in the Kashmiri plight.'⁸⁴ On her mission in January 2011, the United Nation's Special Rapporteur reported that in the state of Jammu and Kashmir, media is often censored, and 'at least ten journalists have been killed since 1990, allegedly by the armed forces.'⁸⁵

Similarly, it was reported that human rights activists, including six lawyers, were killed whilst representing those alleging human rights violations.⁸⁶ Other foreign dignitaries visiting India, such as FCO Minister Peter Hain in 1999, and Robin Cook (the then Foreign Secretary) in April 2000, had also expressed concern about human rights violations.⁸⁷ Concern was also expressed by the UK government in 2007, when it stated, 'the human rights situation in the Kashmir region on both sides of the line of control remains of concern, with reported abuses by militants and the

⁸⁰ Hindu Times, October 31, 1999, p. 5.

⁸¹ Chenoy K. (2006) op cit at 24.

⁸² International Crisis Group (2003b) op cit at p.11.

⁸³ Kumar M. (2005) 'The Hidden Conflict: False Optimism and Silent Strategy in Kashmir'. *Harvard International Review*, 2005, 26(4) at 36.

⁸⁴ Kumar M. (2005), *ibid.*

⁸⁵ United Nations (2012) op cit at p.15, para 99.

⁸⁶ United Nations (2012) op cit at p.14, para 86-90i.

⁸⁷ House of Commons (1999/2000) Cm 4774 'Human Rights Foreign & Commonwealth Office Annual report 2000' – *House of Commons Parliamentary Papers Online*, downloaded 16/11/2009.

Indian security forces.’⁸⁸ Furthermore, the European Parliament has condemned the human rights violations, which led to the ‘hundreds of unidentified graves hav[ing] been discovered since 2006 in Jammu and Kashmir and whereas at least 940 bodies have reportedly been found in eighteen villages in the Uri district alone.’⁸⁹ The European Parliament announced that it ‘[s]trongly condemns the unlawful killings, enforced disappearances, torture, rape and other human rights abuses which have occurred in Jammu and Kashmir since the beginning of the armed conflict in 1989; insists that the families of the victims be granted full reparation.’⁹⁰

Just as the Indian government has been urged to adhere to human rights, the Pakistani government is asked ‘to ensure that the people of Azad Jammu Kashmir can exercise their fundamental civil and political rights in an environment free from coercion and fear’, the European Parliament has simultaneously urged ‘Pakistan to revisit its concepts of democratic accountability and minority and women’s rights in Azad Jammu Kashmir.’⁹¹ Thus the European Parliament urged both India and Pakistan to allow independent human rights observers, such as Amnesty International, to assess and observe the situation in Kashmir.⁹²

The individual and collective violations, such as over policing, and lack of democratic elections, have been latterly justified by India as related to the ‘war on terror’ which has necessitated enhanced security and legislation in Kashmir.⁹³ Duckinski writes, ‘As Kashmir Valley has been redefined as a frontier in the global war on terror, Kashmiris have been caught up in new ideological schematizations that posit a secret worldwide illegal network of enemies – infiltrators, jihadis, sleepers, and fanatics – engaged in a common plot to threaten the welfare and integrity of the nation. . . .’⁹⁴ Thus, according to some commentators the ‘indefinite’ and subjectively defined terrorism, (discussed in detail in Chapter Four), has ensured that India

⁸⁸ House of Commons (2007/2008) Cm 7340 ‘Human Rights Annual Report 2007’ at 33. *House of Commons Parliamentary Papers Online*: downloaded 16/11/2009; 2006/07 HC 55, *South Asia Foreign Affairs Select Committee 4th Report with proceedings, evidence and appendices*, at 50. HMSO: London.

⁸⁹ 2009/C294 E/17 ‘European Parliament resolution of 2008 July 10 on allegations of mass graves in Indian-administered Kashmir’ at C294E/76, *Official Journal of the European Union*. 3/12/2009.

⁹⁰ *Ibid* at 77.

⁹¹ European Parliament resolution of 24 May 2007 on *Kashmir: present situation and future prospects*. (2005/2242 (INI)) at C102E/474. *Official Journal of the EU*. 24/4/2008.

⁹² *Ibid*.

⁹³ International Crisis Group (2003b) *op cit* at p.19-20.

⁹⁴ Duschinski H. (2009) ‘Destiny Effects: Militarization, State Power, and Punitive Containment in Kashmir Valley.’ *Anthropological Quarterly* 2009, 82(3); 691.

continues its current political governance in Kashmir.⁹⁵ Indeed the International Crisis Group found that the major political parties used Kashmir as a ‘major electoral plank’, and that the domestic opinion is that there should be no soft policy for ‘terrorism’ in Kashmir.⁹⁶

Consequently, India justifies its ‘high ratio of troops to civilians [making] Kashmir one of the most heavily militarized areas in the entire world.’⁹⁷ Jammu and Kashmir Public Safety Act 1979 is exclusive to Jammu and Kashmir. It enables the ‘administrative detention’ of any person or persons without judicial redress or intervention up to two years.⁹⁸ The Jammu and Kashmir Disturbed Areas Act 1992, confers powers to the State Government, under Section 3, to declare via notification in the official gazette ‘whole or part’ of the area as ‘disturbed’.⁹⁹ In addition the ‘The Armed Forces (Jammu and Kashmir) Special Power Act, 1990’¹⁰⁰ bestows ‘special powers’ to the armed forces working in Jammu and Kashmir. Thus, under section 3 of the Act, the Governor of the State or the federal government can ‘declare’ the area as ‘disturbed’ to enlist the aid of the armed forces. Its basis includes any activity ‘disclaiming, questioning or disrupting the sovereignty and territorial integrity of India.’ Section 4 allows the armed forces to ‘fire upon or otherwise use force, even to the causing of death’ for the ‘maintenance of public order.’ It also states that in such circumstances a warrant is not required for an arrest, or even for entering and searching a home or vehicle. Section 7 offers ‘protection of persons acting in good faith under this Act.’¹⁰¹

Therefore it has been argued that the military personnel have the freedom to indiscriminately exercise their powers, irrespective of whether those powers violate human rights, and the Kashmiri people have no redress. This has led observers to conclude that because of ‘this war against the people, Kashmiris by virtue of their existence are transformed into terrorists, enemies of the state excluded from the political arena. . . . populations stripped of basic human rights

⁹⁵ Ibid.

⁹⁶ International Crisis Group (2003b) op cit at 19.

⁹⁷ Duschinski H. (2009), op cit at 691.

⁹⁸ United Nations (2012) op cit at p.5, para 18.

⁹⁹ See: <http://www.vakilnol.com/bereacts/Laws/Jammu-And-Kashmir-Disturbed-Areas-Act-1992.htm>.

¹⁰⁰ At:

<http://www.satp.org/satporgrp/countries/india/states/jandk/document/actsandordinances/J&KSpecialpoweract.htm>.

last visited: April 2012.

¹⁰¹ Ibid.

because of their collective identity as Kashmiris.’¹⁰² Indeed the Special Rapporteur to the United Nations recognized that ‘the broad and vague definitions of terrorism contained in [the] security laws’ provided legal justification for the alleged human rights violations.¹⁰³ Human rights violations are said to be one justification for the continued presence of terrorist groups in Kashmir, as discussed in the subsequent section of this Chapter.

2.5 Terrorist Groups in Kashmir

The ‘Kashmir conflict’, in its widest sense ‘finds its origin in the 1947 partition of the subcontinent,’ as already described.¹⁰⁴ Academic assessment of the insurgency prior to September 2001, is that the situation became more militant from 31 July 1988, with the establishment of the Jammu Kashmir Liberation Front.¹⁰⁵ Although this group ceased to exist by 1994, it laid the foundations for other groups that continue to exist.¹⁰⁶ However, others claim that the core issue of the insurgency in Kashmir, is the consequence of ‘rigged elections’, which created a ‘separatist insurgency’ in 1989.¹⁰⁷ A survey of militant groups will now be given.

Lashkar-E-Toiba (Soldiers of the Pure) is said to be one of the most feared groups fighting against Indian control in Kashmir. It emerged in 1994, (but its founding organization, a Pakistani Punjabi group known as Markaz Dawa-ul-Irshad was established in 1987), and earned its reputation following the introduction of ‘Fedayeen Fighters’ who carried out attacks on Indian troops. It has been held responsible by the Indian Government for undertaking armed attacks in India and Kashmir. This organization acknowledged in 2000 that it was responsible for attacking the armed barracks at the Red Fort in Delhi, in which three people died. India has alleged that Lashkar-E-Toiba is also responsible for the raid on the Indian parliament in December 2001. It is further accused of being responsible for the explosions in 2003 in the city of Mumbai, which killed 55 people and injured hundreds, and subsequently in 2005 in Delhi when 60 people died.

¹⁰² Duschinski H. (2009), op cit at 691.

¹⁰³ United Nations (2012) op cit at p.6, para 29.

¹⁰⁴ Kumar M. (2005) ‘The Hidden Conflict: False Optimism and Silent Strategy in Kashmir’. *Harvard International Review*, 2005, 26(4) at 36.

¹⁰⁵ Evans A. (2000) “The Kashmir Insurgency: As Bad As It Gets.” *Small Wars and Insurgencies* 11:1, Spring 2000, pp69-81.

¹⁰⁶ *Ibid* at p.69.

¹⁰⁷ Kumar M. (2005) op cit at 36.

However, they deny killing civilians stating that the tactic was against the organization's principles. They further deny attacks in 2005 on the Delhi parliament.

Following the September 11, 2001 attacks, the group was banned in Pakistan in 2002. However, until then, it openly raised funds and recruited support inside Pakistan. Subsequent to the ban, it has named itself Jamaat Ud Dawa (Party of the Calling) and continues its activities in Pakistani controlled Kashmir.¹⁰⁸ Significantly, 'Lashkar-E-Toiba has many international linkages including in the United Kingdom. On Friday 17 March 2006, Mohammed Ajmal Khan, from Coventry, was jailed for nine years in the UK after admitting directing a terrorist organization, including providing weapons and funds to Lashkar-E-Toiba.'¹⁰⁹

Harkat-Ul-Mujamdeen, is also alleged to receive its financial support from Muslims worldwide; namely the Middle East, Europe and Palestine. It is also said to be involved in other conflict regions such as Afghanistan, Takikistan and Chechnya.¹¹⁰ The group was established in 1985 in opposition to the Soviet occupation of Afghanistan. The group moved to Kashmir following the end of Soviet-Afghan war in 1989. In 1993 the group merged with Harkat-Ul-Jihad-al-Islami to form Harkat-Ul-Ansar. To avoid the label of terrorist organization by the USA, the name of the organization was changed in 1997 to Harkat-Ul-Mujahieen. In 1999 they hijacked the Indian Airlines Flight 814, and successfully obtained freedom of some of its leaders in Indian custody. Although high profiled incidents have occurred since,¹¹¹ its agenda is to unite Muslims in South Asia and worldwide.¹¹²

Hizbul Mujahideen, 'with a pro-Pakistan agenda',¹¹³ is the most widely supported and indigenous. It has been asserted that the 'balance of fire power among the rebels shifted to Hizbul Mujahideen.'¹¹⁴ Hizbul Mujahideen is said to have 'emerged' from Afghanistan, and 'is a

¹⁰⁸ BBC News <http://news.bbbcode.uk/go/pr/fr/-2/hi/southasia/3181925.stm>. published 17th of March 2006.

¹⁰⁹ House of Commons (2006/07) HC 55 'South Asia Foreign Affairs Select Committee' op cit at 153.

¹¹⁰ Evans A. (2000) op cit at 71.

¹¹¹ Retrieved from <http://en.wikipedia.org/wiki/harkat-ul-mujahideen>. 11th of July 2006.

¹¹² Evans A. (2000) op cit at 71.

¹¹³ Duschinski H. (2009) op cit at 691.

¹¹⁴ Jalal A. (2003) *Modern South Asia: History, Culture, Political Economy*. Routledge: New York at 187.

subsidiary of Jamaat – e – Islam in Pakistan.’¹¹⁵ It was established in 1989, and is described as ‘one of the oldest militant groups.’ Its aim is to unite the whole of the Jammu and Kashmir Valley within Pakistan. Its financial funding is said to be from Pakistan and Jamaat-i-Islam, which works in the entire region of South Asia.¹¹⁶ It has been observed that ‘in addition to its regular attacks on Indian security forces, Hizbul Mujahideen is implicated in excesses against the civilian population of Kashmir and the destruction of the [Sufi Muslim] shrine of the patron saint of Kashmir at Chorar Sharif. [Despite the aforementioned funding from Pakistan, officially] in 2002 the Pakistan government reversed its policy of promoting militancy in Indian-administered Kashmir.’¹¹⁷ It openly opposes any diplomatic relationship between India and Pakistan, and via *Jamaat*, its parent organization and Pakistan’s current opposition party, Hizbul Mujahideen openly supports ‘more mujahideen attacks’ as the Kashmiri conflict remains unresolved.¹¹⁸

Jaish E-Muhammad (The Army of Muhammad) was established in 2000 by Mulana Masood Hzhzar, a Pakistani cleric, released from Indian prison in exchange for the hostages on an Indian Airline. It supports a Pakistani controlled Kashmir. It is active in carrying out armed attacks on Indian armies in the Indian controlled Kashmir. It is alleged to receive some funding from Pakistani supporters in Birmingham.¹¹⁹ Indeed in 2002, the Sunday Telegraph reported that Lashkar E-Toiba and Jaish E-Muhammad received £5,000,000 a year from British Muslims.¹²⁰

A common aspect of all these groups is a nationalistic/religious ideology which political aims. They are alleged to be supported by some Kashmiri people, as well as the Pakistani Government in its proxy war against India. The Lashkar E Tayyaba, Jaish E Muhammad and Harkat Ul-Mujahideen are proscribed by the Terrorism Act 2000, and are said to be ‘at the forefront of violent activity within the [Kashmiri] region.’¹²¹

¹¹⁵ Mustafa D. (2005) ‘(Anti) Social Capital in the Production of an (un) Civil Society in Pakistan.’ *The Geographical Review*, 2005, 95(3) at 328 (American Geographical Society).

¹¹⁶ Evans A. (2000) op cit at 71.

¹¹⁷ Mustafa D. (2005) op cit at 328.

¹¹⁸ Dutt S. (2002) ‘The Indo-Pakistan Summit: Faltering Steps towards Peace? Sagarika Dutt comments on Indo – Pakistan Relations in the Light of the Recent Failed Summit in Agra.’ *New Zealand International Review*, 2002, 27(1) at 2.

¹¹⁹ Retrieved from <http://en.wikipedia.org/wiki/terrorism-in-kashmir>. 11th July 2006.

¹²⁰ Retrieved from <http://www.rediff.com/news/2002/jun/09jk2.htm>. Date: 12 July 2006.

¹²¹ Hansard Debates (2002) Jack Straw, Col. 596-604.

In addition commentators have questioned whether Al-Qaida fleeing from Afghanistan might have found sanctuary in Kashmir albeit in Azad Kashmir.¹²² Kai Leather¹²³ identifies two ideological thoughts on the separatist groups in Indian controlled Kashmir, namely the nationalists, who want to liberate Kashmir from Pakistan and India, and a second view, that Kashmir has Muslim majority that should not be under the control of India. Zutshi suggests that the latter viewpoint want Kashmir to be a part of Pakistan.¹²⁴

One analysis of the terrorism in Kashmir is that while 'Pakistan trained and armed the young Kashmiris who have crossed over to garner support for their 'freedom struggle', the provocation arose primarily from India, not Pakistan.¹²⁵ Thus, it is argued that what commenced as targeted insurgency – aggression towards the constitution and security forces, progressed to terrorism with indiscriminate killings of civilians. In addition to the lack of a democratic system, it is asserted that the human rights violations have perpetuated insurgency in Kashmir. This violent activity by terrorists and counter-terrorism has led to the deaths of thousands of Kashmiri's and security forces.¹²⁶

The governing executive of the Indian military view the Kashmir situation and the insurgency as 'a zero sum game between India and Pakistan', though they view Pakistan as being responsible for the militants in Kashmir.¹²⁷ The Pakistani Government has continuously denied assisting pro-Pakistani and pro-Islamic Kashmiri militants. Nevertheless, Pakistan has stated that it has an obligation to bring to international attention Indian's violation of human rights and treatment of Muslims in Indian occupied of Kashmir.¹²⁸ There is international evidence which suggests that the Pakistani Inter-Services Intelligence Bureau has undertaken covert operations in Kashmir.¹²⁹ Although, there is there is continuous denial of any support of terrorism in Kashmir, the then

¹²² Ollapally, D. (2003) "America's War on Terrorism on South Asia: Political and Military Dilemmas". *White House Studies*. Vol 3, Issue 4, p. 445.

¹²³ Leather K. (2003) *Kashmiri Separatists. Origins, Competing Ideologies and Prospects for Resolution of the Conflict*. New York: Novinka Books.

¹²⁴ Zutshi, C. (2005) "Kashmiri Separatists: Origins, Competing Ideologies and Prospects for Resolution of the Conflict." *Pacific Affairs*. Vol 78, Issue 1. p. 148.

¹²⁵ Chenoy K. (2006), op cit at 24.

¹²⁶ Evans G. (1995), op cit at 178.

¹²⁷ International Crisis Group (2003b) op cit at 6.

¹²⁸ Hewitt T. (1997), op cit at 607.

¹²⁹ Hewitt T. (1997), op cit at 607.

self-proclaimed President of Pakistan publicly stated 'Pakistan will continue to extend full moral, political and diplomatic support to the Kashmiri people in their judicial goal.'¹³⁰ However, security operations continue to affect economic growth.¹³¹

Liaquat Ali, the Head of Counter-Insurgency Operation in Srinagar, Kashmir, recalls 'when I went to Pakistan for my training, I realized that we were being used as pawns in Pakistan's game plan...The training camps in Pakistan convert the secular-minded Kashmiri's into communal, blood-thirsty terrorists. I realized that Kashmir is much better off, socially, economically, as well as politically without Pakistan's help.'¹³²

In their research, the House of Commons Foreign Affairs Select Committee, found that the Kashmiri people want independence but simultaneously realize that 'it is a fantasy.' According to the Committee's findings, 'The Kashmiris themselves, once they began to get going and learnt more about their own history, said – I heard this frequently when I was in the Valley – 'why should we swap one set of masters for another? If we are to be free, let's be free.' This was very much in the spirit of the collapse of the Soviet Union ... and so on. . . . however, independence is an idealistic idea that people are not sure they will ever see realized. . . . The Kashmiri independence movement is very factionalized and demoralized. . . . It is uneven support, but it's very much there. . .'¹³³ Evidence of such support is advocated by the Jammu Kashmir Liberation Front, who ran 'a mass signature campaign' during 2004 and 2005 in the Indian administered Kashmir. They obtained '1.5 million signatures', which represented twenty five percent of the population.¹³⁴

2.6 Summary

Part one of this chapter has provided a historical and political perspective of the ongoing dispute in Kashmir. It has highlighted the human rights violations and the insurgency that have encouraged terrorism. The next part of this chapter will utilize this discussion to provide a profile

¹³⁰ Press Trust of India "Mushraff wants to meet Hurriyat Leaders". Indian Express, July 5, 2001, p. 1.

¹³¹ Paris J. (2010) *Prospects for Pakistan*. London: Legatum Institute.

¹³² Cited in Bhatt, (2003), op cit at 215.

¹³³ 2006/07 HC 55 'South Asia Affairs Select Committee 4th Report with proceedings, evidence and appendices', op cit at 132-133.

¹³⁴ Ibid.

of communities that have their origins in Kashmir but live in the United Kingdom. Although, as the subsequent discussion will highlight, there are no official figures for the population of British Kashmiri origin, the aim is to provide an ethnography of the participants being interviewed and to begin to understand how, if at all, the dispute in Kashmir affects the outlook of this subculture - community.

2.7.1 A Profile of Kashmiris in Britain

It has been officially stated the dispute in Kashmir 'has also had an impact on community relations in British cities where conflicts originating in the subcontinent can be a factor in local politics. In addition, in the past terrorist training camps might have trained British Kashmiris through such experience that some had ended up 'as the new generation of recruits for al-Qaida and the global jihad movement.'¹³⁵

It is further claimed that 'Britons have gone to Pakistan where they have joined terrorist groups launching attacks in Kashmir.' An example of this is Bilal Mohammed, the 24 year old, who on 25 December 2000, 'took part in a fidayeen mission and blew himself up outside an Indian army headquarters in Srinagar, killing ten people. Bilal was a Briton of Pakistani origin, from Birmingham, a youth [who] frequented nightclubs until he reportedly had become very religious. Bilal's notoriety will be that he was the first British suicide bomber.'¹³⁶ It was emphasised in the introduction of this chapter that three of the London bombers had ancestry and links to Pakistani administered Kashmir.

Britain has received criticism as being responsible for the Kashmiri dispute because it mismanaged the issue in 1947. When Douglas Hurd, as a Foreign Secretary in 1995 asked India to consider human rights in Kashmir, India responded that Britain had not felt it 'necessary to ascertain the wishes of the colonies to which it transferred power, including India itself – and it had countenanced continued violence in Ireland rather than permit the breakup of the UK.'¹³⁷

¹³⁵ House of Commons (2006/07) HC 55: *South Asia Foreign Affairs Select Committee 4th Report*, op cit at 37.

¹³⁶ Ibid, EV.152 at 258.

¹³⁷ Evans G. (1995), op cit at 178.

It is further submitted that the political activity in Kashmir has affected the 'ethnic politics' in the contemporary UK.¹³⁸ It is argued that since the 1980's the Kashmir issue has reemerged as an issue which engages the Parliament. Its interest coincides with the growth of emotion and associated activities amongst British Kashmiris.¹³⁹ The 1997 general election significantly highlighted the importance of Kashmir issue in British politics. This was evident by the continuous lobbying of the British Kashmiris,¹⁴⁰ particularly in West Midlands, West Yorkshire, Great Manchester, and Buckinghamshire.

A Kashmir Human Rights Committee was formed in the House of Commons in 1990 by Max Madden, then MP for Bradford West and chaired by Roger Godsiff, then MP for Birmingham Small Heath.¹⁴¹ Membership of the Kashmir group comprised 67 MPs, 47 Labour; 12 Conservative and 8 Liberal, in 1995. In written evidence provided to the South Asia Foreign Affairs Select Committee, Mohammed Ghalib of the All Parties International Kashmir Co-ordinating Committee, highlighted the importance of addressing the Kashmir dispute in British politics. In considering their political party's welfare, he argued that in light of the half a million British Kashmiris, 'The Labour Party has [a] Kashmir policy in its party manifesto¹⁴² as well as on human rights issues but unfortunately that policy had never been reflected in the government policies. Similarly the party has failed to raise voice in favour of Kashmiri people's right to self determination or against the flagrant violation of their rights in Kashmir since it formally adopted the policy in 1995. . . . they can decide their future political action if Labour Government continue to ignore the Kashmir conflict.'¹⁴³

It has been recommended that Britain 'could get involved in the peace process since the United Kingdom was 'still well thought of in the region', but only to 'facilitate and encourage dialogue.' This was emphasized by Margaret Beckett, the then Foreign Secretary, who claimed that the British government was 'encouraging and have always encouraged negotiation,' however 'it is for the parties to see what is the best ground on which they can reach agreement and find the best

¹³⁸ Ellis P. and Khan Z. (1998), "Diasporic Mobilization on the Kashmiri Issue in British Politics". *Journal of Ethnic and Migration Studies*. Vol 24, Issue 3. p. 471.

¹³⁹ Ellis P. and Khan Z. (1998), *ibid.*

¹⁴⁰ Ellis P. and Khan Z. (1998), *ibid.*

¹⁴¹ Ellis P. and Khan Z. (1998), *ibid* at 471.

¹⁴² House of Commons (2006/2007) Report submitted on 1 January 2007, at 294.

¹⁴³ House of Commons (2006/07) Submitted on 1 January 2007, HC 55, op cit at p.294 (Ev.188).

way forward. It might be the kiss of death for us to express a preference one way or the other.¹⁴⁴ This sentiment has been endorsed by others who have advocated that Kashmir 'is a dispute between two sovereign nations, it can only be resolved through direct dialogue between those two sovereign nations.'¹⁴⁵

2.7.2 British Kashmiris – Ethnography.

'British Kashmiris' are those who emigrated from Kashmir or they have ancestral origins there. The majority are from the Pakistani administered Kashmir.¹⁴⁶ By contrast, 'Dr Majid Siraj, a leading surgeon from [the] Indian controlled Kashmir, now based in Leeds, notes that 'it was very difficult for working class people to obtain passports in Indian held Kashmir. The whole process could take up to two years with numerous visits by police to check on the applicants.' He is of the opinion that the Indian government created circumstances that make it difficult for those in Indian administered Kashmir to migrate. He elaborates that there in UK only one hundred and fifty families from that area, twenty of whom are Hindu Pandits.¹⁴⁷ This is corroborated by other writers on Kashmir who state that there are only around two hundred families from the Indian administered Kashmir.¹⁴⁸ Looking at the overall picture, it is continuously reiterated by writers that there is 'no official recognition of Kashmiris residing in Britain.'¹⁴⁹ The BBC reports that 75 per cent of the 750,000 Pakistanis in England are of Kashmiri origin.¹⁵⁰ It has also been reported that they mainly reside in British cities such as Glasgow, Bradford, Birmingham, Luton, Derby, Buckinghamshire, in particular High Wycombe, with large pockets in Lancashire, Leeds, Nottingham and London.¹⁵¹

¹⁴⁴ House of Commons (2006/07) HC 55, op cit at 52.

¹⁴⁵ Hansard Debates (2002) per Jack Straw, 10 June 2002, col.603.

¹⁴⁶ Rehman S. (2009) *British Kashmiris, Challenges and Opportunities*. <http://bkaf.org.uk/article1.html>, last visited: 11/12/2009.

¹⁴⁷ March 2000, cited in Khan Z. (2000) *Diasporic Communities and Identity Formation: The post-colonial Kashmiri experience in Britain*. University of Luton: Luton.

¹⁴⁸ Rehman S. (2009), op cit; Ali D. (2007) *Recognising the Kashmiri Community in the United Kingdom: Implications for Education Attainment*. Race Equality Teaching Trentham Books: London.

¹⁴⁹ At <http://www.meramirpur.com/pahari-langua-e-and-its-implications-for-britain.html>. last visited November 2011.

¹⁵⁰ BBC, 11 July 2005 *Kashmiri Anxiety Over UK Attacks*. <http://www.jammu-kashmir.com/archives/archives2005/kashmir20050711a.html>.

¹⁵¹ At <http://www.meramirpur.com/pahari-langua-e-and-its-implications-for-britain.html>. last visited November 2011.

2.7.3 Migration

According to Shams Rehman, the 'first Kashmiri' came to Britain in the 1830s.¹⁵² The majority of the people migrated from the Pakistani administered Kashmir, are from Mirpur and Kotli, (Kotli 'was a sub district' of Mirpur 'until the early 1970s'¹⁵³). The demographics and history of Mirpur has been compiled by the research undertaken by Dr Roger Ballard at the University of Manchester, Centre of Applied South Asian Studies.¹⁵⁴ Although Mirpur is situated north of Punjab, its residents rarely obtained employment in the British Punjab. Thus there is 'a tradition of Mirpuri men travelling throughout the Indian sub-continent for paid work.'¹⁵⁵ They are compared to 'the Filipino domestic women workers, [whereby] one male member of the family volunteers for this sacrifice.'¹⁵⁶

The end of the nineteenth century saw the men from Mirpur working as 'stokers on the British coal fired steamships plying out of Bombay.'¹⁵⁷ These Kashmiris also served in the armed forces of the British Indian army, and fought alongside the Allies.¹⁵⁸ Following the Second World War, they were employed on British merchant ships. Some of these 'seamen found themselves on shore in Britain. These stranded Kashmiris were soon in demand, first in the labour-starved munitions' factories of Birmingham and later, as a post-war boom got under way, in the mills and furnaces of the North.'¹⁵⁹ These are said to be the 'pioneers',¹⁶⁰ 'who laid the foundations'¹⁶¹ for the subsequent migrations from Pakistani administered Kashmir.

Following de-colonisation, a further factor was that water sources were scarce for the 'new' Pakistan, and so the *Mangla Dam* was constructed. This resulted in the old town of Mirpur, with its fertile land disappearing under water. 'The construction of the dam resulted in the

¹⁵² Rehman S. (2009), op cit.

¹⁵³ Khan Z. (2000), op cit.

¹⁵⁴ Doe B. (2006) 'Another country', *TES magazine*, 23 June 2006.

¹⁵⁵ Doe B. (2006), *ibid*.

¹⁵⁶ Ali D. (2007) *Recognising the Kashmiri Community in the UK: Implications for Education Attainment*. Race Equality Teaching Trentham Books: London at 27.

¹⁵⁷ Doe B. (2006) op cit.

¹⁵⁸ Khan Z. (2000), op cit.

¹⁵⁹ Doe B. (2006), op cit.

¹⁶⁰ Anwar M. (1979) *Myth of Return: Pakistanis in Britain*. Heinemann: London.

¹⁶¹ Doe B. (2006), op cit.

displacement of at least twenty thousand families.¹⁶² This combined with the culture of working away from their ancestral territories, led to new migration to UK.¹⁶³ This coincided with Britain's need for labour force in the 1950s and the 1960s.¹⁶⁴ Thus those emigrating to Britain 'are not usually English-speaking, skilled or well educated. . . . [and once in Britain are] concentrated in the poorest housing and lowest paid jobs.'¹⁶⁵ The indigenous British community views them 'as resistant to integration or assimilation, clinging to their own language, customs and religious identity.'¹⁶⁶

2.7.4 Identity

It is argued that for integration and assimilation, identity is crucial. This hypothesis is based on the notion that, unlike other South Asian communities in Britain, Kashmiris have 'had to forcefully assert their identity,' and thus reflecting the ambiguity of their identity from their place of origin.¹⁶⁷ At present, South Asian background usually identifies 'Indian, Pakistani, and Bangladeshi', and thus cuts out the Kashmiris. Consequently, Kashmiris residents in UK usually opt for the Indian or Pakistani designation when completing forms or surveys.¹⁶⁸ Over two-thirds of Pakistanis are actually Kashmiris.¹⁶⁹ But apart from the anecdotal observation on a strong Kashmiri presence, it is difficult to ascertain the national picture with any accuracy, especially as many studies have been somewhat 'lax' in their use of terminology.¹⁷⁰

It is observed that the language difficulties perpetuated to allowing the Kashmiri identity to be 'cleansed'.¹⁷¹ It has been established that 'Pahari is the name of their language, which is a language of the Indo-Aryan family of languages.'¹⁷² Thus when presented with South Asian languages in the British services, namely: 'Urdu, Hindi, Bengali, Punjabi or Gujarati', the British

¹⁶² Khan Z. (2000), op cit.

¹⁶³ Ibid.

¹⁶⁴ Ellis P. & Khan Z. (1999) 'Political Allegiances and Integration: The British Kashmiris' in Weil S. (editor) *Roots and Routes, Ethnicity and Migration in Global Perspective*. Magnes Press, The Hebrew University: Jerusalem.

¹⁶⁵ Ibid.

¹⁶⁶ Doe B. (2006), ibid.

¹⁶⁷ Khan Z. (2000), op cit.

¹⁶⁸ Ellis P. and Khan Z. (1998), op cit.

¹⁶⁹ Ballard, R. (1991b) "Kashmir Crisis: View from Mirpur". *Economic and Political Weekly* Vol 2, No 9, pp 513-517.

¹⁷⁰ Ellis P. and Khan Z. (1998), op cit.

¹⁷¹ Ali D. (2007), op cit at 27.

¹⁷² Ali D. (2007) op cit at 27.

Kashmiris opt for the Pakistani languages of Urdu or Punjabi, some struggling to understand either.¹⁷³ Other researchers have provided similar findings.¹⁷⁴

As for the position of Kashmiri immigrants in the UK, it is said that they have been 'excluded and marginalized' since the outset. Hence, it may not be a surprise that difficulties in assimilation are further perpetuated by 'the high levels of underachievement' in the education system.¹⁷⁵ This high level of underachievement in the education system has led to low, socio-economic status in the UK, despite the lack of official data, there is the continuous emphasize on, 'in our view the problems of Kashmiri children are even worse than those of true Pakistanis.'¹⁷⁶ Ballard¹⁷⁷ identifies several contributing factors for the low socio-economic position and the poor educational achievement of the 'Mirpuris'. The first is their poor and low educational origins; second, is their close ties to their places of origin with 'chain migration' that is perpetuated by arranged marriages of their children in the parents' place of origin. These issues, it has been held, are given priority over the educational achievement in the UK. He observes, 'as a result Mirpuris routinely find themselves driven to engage in even more byzantine counter manoeuvres in an effort to contain and subvert the efforts of their closest kin to advance their own interests.'¹⁷⁸ In summary, it is argued that the British Kashmiri Muslims commenced 'the race with substantially greater handicaps than their peers drawn from elsewhere in South Asia, but they also chose to follow a significantly different course whilst running it.'¹⁷⁹

Hence, the Kashmiri community in Britain, themselves 'quite wrongly proscribe to Punjabi identity.'¹⁸⁰ Significantly, Rehman argues that the British Kashmiris are referred to as 'Mirpuris' by those who either did not know about Kashmir or chose to overlook the wider Kashmiri

¹⁷³ Ibid.

¹⁷⁴ At <http://www.meramirpur.com/pahari-langua-e-and-its-implications-for-britain.html> visited November 2011.

¹⁷⁵ Ali D. (2007) op cit at 27.

¹⁷⁶ At <http://www.meramirpur.com/pahari-langua-e-and-its-implications-for-britain.html> visited November 2011.

¹⁷⁷ Ballard R. (2002) "The South Asian Presence in Britain and its Transnational Connections" in Singh H. & Vertovec S. (eds.) *Culture and Economy in the Indian Diaspora*. London: Routledge.

¹⁷⁸ Ballard R. (2002) op cit at p.23.

¹⁷⁹ Ballard R (2002) op cit at 24.

¹⁸⁰ Khan Z. (2000), op cit.

identity.’¹⁸¹ It is further submitted that other Pakistanis, whether they are from Karachi, or Islamabad, use 'Mirpuri' as 'pejoratively' and 'online dating sites often stipulate 'No Mirpuris'.¹⁸²

The wrong identity is perpetuated by the fact that the majority of Kashmiris ‘were illiterate, only concerned with work and sending money back home. . . . it gave a free hand to Pakistani academics to construct Pakistani or Muslim identities and completely ignore and erase Kashmiri ethnicity and identity.’¹⁸³ Accordingly, the assertion that ‘most of the Kashmiris are Muslims and come from Pakistani colonial area therefore they are Pakistanis and have no need for their language, culture and heritage to be distinguished,’ is incorrect. It is further observed that ‘they have no nation state, however, neither have Kurds, Palestinians, nor many more ethnic groups which are recognized and included.’¹⁸⁴

Research indicates Kashmiri identity is that of the Kashmir State and not of divisions of people or places.¹⁸⁵ It has been observed that descents of Pakistani administered Kashmir commenced calling themselves Kashmiris instead of Pakistani or Punjabis. This move is related to increased educational knowledge of Kashmir and its history which has led to the disillusionment and awareness of the ill-treatment of those in the 'Azad Kashmir' by the Pakistani dominated Punjabi administration, and indeed increasing political assertiveness.¹⁸⁶ Ellis and Khan found evidence in Luton of Kashmiri attending meetings in Britain ‘to advance aspirations for the unification (on independence) of Kashmir’. Children of the original Kashmiri immigrants share the aspirations of their forefathers, and condemn the human rights violations, although they may have never lived in Kashmir.¹⁸⁷

¹⁸¹ Rehman S. (2009) op cit.

¹⁸² Shackle S. (2010) 'The mosques aren't working in Bradistan.' *New Statesman* 20 August 2010, at <http://www.newstatesman.com/society/2010/08/bradford-british-pakistan>. visited November 2011.

¹⁸³ Ali D. (2007) op cit.

¹⁸⁴ Ali D.(2007) op cit.

¹⁸⁵ Ali, N., Ellis, P. and Khan Z. (1996) “The 1990’s: A Time to Separate British Punjabi and British Kashmiri Identity”, Singh N.G. and Tabot I. (editors), *Punjabi Identity: Continuity and Change*. New Delhi:Manohar. p. 229-256. (Identity relates to ties as well as legal concepts of citizenship; namely that in defining the Kashmiri citizenship in 1858 the Maharajah applied it to all living in Kashmir, and their descents, up to two generations of those living outside Kashmir. This ruling continues to exist).

¹⁸⁶ Ellis P. and Khan Z. (1998); Etal; (1996).

¹⁸⁷ Ellis P. and Khan Z. (1998), op cit.

In recognizing the said frustrations and difficulties, the House of Commons accepted the motion on 16 December 2008, that 'this House recognizes there is a considerable Kashmir community in the UK . . . calls on the Government to give recognition to the six hundred thousand Kashmiri people estimated to be living in the UK by ensuring that the 2011 census has a separate section for Kashmiri people to identify themselves and looks forward to Kashmiri people living in the UK being able to register their identity as the many other ethnic groups that live in the UK are able to do so.'¹⁸⁸ The figures for the 'Kashmiri people' are as yet not available.¹⁸⁹

2.7.5 Religion

Sufism

The circumstances in Kashmir have led to what Margolis refers to as the new 'Jihad'.¹⁹⁰ Bhatt observes that it is new because Kashmiri's are 'Sufis, the most pacifists and mystical branch of Islam based on the precept of peace and complete devotion to Allah.'¹⁹¹ The Foreign Affairs Committee acknowledged, Kashmir 'does not have the extremism and radicalism that we see in other Islamic movements. That was never part of Kashmir's make-up. It had a more Sufistic, softer face of Islam.'¹⁹² The 'softer face' of Sufism is reiterated by John Glover,¹⁹³ who emphasizes that based on 'both Quranic and Sufi education' there was the 'emphasis on diplomacy and co-operation ... religious principles could not be compromised, but armed jihad was explicitly rejected as counter-productive'.¹⁹⁴

However, it is argued that the face of Islam changed in the mid twentieth century when Islamic teachings in Kashmir became more dependent on Pakistani scholars.¹⁹⁵ It is perhaps significant

¹⁸⁸ Cited in <http://www.edms.org.uk/edms/2008-2009/312.htm>. last visited: January 2010.

¹⁸⁹ See: Office for National Statistics (2011) *Population Estimates by Ethnic Group: Methodology Paper*. Newport, Crown Copyright, and Office for National Statistics (2011) *Population Estimates by Ethnic Group 2002-2009*. 18 May 2011. Newport: Crown Copyright.

¹⁹⁰ Margolis, E. S. (2000), *War at the Top of the World: The Struggle for Afghanistan, Kashmir, and Tibet*. Routledge: New York. p. 57.

¹⁹¹ Bhatt S. (2003), op cit at 215.

¹⁹² 2006/07 HC 55 op cit at 135.

¹⁹³ Glover J. (2007) *Sufism and Jihad in Modern Senegal: the Murid Order* Rochester New York: University of Rochester Press.

¹⁹⁴ Skinner D.E. (2009) 'John Glover, Sufism and Jihad in Modern Senegal: The Murid Order'. *Africa* 2009, 79:2; 315.

¹⁹⁵ Venkatraman A. (2007) 'Religious Basis for Islamic Terrorism: The Quran and Its Interpretations.' *Studies in Conflict & Terrorism*, 30:3, 229-248 at 234.

to note that the majority of the first generation British Muslims practice Sufism, as it, had existed in Kashmir since the 1300s.¹⁹⁶

The British Kashmiris generally belong ‘to the branch of Islam called Barelwi [Sufism], a sect disdained by many other British Muslims and somewhat isolated.’¹⁹⁷ They are the followers of the Mawlana Ahmad Raza Khan Barelvi (1856-1921), who revived Sufism in the Indian subcontinent.¹⁹⁸ Their differences from other Muslims are based on the Barelvi – Sufi doctrine,¹⁹⁹ the Sufi teaching revolves ‘around the centrality of mediation: the Prophet mediated with God, the *shaykh* – and the saints – with the Prophet . . . three channels of mediation and intercession: the individual pir or shayky, the founding saint of a Sufi order . . . and the Prophet.’²⁰⁰ There is also the emphasis on ‘shrine-based Islam.’²⁰¹ The British Kashmiri Muslims are viewed as practicing ‘customary’²⁰² Islam and accordingly marginalized within the wider British Muslim community.

Furthermore, the British Barelvi mosques have ‘Urdu-speaking imams’, as Ann Cryer, the then Member of Parliament for Keighley in West Yorkshire, with many British Kashmiri constituents stated, ‘many of imams who have been brought in don’t speak a word of English and have little knowledge of what life in Britain is all about, particularly for their young members. We have to help our communities to integrate, to live in cohesion.’²⁰³ She was particularly critical of those from Mirpur, and described them as part of the problem rather than the solution.

It has been observed that such imams hinder the British born and inadvertently make them vulnerable to exploitation from extremist groups of Islam. ‘Madeline Bunting wrote about this in *The Guardian* after the London bombings . . . She cited one Barelvi journalist’s claim that

¹⁹⁶ Ibid. see also: Johns A.H. (1995) ‘Sufism in Southeast Asia: Reflections and Reconsiderations’. *Journal of Southeast Asian Studies* 1995, 26(1), 169 and Naeem F.S. (2009) ‘Sufism and Revivalism in South Asia: Mawlana Ashraf Ali Thanvi of Deoband and Mawlana Ahmad Raza Khan of Bareilly and Their Paradigms of Islamic Revivalism.’ *The Muslim World* 2009, 99(3), 435.

¹⁹⁶ Doe B. (2006) op cit.

¹⁹⁷ Doe B. (2006) op cit.

¹⁹⁸ Naeem S.F. (2009) op cit.

¹⁹⁹ Naeem S.F. (2009) op cit.

²⁰⁰ Ibid.

²⁰¹ Naeem S.F. (2009) op cit.

²⁰² Discussed in Chapter 5.

²⁰³ Quoted in Doe B. (2006) at <http://www.tes.co.uk/article.aspx?storycode=2261962> last visited May2012.

unnamed Arab movements have a name for young UK Barelvis let down by their elders. They call them *orphans of Islam* and target them for recruitment.²⁰⁴

2.8 Conclusion

There is no denying that the 'instability between India and Pakistan [is] one of the greatest threats that the world might face in the future.'²⁰⁵ Consequently it has emerged that the events in Kashmir have had and continue to have an impact in the United Kingdom. British Kashmiri Muslims' 'detachment, indeed, isolation from [all] groups'²⁰⁶ may on occasions make them vulnerable to exploitation from deviant and extremists personnel. In analysing the events of 7 July 2005, Hayman concluded that 'many of these terrorists supported extreme Kashmiri groups, their first links with terrorism in Pakistan, which led them to al Qaeda.'²⁰⁷

The Kashmiri situation offers little hope of optimism, leading some to comment that 'in this conflict, the people who are being used as table tennis balls in a game of power politics are the Kashmiri people.'²⁰⁸ Analysis of India's special powers conferred on its military, and its blatant human rights violations has led to the conclusion by one ethnographic researcher in Indian administered Kashmir, that 'militarization and penalization work hand in hand to produce patterns of captivity in which a particular society's 'rubbish people' – those not fully human and better off dead – are subjected to the waste disposal strategies of control and surveillance...'²⁰⁹ Kashmir is viewed as 'continuation or resurrection of colonial power in contemporary form', and Kashmiris 'probably had more freedom under the British crown' than at present.²¹⁰

However, no peace compromise is anywhere nearer today than it was nearly sixty years ago. Injustice and inhumane treatment can become a breeding ground for home-grown terrorism, as is the case in Kashmir. The simple solution lies in the task of getting 'people to look forward rather

²⁰⁴ Doe B. (2006), op cit, emphasis added.

²⁰⁵ House of Commons (2002) *Hansard Debates*, Mr Richard Spring, 10 June 2002, col.598.

²⁰⁶ Tilman R. (2002) 'Durkheim and Veblen on the Social Nature of Individualism.' *Journal of Economic Issues*, 2002, 36(4): 1104.

²⁰⁷ Hayman A. (2009) *The Terrorist Hunters* Bantam Press: London at p.285. See also: Durkheim E (1965) *The Division of Labour*, translated by George Simpson. The Free Press: New York, p.129-130; see also: Turner P.S. (1993) *Emile Durkheim: Sociologist and Moralist*. Routledge: New York.

²⁰⁸ House Commons (2002) *Hansard Debates* Mr Khalid Mahmood. 10 June 2002, Col. 602.

²⁰⁹ Duschinski H. (2009), op cit.

²¹⁰ Berman N. (2006) 'Intervention in a 'Divided World': Axes of Legitimacy.' *E.J.I.L.* 2006, 17: (743).

than looking back,²¹¹ without this the Kashmiri people will continue to be 'used as table tennis balls in a game of power politics.'²¹² The International Crisis Group concluded that although India has 'exploited' global 'concerns by linking Kashmiri militancy with the global war against terrorism',²¹³ India continues to remain willing to accept 'a dialogue, . . . with Pakistan.'²¹⁴ However any long term 'solutions' require that all the Kashmiri 'grievances' highlighted in this chapter and elsewhere be addressed.²¹⁵

In conclusion, the dispute over Kashmir is an ethnic, religious and territorial issue with potential for economic and strategic gains to India and Pakistan, which is in desperate need of diplomacy.²¹⁶ The Kashmiri situation is analyzed by Duschinski who writes, 'of how deeply – entrenched patterns of militarization produce real social suffering for particular local communities while simultaneously being obscured and rendered invisible through popular rhetoric of protecting national security, promoting national interests, and maintaining law and order.'²¹⁷

It has been asserted these background conditions have led some British Kashmiris to sympathize with and support terrorist groups in Kashmir. It was reported that 'stabilising Kashmir is also important for United Kingdom domestic security reasons.'²¹⁸ Christopher Hope identifies that British Muslims are sending their 'problem children' to Islamic institutions in Kashmir. These children are deemed to be at risk of exploitation from Islamic 'radicalisation.'²¹⁹ Hence, the importance of this chapter, to the analysis of the present Kashmiri viewpoint on terrorist groups in Kashmir.

²¹¹ House of Commons (2002) Hansard Debates. 10 June 2002, Col. 604: Jack Straw.

²¹² Ibid col.602: Khalid Mahmood.

²¹³ International Crisis Group (2003) op cit at p.22.

²¹⁴ Ibid at p.23.

²¹⁵ Ibid at p.24. see also: "Kashmir: The Way Forward", Kashmir Study Group (February 2000) at

<http://www.kashmirstudygroup.org/bottom.html>, and Noorani A.G. (2002) "The Dixon Plan", *Frontline*, Vol. 19: 21, 21-25 October 2002.

²¹⁶ Hilali, A. (1999), "Kashmir: A Dangerous Flashpoint in South Asia". *Bulletin of Concerned Asian Scholars*. Vol 31, Issue 2. p. 62.

²¹⁷ Duschinski H. (2009) op cit.

²¹⁸ Hope C. (2011) "Wikileaks British Muslims sending problem children 'al Qaeda' schools." *The Telegraph* 4 February 2011. <http://www.telegraph.co.uk/news/worldnews/wikileaks> visited 22/5/2012.

²¹⁹ Hope C. (2011) "Wikileaks British Muslims sending problem children 'al Qaeda' schools." *The Telegraph* 4 February 2011. <http://www.telegraph.co.uk/news/worldnews/wikileaks> visited 22/5/2012.

In brief it has been established that the diminished and confused identity of Kashmiris in Britain, and religious beliefs contrary to mainstream Islam have created conditions to be targeted by extremists as being susceptible to recruitment as 'Islam's orphans', as was the unfortunate case of the London bombers on July 2005. The following chapters 4 to 7 will address some of the issues identified here when interviewing the participants of a British Kashmiri Muslim community.

Chapter Three Methodology and Fieldwork

3.1 Introduction

This chapter will consider the rationale, development and implementation of the fieldwork undertaken for this thesis. It will consider the issues of achieving access, sampling, data collection and data analysis, as well as issues of confidentiality, risk management, research ethics and the pragmatic constraints of the research process. The fieldwork consisted of face-to-face, semi-structured interviews with British Kashmiri Muslims in one area of the North of England. The focus of this chapter is, first, to provide an outline of methodology, and the suitability of the research design. Then the issues that arose from the fieldwork, such as ethical issues, and issues emerging from the interview situation itself, before going on to explain the data analysis. The findings in relation to conceptual developments will be identified in Chapters Four and Five. The findings on specific areas of law will be reserved for the subsequent Chapters Six and Seven.

The writer had commenced the research with the idea that it would be sequential: the data collection would lead directly to the data analysis; however, it soon became apparent that this would not be the case. On occasions the writer was at the mercy of the participants in terms of timing, and departure from the pre arranged plans and timetabling was necessary. The researcher was compelled to re-think preconceived ideas specifically in relation to access. Analysis was formulated on the basis of 'information' provided by the participants.¹

The aims did not entirely represent the reality of the fieldwork, as human beings cannot be modified to fit in an ideal laboratory, nor can their views. This became clearer as the fieldwork progressed. It also became apparent that social science research requires modification to the settings, rather than the participants modifying to the researcher. The researcher has to be flexible, and interact in a manner (within the boundaries of the research), to suit the participants. The pragmatic necessities of the fieldwork led to the informative process requiring analysis and reflection. Via such a reflective process, the problems experienced in the fieldwork and the counter-strategies utilised will be highlighted. This will be in conjunction with the discussion of the strengths and limitations of the methodology.

¹ Creswell J. W. (2007) *Qualitative Inquiry and Research Design* Second Edition. London: Sage Publications at p.63.

3.2 Aims and Objectives of the Research

The aim of this research was to ascertain the views of a minority religious group, namely, the British Kashmiri Muslims, on the issue of terrorism, and the British counter-terrorist legislation and policies. This was to be furthered by contacting community centres. Semi-structured interviews were conducted with the aim of obtaining a sample of fourteen men and fourteen women. The time and resource constraints of a self-funded PhD project would only allow for that number of interviews. Nonetheless, the participants were chosen with care in accordance with a purposive sampling approach suitable for small-scale qualitative research projects where the aim is to gather rich sources of data, depth of insight and generate new hypotheses, rather than to test existing concepts or to generalize to a large population.

From the two groups there was to be an equal number of first generation and second/third generation Kashmiri Muslims. This is crucial since the second / third generation of Kashmiri Muslims will be British born and educated, whose culture may differ from the Kashmiri born first generation. Due to the limitations of a PhD thesis, this research will not cover the views of any other Muslim group in the UK. However, the research is original by not treating all Muslims as one 'community' but seeking to penetrate in detail and for the first time one important category within the many communities of predominately Muslim people resident in the UK. As the impending discussion will highlight, British Kashmiris have been selected because of their historical conflict in Kashmir, and links to the British Empire – and the transfer of this conflict to contemporary British society. In addition, nearly a quarter of British Muslims are of Kashmiri origin.² This research is valuable in offering some unique insight into the selected British subgroup/culture, and its minority religious beliefs,³ which is presently under-researched.⁴

² BBC, 11 July 2005 *Kashmiri Anxiety over UK Attacks*. <http://www.jammu-kashmir.com/archives/archives2005/kashmir20050711a.html>.

³ It is difficult at this stage to distinguish between religion and culture, as chapter 2 will highlight religion is interlinked to the selected group's culture.

⁴ Rehman S. (2009) *British Kashmiris, Challenges and Opportunities*. <http://bkaf.org.uk/article1.html>, last visited January 2010; Ali D. (2007) *Recognising the Kashmiri Community in the United Kingdom: Implications for Education Attainment*. Race Equality Teaching Trentham Books: London.

3.3. Methodology

In exploring the selected group's views and perceptions of and towards terrorism, careful consideration has been given to the research strategy. Consideration was given to the fact that a methodology 'translates' the principles of a paradigm in a research language, and shows how the world can be explained, handled, approached and studied;⁵ highlighting 'what is important, what is legitimate, what is reasonable' to the researcher.⁶

3.3.1 Qualitative and Quantitative Research

Brief consideration will now be given to the two main approaches to research. It is argued that the qualitative approach is the most useful for this thesis. When faced with the question, 'Which is better?' the better paradigm (qualitative or quantitative) is the one that serves to answer the specific research question.⁷ The approach best suited to the present research is qualitative. It enabled the researcher to utilize techniques that the British Kashmiri Muslim participants are 'comfortable' with, and is suitable for both the researcher and the participants.⁸ The researcher can therefore 'make the most efficient use'⁹ of all available resources to understand the participants views.¹⁰ It is noteworthy that due to the sensitivity of the subject matter, and issues of confidentiality, on-line or telephone-based survey research would not be as effective, or indeed provide the in-depth data required. Moreover, response rates would likely be low and responses of poor quality. Surveys and questionnaires would only be completed by those proficient in the English language, though there exists as discussed below, a substantial sample that are illiterate, but whose views are vital.

⁵ Sarantakos S. (1993) *Social Research* Hampshire. Macmillan Press Ltd (34-45).

⁶ Patton M. (1990) *Qualitative Evaluation & Research Methods* Newbury Park: Sage, at p.37.

⁷ Benz & Newman (1998) *Qualitative – Quantitative Research Methodology: Exploring the Interactive Continuum*. Carbondale, IL; Southern Illinois University Press at p.11.

⁸ Creswell J.W. (2007) op cit at 23. See also: Rorty R. (1990) 'Pragmatism as anti-representationalism' in Murphy J.P. (editor) *Pragmatism: From Pierce to Davidson*. Westview Press: Boulder, CO; Patton M.Q. (1990) *Qualitative education and research methods* Sage: London; Cherryholmes C.H. (1992) 'Notes on Pragmatism and Scientific Realism.' *Educational Researcher*, 14: 13-17; Tashakkari A. & Teddie C. (2003) (editors) *Handbook of mixed methods in the social and behavioural sciences*. Sage: London.

⁹ Onwuegbuzie A. J. (2002) 'Why Can't We All Get Along? Towards a Framework for Unifying Research Paradigms.' *Education*, 122 (3): 518

¹⁰ Giorgi A. (2002) 'The Question of Validity in Qualitative Research.' *Journal of Phenomenological Psychology*, 33(1): 1.

3.3.2 Qualitative Research Method¹¹

Qualitative research is generally *interpretive*. It is the most appropriate for this thesis because the researcher is well-placed by reason of her personal background to access, understand, analyze and explain the research topic. Interpretive ‘positions’ are described as being the most effective with underrepresented or minority groups such as that of the British Kashmiri Muslims, as they ‘provide a pervasive lens or perspective on all aspects of’¹² the research in ‘natural settings’.¹³ In addition, it is an appropriate approach because ‘terrorism’ is an emotive subject. Therefore, to assess the strength of feelings around the subject, qualitative approach would be the most effective. The research is not just about what is officially pronounced but what is genuinely felt. Interviews were selected as the main data collection instrument. For effective results and indeed participation in this ‘sensitive’ area of research ‘empathy’ is imperative, and the researcher can only achieve this using the qualitative research method.

The research involved analyzing and exploring the way in which individuals (British- Kashmiri Muslims) viewed UK society, specifically the laws on terrorism, and how these perceptions were expressed and perceived by this group.¹⁴ Thus in order to understand this perspective, any valid interpretive study would have to ‘conceptualize reality’ from the selected community’s point of view.¹⁵ As a British born Muslim, the writer was able to demonstrate empathy with the dynamics involved in the subject group's religion, and as a person of Kashmiri ancestry, she was also able to demonstrate a unique level of insight in particular in relation to the second and third generation participants.

Qualitative inquiry can generate theory and findings from the perspective of its participants,¹⁶ which are vital for the thesis. It helps the researcher to address values,¹⁷ and capture social

¹¹ The researcher has used qualitative methods whilst undertaking research as a undergraduate and postgraduate at Masters level, however the experience is limited to interviews.

¹² Creswell J.W. (2007) *Qualitative Inquiry and Research Design Choosing Among Five Approaches* Sage Publications: London at 24.

¹³ Creswell J.W. (2007) *ibid* at 38.

¹⁴ Daymon C. & Holloway I. (2002) *Qualitative Research Methods in Public Relations and Marketing Communications*. Routledge, at p.4.

¹⁵ Sarantakos, (1993), *op cit* at p.34-5; Daymon & Holloway (2002), *ibid* at p.5.

¹⁶ Goodson L. & Philimore J. (2004) *Qualitative Research in Tourism: Ontologies, Epistemologies & Methodology*. Routledge, at p.4.

meanings.¹⁸ In addressing values, the researcher acknowledges the culture of the participants, which is vital when working with perceived minority groups such as British Kashmiri Muslims. Qualitative data 'humanize' research,¹⁹ and enable guidance on a personalized level, thereby allowing the researcher to explore perceptions and attitudes on terrorism in depth. Full understanding of participants necessitates interviews followed by detailed transcription analysis. This provides data to produce 'descriptive writing that is the hallmark of qualitative research'.²⁰ Shortcomings of the chosen methodology are discussed in the concluding part of this chapter.

3.4 Researcher Bias

It is important to acknowledge the researcher's standpoint, as objectivity is regarded by many as a virtue that every researcher should aspire to.²¹ The goal of objectivity or value neutrality is in order to minimize bias, and present social reality as it is, rather than as influenced by the personal prejudices of the researcher.²² However, Mills argues that the most admirable scholars do not split their work from their lives. They take both too seriously to allow such dissociation, and they use each for the enrichment of the other.²³ It is further submitted that separating research from other aspects of one's life can cut off a major source of insight, hypotheses and validity checks.²⁴ Indeed feminist researchers' have found that trust is enhanced when the researcher's identity is acknowledged in the field.²⁵

Disclosing one's inevitable bias or personal beliefs is less dangerous than pretending to be value free²⁶. The writer is a British born Muslim with Kashmiri ancestry, and acknowledges her biases, namely that the British law on terrorism is necessary, and that majority of the Muslim

¹⁷ Ebbs C.A. (1996) "Qualitative Research Inquiry: Issues of Power and Ethics" *Education* Vol.117, Issue 2, 1996, p.217.

¹⁸ Jupp V. (1989) *Methods of Criminological Research*. London: Unwin Hyman, p.28.

¹⁹ Fitzgerald M. & Muncie J. (1981) 'Humanising the deviant' in Fitzgerald M., et al (editors) *Crime & Society: Readings in History and Theory*. London: Routledge & Kegan Paul.

²⁰ Pugach C.M. (2001) "The Stories Choose to Tell: Fulfilling the Promise of Qualitative Research for Special Education", *Education*. Vol.67, Issue 4; p.439.

²¹ Sarantakos, op cit at p.18.

²² Ibid.

²³ Mills C.W. (1959) 'On intellectual craftsmanship' in Mills C.W (editor) *The sociological imaginations* pp.195-226. London. Oxford University Press, p.195.

²⁴ Maxwell (1996), op cit at p.27; see also Hammersley M. (1998) *Reading Ethnographic Research* Second Edition. London: Longman (Social Research Series).

²⁵ Warren C. (1988) *Gender Issues in Field Research*. London: Sage Publications.

²⁶ Sarantakos, op cit at p.19.

Community in Britain are agreeable to such laws. However, the writer is of the opinion that these views may not be shared by all second and third generation Muslims. This is in line with the literature research conducted by the researcher, which categorically states that the said population is vulnerable to terrorist recruitment, was highlighted by the London bombings in July 2005.

It is important to distinguish between two different purposes for research: practical purposes, and scholarly purposes. The writer's practical purpose is to explore the needs of the community for legislature, the aim of which is to 'protect'; and the research purpose is to enhance academic understanding and insight into the views of the participants.²⁷ The understanding and insight will be scholarly in the sense that it will be fully and openly argued and interpreted in light of existing scholarly literature. The analysis may then be of use to decision makers involved in the development of the legislation and other forms of public policy.

There is the inevitable concern over whether the researcher, as a member of the British Kashmiri Muslim, 'can be a valid and reliable interpreter of the research';²⁸ the argument that being an 'inside' member of a group creates bias rather than empathy. This view has been challenged by some researchers in the feminist and emancipatory fields,²⁹ who accept that all researchers possess 'values and perceptions' - thus acknowledging limitations and bias at the outset is inevitable. In addition, it has been argued that 'detached researchers need to recognize their assumption of privilege, the potential inability to establish rapport, and the possibility of inaccurate interpretation.'³⁰ Successful research requires acknowledgement of the 'diversity' of the participants, and to ignore that 'would be the greatest travesty.'³¹ It has to be assumed for the purposes of the present research that the participants in the research have valuable views that the researcher can obtain knowledge about. To control the potential 'bias' of the researcher, Burke Johnson suggests that the 'researcher actively engage in critical self reflection about his / her

²⁷ Maxwell, op cit at p.15-16.

²⁸ Henderson K. A. (1998) 'Researching Diverse Populations.' *Journal of Leisure Research*, 30(1): 157.

²⁹ Stanley L. (editor) (1990) *Feminist Praxis*. Routledge: London; Denzin N.K. (1994) 'The Art and Politics of Interpretation.' in Denzin N.K. & Guba Y.S. (eds.) *Handbook of Qualitative Research*. pp.500-515. Sage: London; Reason P. & Rowan J. (eds.) (1981) *A source book of new paradigm research*. London: John Wiley & Sons.

³⁰ Henderson K.A. (1998) op cit at 157.

³¹ Ibid.

potential biases and predispositions'.³² The writer asserts that the objectivity or value neutrality is unattainable, unnecessary and undesirable. In order to control any bias, the researcher created a 'diary'³³ alongside the 'field notes'. The diary was used following each interview, and this enabled the writer to reflect on the processes that occurred during the interviews.

3.5 Access and Sample Selection

Access was gained via community centres, initially by telephone, with face to face meetings where deemed necessary. 'Purposive' and 'snowball' sampling³⁴ was used to obtain further contact. Participants would be first and subsequent generation of British Kashmiri Muslims, as well as male and female. Beyond this, sampling was based on accessibility and their cooperation or willingness to undertake the interviews.³⁵ The initial group of participants were those attending selected youth centres and adult drop-in centres, which includes women's centres.

There are potential risks to the researcher working alone; such as, anger and abuse. The researcher proposed to address these by exiting the situation. In addition, arrangements were made for the researcher to be contacted via telephone or pager, and the participants were informed accordingly that should the interview exceed an hour, there would be an interruption at that stage.

The females were all personally contacted; the aim was to have five first generation and five second or third generation females. Qualitative research, as it is continuously reiterated, is indeed time consuming, however, this research had the additional inherent difficulties related to the subject matter. Eight women withdrew consent once it became apparent as to what we would be discussing. Two British born women said that they were 'too far from Kashmir', and 'know nothing about it'. One asserted, 'I have nothing worthwhile to say about terrorism.' Others expressed that they were 'extremely uncomfortable talking about terrorist stuff, I'm not like

³² Burke Johnson R. (1997) 'Examining the Validity Structure of Qualitative Research.' *Education*. 118 (2): 282.

³³ See appendix 3.

³⁴ Etienne M. (2005) 'The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers' *Journal of Criminal Law & Criminology*, Vol. 95, Issue 4, p.1195.

³⁵ Wong-Wylie G. (2007) 'Barriers and Facilitators of Reflective Practice in Counsellor Education: Critical Incidents from Doctoral Graduates.' *Canadian Journal of Counselling* 2007, 41(2): 59; and Molleda J-C. & Maeno A. (2008) 'Balancing Public Relations with Socio-economic and political environments in transition: comparative, contextualized research in Columbia, Mexico and Venezuela.' *Journalism & Communication Monographs* 2008, 10(2): 115.

them. I can't believe you're doing this, they're all gonna think that you're one of them. You shouldn't be doing this. Leave it [to] the white folk.' Several said, 'I'm not educated, what do I know?' In addition to the eight, one withdrew because of sudden illness in the family. The researcher had anticipated that access would be easier with the female British Kashmiri Muslims, but the opposite was the case. Following much negotiation, reassurances of confidentiality and anonymity, seven females were interviewed.

All twenty males were interviewed. Snowballing chains were employed with the men, whereby one participant provides access to another individual. This process was essential for this research as an introduction from an existing member ensured that confidence and trust was established in the researcher.³⁶ Three initial contacts were established with the first generation men, one of whom was informally appointed 'leader', since he knew the community well and was trusted by the majority of the community. His approval signaled to the others that the researcher was ethical, and having him as a 'sponsor'³⁷ also reduced any potential risks to the researcher, who had initially encountered some hostility from individuals on discussing the issue of terrorism and Kashmir. In addition, it was fortuitous that the interviews were conducted at a time of local and national British elections; since the community was divided into Conservative and Labour camps, many of the men had taken leave off work to campaign for their individual parties. Thus the men appeared keen to be interviewed, and those that were selected would establish the researcher's credentials, and on satisfaction of that point they would proceed enthusiastically with the interview. Of the second and third generation males, five were personally contacted, and then several different chains of snowballing were initiated with students and government and public sector employees.

As with all research, there were limitations to the snowballing process. The existing participant may knowingly or unknowingly discuss his interview with the potential participants, therefore creating bias. It has to be accepted that anonymity and complete confidentiality of which participants were being interviewed was not exclusive to the researcher.³⁸ These issues were addressed with the participants, namely that confidentiality was of fundamental importance, and

³⁶ Jones I. & Gatten C. (2003) *Research Methods for Sport Studies*. Routledge: London at p.184.

³⁷ Denscombe M. (2003) *The Good Research Guide for Small-Scale Social Research Projects*. Open University Press: Maidenhead at p.16.

³⁸ Spenkle D.H. & Piercy F.P. (2005) *Research Methods in Family Therapy*. Guildford Press: New York at p.95.

the content of his interview or anyone else's views were not to be discussed. The researcher invested considerable time discussing these issues to protect confidentiality, and to eliminate and minimise bias.

The snowballing process of the data accumulation proved essential for the research, as it yielded a sample of participants that the researcher would not have had access to via any other means. In addition, to illustrate an example of direct contact and the difficulties: one of the wives prevented the researcher from interviewing her husband. For sixty to ninety minutes alone with a 'strange man', she said firmly, 'is against Islam.' Yet the researcher was never permitted to be 'alone' with any male participants; this was done out of respect for the researcher, and to ensure that her reputation remained intact.

The interviews were conducted in participants' homes, and for some of the men in a house that belonged to one of the informally appointed 'leaders' that had instigated the snowballing process. The researcher had anticipated that they would take place in community centres, but the participants adamantly refused to be interviewed in such locations for reasons of confidentiality. But this caused some practical difficulties. There were interruptions for cups of tea and food. On occasions there were interruptions by crying children. The initial contact would sit mute, as a chaperon whilst the researcher interviewed each individual male. It was reassuring that he never interrupted, but he assured the 'new' participant of his confidentiality too. With regards to the second generation males, they were interviewed with the door ajar. Again as with the first generation males, there were similar interruptions. The females were all interviewed alone with no interruptions. However, as these were conducted in their homes, there were only certain times in the day that they could be interviewed, because they had prior commitments and other chores to undertake. These prior commitments lead to several visits to their homes, as some would forget that they had 'double booked'.

It was imperative that the researcher was flexible in her approach and methods. Reflection and assessment of the situation made access to the participants slightly easier but not without hindrances. As a person fluent in the languages of Pahiri and Urdu, the writer hoped that she possessed the necessary cultural awareness and understanding. However, the fluency in the languages alone was not sufficient, the researcher had to adapt a consistent manner when

translating the words from English to Pahiri, the exact same words were used for each interviewee. The challenge was to ensure that each participant was asked the same question in Pahiri, since one word may be translated in several different ways, and convey a completely different meaning. In addition, the writer's dress code, (casual jeans and blouse), perturbed some of the first generation women. One commented that it saddened her to see someone wearing an Islamic headscarf and western clothing, and that it was a 'contradiction'. Another said, 'What is the point of the hijab [headscarf] when you wear jeans.' This example highlights the importance of understanding not just the religious aspects, but also the cultural aspects of the community being researched.

3.6.1 In-depth interviewing³⁹

Qualitative research interviews are typically referred to as *depth* or *in-depth* interviews.⁴⁰ In-depth interviewing is the most commonly used data collection approach in qualitative research.⁴¹ The in-depth interview enables researchers to understand the meaning people make of their lives from their own perspective. This was necessary for this thesis as it allowed the participants to relay their perspective on the issue of terrorism, and whether their religion, origin or other factors contributed to their views. In-depth interviewing takes seriously the notion that people are experts on their own experience and so best able to report how they experienced a particular event or phenomenon. If we interview different people (even though those individuals have a connection in common, namely religion and place of origin), about the same event or phenomenon, we shall inevitably gain a range of perspectives.⁴²

Like any method of data collection, in-depth interviews have their relative strengths and weaknesses.⁴³ However the choice to use interviewing in this thesis was informed by the view that they would generate the most valid and appropriate forms of data. Firstly, they share the general advantages of all face-to-face interviewing. They offer flexibility but still allow a

³⁹ It is proposed that the interviews will be analysed immediately following, this is imperative as the material will be contemporaneous.

⁴⁰ Maykut P. & Morehouse R. (1994) *Beginning Qualitative Research: A Philosophic and A Practical Guide*. London: Falmer Press, at p.81.

⁴¹ Darlington Y. & Scott D. (2002) *Qualitative Research in Practice: Stories from the Field*. Allen & Unwin Publishers, at p.48.

⁴² Darlington Y. & Scott D. (2002) *op cit*, at p.48.

⁴³ Darlington Y. & Scott D. (2002) *op cit*, at p.48.

direction to the discussion and a deep exploration of the subject matter.⁴⁴ Probably the central value of the interview as a research procedure is that it allows both parties to clarify the questions and answers, and this is necessary as there may be English language difficulties. There is an implicit, or explicit sharing and / or negotiation of understanding which is unique to the interview setting, and usually not present in other procedures such as questionnaires.⁴⁵ In addition the overriding advantage of a 'friendly chat' in the interview process enables the interviewee to disclose information that would not be obtained in questionnaires.⁴⁶ Thus interviews are an excellent means of finding out how people think or feel in relation to sensitive and emotive topics such as 'terrorism'.⁴⁷

The interview process adopted for this thesis involved a semi-structured method. Semi-structured interviews are designed to address 'the pivotal information needed' for the research.⁴⁸ It is an effective method for the present research whereby 'standardized set of questions' are designed as 'semi structured' in that they 'allow interviewers, at their discretion, to use follow-up questions' when the participant's answer is 'unclear or incomplete.'⁴⁹

The semi structured nature of the interview allowed the researcher to focus on the issues at hand, especially since the interviewees struggled to elaborate on the topic. Nonetheless, it did appear like a 'test' to some, who required assurances that the researcher was not interested in a 'correct' answer. There was very little rambling or any superfluous information, some of the participants appeared apprehensive but were keen to answer the questions. The men were certainly more open and talkative than the females. In order for the participants to elaborate, 'para-phrasing' was utilised, where the researcher selects and repeats something that the interviewee has said. It is noteworthy that the researcher resiled from offering any personal opinions.

The researcher was acutely aware of non verbal communication: personal and the participants'. Conservative western dress code (perhaps not sufficiently adhered to, as noted earlier) and

⁴⁴ Darlington Y. & Scott D. (2002) op cit at pp.48-49.

⁴⁵ Darlington Y. & Scott D. (2002) op cit at p.49.

⁴⁶ Leedy P.D. & Omrod J.E. (2010) *Practical Research* 9th edition. New Jersey: Pearson Publications at p.188.

⁴⁷ Darlington Y. & Scott D. (2002) op cit, at p.50.

⁴⁸ Joffe W.S. (2001) 'Investigating the Acquisition of Pedagogical Knowledge: Interviews with a Beginning Teacher of the Gifted.' *Roepers Review*, 2001, 23(4): 219.

⁴⁹ Long C. & Stansbury K. (1994) 'Performance Assessments for Beginning Teachers: Options & Lessons.' *Phi Delta Kappan* 1994, 76(4) at 318.

personal mannerisms were reserved to reassure the participants that their views were of imperative significance.

3.6.2 Questions

Question-asking is an 'art'⁵⁰, and at the heart of research design for semi-structured interviews.⁵¹ In this project the female gender of the researcher was found to be a hindrance to engagement with some of the first generation males, but simultaneously an advantage as it allowed access to the 'first generation' females as they would not be as forthcoming with their responses to a male researcher.

The sensitive nature of the subject matter was reflected in the questions. The primary consideration for this qualitative research is that the questions be open-ended, inviting the interviewee to participate in a conversation.⁵² However, interviews can be derailed if the interviewees begin to see the session as a grilling on topics for which they cannot supply the necessary information.⁵³ In addition, it was imperative to avoid unclear or vague questions, as well as complex questions. It was anticipated that the participants would appreciate simplicity,⁵⁴ especially when English may not be their first language.

3.6.3 Interview Guide⁵⁵ or Schedule

The interview guide is an essential tool that consists of a series of topics and questions or prompts that the research encompasses.⁵⁶ It enabled the interviewer to ascertain the participants' views and seek clarification or elaboration where necessary. Every interview requires some kind of structure, especially in broad subjects such as terrorism. This structure was particularly necessary because the subject was sensitive and therefore prevented potentially emotional outbursts from diverting the focus of the subject matter. Prestructuring also reduced the amount of data that the researcher had to deal with. Indeed it offered both the interviewer and the

⁵⁰ Maykut & Morehouse (1994) op cit at p.88.

⁵¹ Maxwell J.A. (1996) *Qualitative Research Design An Interactive Approach*. Applied Social Research Method Series. Vol.41. London: Sage Publications, p.49-51.

⁵² Maykut & Morehouse (1994) op cit.

⁵³ Ibid, at p.91.

⁵⁴ Ibid, at p.93.

⁵⁵ See Appendix One for the Interview Guide.

⁵⁶ Maykut & Morehouse (1994), op cit at p.83.

interviewee guidance. In most cases an interview guide is recommended.⁵⁷ Therefore the present research utilized a single interview guide that was used with all participants; this 'direction' further promoted consistency. As discussed in the preceding section, the majority of questions were open-ended.⁵⁸

3.6.4 Recording

Initial data analysis conducted immediately following each interview. The notes would be transcribed following the interviews, and the information would be utilized in the thesis. This allowed the immediate recognition of emerging concepts, and simultaneously ensured, the participant's confidentiality; the only information recorded was that which was necessary for the thesis.⁵⁹ To reduce the risk of individual recognition, the data were organised in a manner that represented the interviewees' response to different questions and with the identification of issues under theme – based headings,⁶⁰ rather than in the form of a narrative.

There are several computer aided methods of analysis such as CAQDAS (Computer Assisted Qualitative Data Analysis Software) and Nvivo. However the researcher elected to employ a 'manual' method of data analysis, (an example of the manual method is that for each question, the answers from each interviewee are recorded on the same thematic section). It has been successfully established that 'computer programs are most helpful with large databases,'⁶¹ but since the data generated from this research were relatively small, the manual method was deemed most suitable. In addition, the fieldwork consisted of non-English language; a computer programme may distort findings in the Kashmiri language.

In consequence, the twenty-seven interviews were all manually recorded. These notes were transcribed immediately after the interviews. There are limitations to this method. However, for the purposes of confidentiality, and placing the participants at ease, manual note taking, albeit time consuming, was essential.

⁵⁷ Darlington Y. & Scott D. (2002) op cit at p.56-57.

⁵⁸ See appendix one.

⁵⁹ Murray S.A., et al., (2009) 'Research Methods and Reporting' *BMJ* 24 October 2009; 339: 958-960 at 959.

⁶⁰ Darlington Y. & Scott D. (2002) op cit at p.29.

⁶¹ Creswell J. (2007) op cit at 165.

3.6.5 Participants⁶²

As noted above, in order to ascertain the views of the British Kashmiri Muslims specifically on terrorism and the British counter terrorism legislation, the writer undertook to interview male and female; first and second or third generation British Kashmiri Muslims. The aim was to interview fourteen men and fourteen women, but it was eventually agreed that due to the qualitative nature of the research, thirty participants would be interviewed, of which twenty would be male and ten female. The higher number of male gender was reflective of the statistics presented by the Home Office, where those arrested for terrorism consisted of 94% male, and of those charged with the terrorism offence, 96% are male.⁶³ In addition, to establish in-depth, exhaustive data, the writer would conduct the research in one area of the country, rather than considering two or three areas simultaneously. Although the interviews are *not* representative of the general population, they offer a unique perspective on the views of one selected British Muslim community.

3.6.6 Overview of the Participants.

Table 1a: Gender and Age.

Number of Males	Age in Years	18-24	25-35	36-45	45-54	55-65	65-70	70+
20	(Total)	4	6	1	1	3	2	3
Number of Females	Age in Years	18-24	25-35	36-45	45-54	55-65	65-70	70+
7	(Total)	1	4	2	0	0	0	0

⁶² For detailed characteristic analysis of the participants, see Appendix 4.

⁶³ Home Office (2009) *Home Office Statistical Bulletin; Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches. Great Britain 2008/09*. 26 November 2009. London: HMSO, at p.19.

Table 1b: Education of the Participants

Males	NO Qualifications/Education	'A' Level	Undergraduate	Bachelors' Graduate	Masters' Graduate
Total	8	1	0	8	3
Females					
Total	2	0	1	2	1

(Appendix 4 outlines further characteristics of the participants).

3.7 Data Analysis

In qualitative research such as the present exercise, data analysis is a continuous and somewhat serendipitous process from the onset of the fieldwork. It is asserted that 'data collection and data analysis go hand in hand.'⁶⁴ Although subjective selection is inevitable, the aim of the researcher is to be faithful to the data collected, and accounts represented will adhere to empirical validity representing the full range of views. Indeed, from the initial interview as the data were collected, analysis took the form of the review of its contents; analysis then affected how to proceed with subsequent interviews. Reflective note-taking following each interview was fruitful in recognising 'emerging themes.'⁶⁵ In addition to the note-taking, the reflective diary enabled the researcher to acknowledge and reflect on personal reactions, including emotions during the fieldwork.

The writer had initially considered typing up all the notes, and commenced the process, but due to confidentiality and anxiety in relation to the subject matter,⁶⁶ manually wrote each interview, and manually identified the themes. Once the transcripts were checked for accuracy, the researcher utilised the process of 'coding'. 'Coding is the process of creating categories and assigning them to selected data . . . involving sifting through the data, making sense of it in

⁶⁴ Daymon C. & Holloway I. (2002) *Qualitative Research Methods in Public Relations and Marketing Communications*. London: Routledge, at p.120.

⁶⁵ Ibid at 121.

⁶⁶ The computer 'crashed' half way through the typing process, the writer had the (irrational) anxiety that the technician operating on the computer may be able to access information from the hardware, yet the data was never saved on the computer's hard drive.

various ways.⁶⁷ Coding was achieved by systematically going through each interview; reading and re-reading of the data then led to links where interviewees expressed similar or divergent views about a particular topic, these slices of data were coded with numbers and symbols whenever encountered. The code terms were in relation to the concepts of terrorism, for example, definition of 'terrorism', 'jihad', and similarity of opinion expressed, and views on the law. The data were subsequently used to make comparisons and contrasts, thus reduced into themes and typologies.⁶⁸

3.8.1 Ethical Issues

There are a variety of ethical issues that need consideration.⁶⁹ The Code of Ethics for Researchers issued by the British Society of Criminology was utilized and emphasized throughout the research.⁷⁰ In accordance with this Code individual participants must to this study have been treated as autonomous, as, and accordingly informed consent was obtained from the individual's at the commencement of the interview. The researcher offered clear explanations of the research and the participants' role, and information on s.38A Terrorism Act 2000 and s. 1 Terrorism Act 2006,⁷¹ especially since there exists no 'scholar's privilege'.⁷² This opt out was continuously reiterated; at the commencement and during the interview. The potential conflict between the 'obligation to extend knowledge versus respect the rights of others' must and was always considered.⁷³

3.8.2 Confidentiality

The development of trust between researcher and participant is an essential part of the research process.⁷⁴ At first sight confidentiality seems a fairly straightforward ethical issue, and in the research literature is almost exclusively dealt in terms of developing data collection and storage

⁶⁷ Scott D. (2002) *Qualitative Research in Practice: Stories from the Field*. Crows Nest, N.S.W: Allen & Unwin at p.145.

⁶⁸ Creswell J. (2007) op cit at 148-149.

⁶⁹ Daymon C. & Holloway I. (2002) op cit at p.71.

⁷⁰ The researcher will carry a copy of it for the participants should they wish to refer to it. See:

<http://www.britisocrim.org/ethical.htm> last visited 20 March 2010.

⁷¹ Namely, that if an interviewee discloses information about their or anyone else's involvement or any illegal activity in terrorism, the researcher is compelled by law to disclose this information to the relevant authorities.

⁷² Van Den Hoonaard W.C (2001) 'Is Research-Ethics Review a Moral Panic?' *The Canadian Review of Sociology & Anthropology*. Vol.38:1, p.19.

⁷³ Daymon C. & Holloway I. (2002) op cit at 71.

⁷⁴ Darlington Y. & Scott D. op cit at p.53-54.

systems in which it is not possible to identify the research subjects. Accordingly, research participants were routinely given assurances of confidentiality.⁷⁵

As emphasised earlier terrorism is a 'sensitive' issue and views on this area may not be openly disclosed without complete assurances of confidentiality, (the researcher offered each participant the option of a written confidentiality agreement, this was refused by all the participants).⁷⁶ It has been argued elsewhere that 'the use of consent forms signed by interviewees becomes particularly problematic when one is engaged on sensitive topics.'⁷⁷ It has been suggested that interviewees sign the form 'with a code', or the researcher sign the consent on their behalf, the latter may be employed in circumstances where the interviewee is illiterate.⁷⁸ It is important to emphasise that while no research is without risks, the risks must be, and were, balanced against the possible gains from conducting such research. It is a powerful tool and one to be used with care.⁷⁹ Thus it was emphasized to the interviewees (at the commencement of the interview) that while their personal experiences and attitudes were relevant to the research, details of criminal activity by themselves or others was not, and that the interview would be terminated should that arise. The notes taken during the interview would be shredded and the information relevant to the thesis will be transcribed. The researcher informed the participants that she would be using pseudonyms for participants and places, for example, 'Southern England', 'Midlands', and so forth. The data were secured in a locked cabinet that contained numerous research articles, and hidden amongst those articles. The transcribed data is to be shredded on completion of the thesis and examination process.

The researcher had had to address some of the potential predicaments and difficulties that the fieldwork may entail, some of which were discussed earlier in this chapter. However this had not prepared her for the level of fear and anxiety in the selected community even around the use of the word 'terrorism'. Trustworthiness and gaining the confidence of the community became a great issue, as was the struggle to present a fair and balanced perspective. Thus, it became

⁷⁵ Darlington Y. & Scott D. op cit at p.29.

⁷⁶ Although two of the participants initially asked for it, and when presented to them, they said it was not necessary.

⁷⁷ Van Der Hoonard W.C. (2001) 'Is Research Ethics Review a Moral Panic?' *The Canadian Review of Sociology & Anthropology*. 38(1): 19.

⁷⁸ Van Der Hoonard (2001), *ibid*.

⁷⁹ Darlington Y. & Scott D. op cit at p.49.

apparent that for any progress to be made, a pilot study would be necessary. It gradually introduced the researcher into the community – the field environment. It was revealed for instance that instead of using the definition of 'terrorism' in Section 1 of the Terrorism Act 2000, it was necessary to paraphrase it because as one participant put it 'the legal language is too difficult to understand.' It enabled the writer to reflect on some of the potential difficulties in the research. The pilot study was also instrumental in addressing the practical limitations of the research: the researcher's appearance, namely dress code was an issue, and the use of a digital Dictaphone was a hindrance. The Dictaphone deterred people from participation since they had enormous and perpetual concerns about confidentiality.

Thus, the fear in the community was not the fear of crime, but the fear of talking about terrorism, the issue of policing and security services will be addressed in the subsequent chapters. Nonetheless, there was anxiety expressed for the researcher's safety and well-being, 'It is not safe for you to be doing this, asking all these questions on this, they can arrest you.' Int.6. 'I seriously hope that you don't get sent to Guantanamo for writing this stuff.' Int.5. 'Why are you doing this, they are arresting Muslim students that are writing on terrorism.' Int.25. One interviewee checked the researcher's bag to ensure that there was no recording device, despite the verbal assurances that information would only be manually recording, and requested that the mobile phone be switched off. He was apologetic and said, 'talking about terrorism stuff is scary these days, especially since one the London bombers was from around here. You better be careful you know, they [the police and security services] can get you any time. It's getting worse, they have spies everywhere.' Int. 17.

The foregoing examples of fear demonstrate the need for the researcher to display empathy and flexibility in order to proceed with the fieldwork. Thus, as stated earlier, continuous reassurances of confidentiality were necessary on introduction and during the interview. The approach therefore, by necessity, departed from what might be seen as a model approach to data collection. The approach adopted was, however, pragmatic and necessary in the context of researching a hard-to-reach group concerning a subject of great sensitivity.

Transparency is imperative for the recognition of research and for its use in academia. Thus validity is necessary for credibility and to enable other researchers to elaborate on the findings.

Self reflection⁸⁰ and critical self awareness was employed by the writer in the interpretation of data. Interviews conducted in English were written word for word, and attempt was made to ensure that those conducted in the Kashmiri language were translated word for word. Where permissible the participants' narratives were read back to them to ensure the accuracy of transcription. As discussed in this chapter, the writer kept a reflective diary to understand the psychological – emotional states that may have occurred during the research experience. The writer accepts accountability for the presentation of the data; however, the contents of these views are solely the participants.

3.9 Strengths and Limitations

In brief, the purpose of the fieldwork was to ascertain the views of a Muslim community in the UK on terrorism and imperatively their views on the counter-terrorism law. The researcher embarked on the fieldwork with the belief that she was in a unique position of achieving the results and succeeding in the proposed fieldwork. It is acknowledged that the researcher is a female of privileged background, but the overriding factor was that the researcher is a practicing British Muslim from an 'ethnic' background similar to that of the interviewees.

As the preceding discussion has highlighted the limitations to qualitative research are that it is labour intensive,⁸¹ and time consuming, from data collection through to analysis, so there may be practical constraints on the number of people who can be interviewed, and were not representative of the general Muslim population. Nevertheless it is proposed that the sample will represent the views of varied age groups, male and female gender, and length of time in the UK. It is proposed that the subsequent analysis has thoroughly and originally explored and enhanced understanding of the views, values and beliefs of first, second and third generation of British Kashmiris.

3.10 Conclusion

In conducting the fieldwork the researcher experienced many emotions ranging from frustration, to excitement and enjoyment. The research process inspired both innovative thinking and

⁸⁰ Creswell J. (2007) *Qualitative Inquiry & Research Design*. Sage Publications: London at 206.

⁸¹ Darlington Y. & Scott D. op cit, at p.53.

meticulous attention to the detail of data gathering and analysis. The researcher's views were revised, or even completely discarded in light of the data accumulated. This became more pronounced as the female participants continuously refused to be interviewed, yet the researcher had commenced with the preconception that access and the data from this group would be relatively easy to obtain. It has been an important experience for the researcher to learn the importance of research not being simply an esoteric enterprise reserved exclusively for outside experts, but rather one which aims to represent, respect and understand the view of participants.⁸²

Throughout this research process, limitations of the study were acknowledged and pragmatic solutions sought, participants' prompt withdrawal of consent to participate was respected, as were their views. It was learned and recognised that such research could only be undertaken on the participant's terms and in other circumstances could not have been conducted at all. This chapter has sought to reflect on aspects of the fieldwork and to make the research process more transparent to the reader in order for assessments of validity to be drawn. Detailed analysis of the data will be represented in subsequent chapters and this can be cross-referenced to the methodology in relation to the prominence of fear as an issue for this population, and the participants view of being a 'suspect community' in the context of the UK government's counter terrorism policies. The data secured were on the issues that affected the participants. Despite the semi-structured nature of the interviews, the participants talked only about areas that they themselves considered relevant, and not what the researcher may have considered relevant. In the chapters which follow, issues and concerns of the researched community regarding prominent concepts such as: 'terrorism', 'jihad'; areas of the law, policing, 'glorification' and aspects of terrorist financing are discussed in depth.

⁸² See also: McVicar A., Munn-Giddings C. & Abu-Helil C. (2012) *Exploring the development of action research in nursing and social care in the UK: A comparative bibliometric review of action research designs in social work (2000-2010)*. Sage Publications.

4.1 Introduction

The purpose of this chapter is to provide an analysis of the conception of terrorism, and terrorism's contested perceptions. This chapter is imperative for the delivery of the thesis. It highlights the malleability of the term 'terrorism'. It is easily contested, and the political and social conditions of a society affect its delineation. Conditions shaping official discourses may not be those shared by discrete communities. Due to its complex nature there is not one monolithic or objective discourse about terrorism. Thus, there are inevitable disagreements which can lead to resentment and alienation when the ascription of a label is felt to be unjust or inaccurate. Indeed both issues can arise with terrorism: inaccurate, because the group does not actually commit wrongs of a kind associated with terrorism, as may be the case with financing or glorification, where the categories are broad; unjust, in a case where the group is military and commits attacks as part of a widely shared aim of self determination or struggle against occupation.

This chapter identifies the core issue of what constitutes terrorism, and how its elements may be justified. This is crucial for the thesis, specifically in relation to how the term 'terrorism' is perceived and sometimes justified by its sympathizers. It is contended that the discourse surrounding the definition of terrorism has enabled contemporary Islamist terrorists to recruit individuals by arguing that it is a colonial, imperialist and a hegemonic concept created by the West. Indeed the fieldwork analysis revealed that the differing perceptions of terrorism determined how the situation in Kashmir was perceived by the participants interviewed.

Consideration will be given to the definition of terrorism and its possible antecedent causes, be they religious, social and / or political, and how terrorism is perceived. The latter will be discussed in conjunction with the research findings from the interviewees. Perception of terrorism leads to 'counter-terrorism' legislation, and it is argued that for counter-terrorism measures to be effective they require community support. Special legislation can in itself lead to conditions for terrorism and / or support for terrorism and its cause. An example of this is the young Kashmiris becoming 'increasingly available to the militants' following India's

deployment of increased national security and legislation,¹ consequently 'alienating' the community in Kashmir that the Indian Parliament sought to protect.²

It is argued by the media and key politicians since the events of September 2001 that we live in a time of terror.³ Yet terrorism has occurred throughout human history and around the globe.⁴ Its sudden dramatic nature and unusually unexpected occurrence attracts widespread attention.⁵ It has also been argued that 'terrorism challenges liberal democratic values'⁶ on the one hand, and, on the other hand, the reaction to terrorism has on occasions provoked a response that threatens the 'essence' of the democracy.⁷ Indeed, few problems can compete with the capacity of an act of terror to encapture and sustain the attention of an audience.⁸ Although the terrorists' communication occurs in many ways,⁹ one commentator refers to it as the 'socio-political message'.¹⁰ This message is said to justify the cause and simultaneously sustain and increase the support for the terrorist agenda. However, as a public event, terrorism is a performance with an involuntary audience, an unscripted and unpredictable event that can go badly wrong, and often does.¹¹ Terrorism, in short, is calculated for a specific political agenda or aims.¹² It is submitted that those political ends are contested, so the definition tends to be ascribed or avoided through political influences with law simply acting as a tool rather than having an immutable meaning.

4.2 What is the definition of 'Terrorism' ?

One of the fundamental, though tacit, assumptions made in the understanding of terrorism is that terrorism is an unequivocal problem¹³. Yet, as Livingston advocates, the 'salient feature' of

¹ Kadian R. (1993) *The Kashmir Tangle: Issues and Options*. Westview Press at p.13.

² Dixit J.N. (2002) *India – Pakistan in War and Peace*. Routledge.

³ Walker C. (2011) *Terrorism and the law*. Oxford University Press: Oxford at p.47.

⁴ Leeman R. W. (1991) in Johnpoll B. K (editor) (1991) *The Rhetoric of Terrorism and Counterterrorism*. New York: Greenwood Press. p.45.

⁵ Lacquer W. (1999) *The New Terrorism Fanaticism, and the Arms of Mass Destruction*. Oxford: Oxford University Press. p.3.

⁶ Lodge J. (editor) (1988) *The Threat of Terrorism*. Westview Press, Boulder, CO. p.1.

⁷ Lodge J. (editor) (1988) *The Threat of Terrorism*. Westview Press, Boulder, CO. p.1.

⁸ Greenberg M.H. & Norton A.R. (1980) *International Terrorism: An Annotated Bibliography and Research Guide*. Westview Press, Boulder, CO. p.2.

⁹ Leeman R. (1991), op cit at 45.

¹⁰ Bassiouni, Cherif M. (1983) in Freedman L.H. & Alexander Y. (editors) *Perspectives on Terrorism*. Wilmington, Del: Scholarly Resources.p.180-181.

¹¹ Klaic D. & Orr J. (editors) (1990) *Terrorism and Modern Drama*. Edinburgh: Edinburgh University Press, p.3.

¹² Livingston S. (1994) *The Terrorism Spectacle*. Boulder Co: Westview Press. p.2.

¹³ Livingston S.(1994), *ibid*, at p.4.

terrorism is the absence of a unified definition.¹⁴ This view exists irrespective of attempts by the international law via the passage of United Nations Security Council Resolutions 1373¹⁵ and 1566¹⁶. Thus consideration will be given to the various definitions of terrorism, and then views from the participants interviewed will be analysed.

4.2.1 United Kingdom's definition of Terrorism

Section 1 of the Terrorism Act (TA) 2000 provides a definition of what 'terrorism' means;

'(1) In this Act 'terrorism' means the use or threat of action where - -

- (a) the action falls within subsection (2),
- b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
- c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it - -

- a) involves serious violence against a person,
 - b) involves serious damage to property,
 - c) endangers a person's life, other than that of the person committing the action,
 - d) creates a serious risk to the health or safety of the public or a section of the public,
- or
- e) is designed seriously to interfere with or seriously to disrupt an electronic system.'

It has been submitted that the above definition of terrorism in the Terrorism Act 2000 is too broad and vague. It is too broad because it covers as targets any foreign government including those that have no regard for their citizens' civil liberties, and encompasses the flexibility to include all groups. It lacks the criteria to facilitate the self determination groups that are opposing autocratic regimes that govern irrespective of their inhumane records. The absence of legal guidelines blurs the boundaries and thus does not distinguish between those exclusively focusing on military targets. Crucially, it is also contended that this definition broadens the State's powers

¹⁴ Ibid.

¹⁵ (2001) 28 September.

¹⁶ (2004) 8 October; this reaffirmed 1267 (1999) and 1373 (2001), and urged states to comply with international law obligations.

to ascribe the label of terrorism according to its political will. Further, it is not only that the description is broad, but it also appears to lack specific context, namely, the reference to a conflict or to geographical context.¹⁷

For their part, the courts have recognised the government's necessity for a broad definition of terrorism. *R v F*,¹⁸ held that section 1 is indeed broad and flexible enough to encompass the government's political agenda for any given situation. This case made 'explicit that the scope of the definition includes action outside the UK against foreign governments.'¹⁹ It has led to the conclusion that via section 1 that the UK government can preserve its 'friendship with oil - owning despots more highly than the political freedoms of refugee underdogs.'²⁰ Walker further argues that there is 'degree of flexibility which escalates with some of the ideas expressed behind the legislative intention.'²¹ More recently in *R v Gul*,²² the appellant, Gul, had been charged with dissemination of terrorist materials. He had uploaded onto the internet images of Iraqi and Afghanistani militants attacking the coalition personnel. The materials included praise and encouragement of such attacks. The Crown Prosecution Service argued that the videos containing such images encouraged 'terrorism' as defined by section 1 of the Terrorism Act 2000. The question before the Courts was whether it was indeed terrorism as stipulated in Section 1. Gul's defence was that the militants were resisting the occupation of their countries, and that he was merely encouraging 'self defence'. However, it was held that under section 1 those who attacked the legitimate military personnel of the coalition were indeed terrorists for domestic law purposes. It was further held that there was no other national or international statute that provided exemption to such actions. This case expanded the remit of Section 1 to apply in international settings when it was argued that 'there was nothing in international law to exempt those engaged in attacks on the military during the course of an insurgency from the definition of

¹⁷ Brandon, B. (2004) "Terrorism, Human Rights and The Rule of Law: 120 Years of the UK's legal response to Terrorism". *Crim.L.R.* 2004. December. 981-997. See also: Feldman, D. (2006) "Human Rights, Terrorism Risks: The Roles of Politian's and Judges". *P. L. 2006, SUM 364-384*: Shah, S. (2005) "The UK's Anti-Terror Legislation and House of Lords: The First Skirmish" *5 HUM. RTS. L. REV. 403 2005*. Barnum, D. (2006) "Indirect Incitement and Freedom of Speech in Anglo-American Law" *E.H.R.LR.2006, 3,258-280*; Carlile, Lord (2007) 'The definition of terrorism.' Cm. 7052. London: HMSO.

¹⁸ [2007] EWCA Crim 243.

¹⁹ Walker C. (2009) *Blackstone's Guide to The Anti Terrorism Legislation*. 2nd edition. Oxford:OUP at 12-13.

²⁰ Walker C. (2009) *op cit* at 201.

²¹ Walker, C. P. (2005), *CLR* "Terrorist Offences: Terrorism Act 2006 Section 11(1). Belonging to Proscribed Organization".

²² *R v Gul (Mohammed)* [2012] EWCA Crim 280; [2012] 1 Cr. App. R 37; Times, April 9, 2012.

terrorism, and the wide and clear definition in section 1 included such acts, when done with the requisite intent.²³

Contrary to the criticisms of the 'wide and clear' definition, the government defended section 1 Of the Terrorism Act 2000, as 'effective and comprehensive.'²⁴ Thus, no amendment was made by the Terrorism Act 2006 to the definition of Terrorism Act 2000. During the long discourse that took place in passing this new legislation, there was dispute about the definition.²⁵ The dilemma posed during the extensive Parliamentary debate clearly highlighted that no consensus could be reached by definition and its political nature was apparent. As Mr. John Denham²⁶ stated 'if the Bill has the limited objective of stopping indirect incitement...people living in this country who take part in terrorist action, here and abroad, that involve the deliberate targeting and indiscriminate killing of innocent civilians, I would have no problem with it...UN Security resolution 1566²⁷ locates terrorism primarily in terms of actions against civilians it also refers to criminal acts in a way that I suspect excludes genuine liberation movements and genuine violence against oppression.'

Later, Lord Carlile's Inquiry²⁸ into the definition of terrorism did 'not offer major new statutory language',²⁹ and in fact considered the definition outlined by section 1 of the Terrorism Act 2000 as of 'real practical importance.'³⁰ Lord Carlile concurred with Lord Lloyd, whom he quotes as saying, 'We must obviously do our best with the definition. However, having spent many hours looking at many different definitions, I can only agree with what was said by both the noble Lord, Lord Goodhart, and the noble Lord, Lord Cope; namely that there are great difficulties in finding a satisfactory definition. Indeed I was unable to do so and I suspect that none of us will succeed. As I say, we must do our best but I hope we will not spend too much time on the

²³ Archbold Review (2012) "Case Comment. Terrorism offences - definition of "terrorism" in Terrorism Act 2000 - international law." *Arch Rev.* 2012, 3, at 2-3. see also: *C. L. & J.* 2012, 176(11) 158.

²⁴ HMSO (2007) 'Government Reply' Cm. 7058, London, at p.5.

²⁵ Barnum, D. (2006) "Indirect Incitement and Freedom of Speech in Anglo-American Law" *E.H.R.L.R.* 2006, 3, 258-280.

²⁶ Hansard, H. C. Vol. 438, Cols 371-372, October 26, 2005.

²⁷ October 8, 2004, paragraph 3.

²⁸ Lord Carlile (2007) 'The definition of terrorism.' London: HMSO Cm. 7052.

²⁹ *Ibid* at p.4.

³⁰ *Ibid* at p.6.

definition.³¹ Lord Carlile urged objective readers to accept this statement, but it is disappointing to some and encouraging to others that Lord Carlile advocates the importance of having a legal definition to prevent 'violent and lethal jihad.'³² It is encouraging that Lord Carlile's Report recognised³³ that the definition is broad enough to encompass non terrorist activities. His solution to such predicaments is to rely on the police and the prosecution's discretion,³⁴ however as the discussion in Chapters Six and Seven will highlight such discretion has limits. Nevertheless Lord Carlile is optimistic that mistakes can be prevented in defining actions as terrorism by the 'jewel' of the criminal justice system, namely the jury.³⁵

In line with Lord Carlile, David Anderson (his successor as Independent Reviewer of the Terrorism Legislation) recognised that the broad definition of terrorism provides a depth of discretion to the police and prosecution, and that the *Gul* case further highlighted the actual broad nature of the definition under section 1.³⁶ Whilst acknowledging that 'it is undesirable' to have such a broad definition, he categorically stated that 'it is not easy however to see a principled basis upon which the scope of the United Kingdom's definition of terrorism could or should be reduced.'³⁷ He elaborated that he did not feel compelled to indulge in 'deep legal waters' and offer any recommendations.³⁸

Lord Carlile's and David Anderson's defences of United Kingdom's definition of terrorism were based on their comparisons with international definitions. Thus it is fitting to proceed in the subsequent section by discussing Europe's perspective, and then, the international law's perspective on terrorism.

³¹ Quoted in *ibid* at p.4.

³² *Ibid* at p.24.

³³ *Ibid* at para 34.

³⁴ *Ibid* at p.35 (para 60).

³⁵ *Ibid* at p.36.

³⁶ Anderson D. (QC) (2012) *The Terrorism Acts in 2011* Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. London: The Stationery Office. June 2012, at p.34-36.

³⁷ Anderson D. (QC) (2011) 'Report on the Operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006.' London: The Stationery Office. July 2011. Para 3.6-3.7 at p.29.

³⁸ Anderson D. (2012) *op cit* at para 3.13, p.38.

4.2.2 Europe's definition of terrorism

The 1977 Council of Europe's Convention on the Suppression of Terrorism³⁹, has been described as an 'ambitious regional response ... , which aimed to facilitate the extradition of persons suspected of terrorist offences.'⁴⁰ Article 1 dictates that the offences in the three international anti-terrorism treaties, namely 1970 Hague Convention, 1971 Montreal Convention and the 1973 Protected Persons Convention, should be used for extradition as well as 'offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons.'⁴¹ Although the 1977 Convention elaborated on the offences (committed by terrorists) covered by previous treaties, 'it does not use or define the term terrorism'.⁴² Nevertheless in 2003⁴³, as a response to 11 September 2001, Council of Europe 'revitalized' the 1977 Convention in its Protocol.⁴⁴ Despite the 'revitalization' there were no major changes to the scheduled offences.

In 2005, the Council of Europe Convention on the Prevention of Terrorism more radically elaborated the concept of terrorism to include 'public provocation to commit a terrorist offence', training and recruitment for terrorism.⁴⁵ The preamble states: '... acts of terrorism have the purpose by their nature and context to seriously intimidate a population or unduly compel a government or an international organization to perform or abstain from performing any act or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization'⁴⁶

It is observed that the 'Council of Europe now has divergent definitions of terrorist-type activity between its 1977 and 2005 Conventions and the position is complicated further by the preamble

³⁹ 1977 Council of Europe Convention on the Suppression of Terrorism & Explanatory Memorandum; see also: Baker M (1987) 'The Western European Legal Response to Terrorism' 13 *Brookings JIL* 1; Lowe V. & Young J. (1978) 'Suppressing Terrorism under the European Convention' 1978, 25 *Netherlands ILR* 305.

⁴⁰ Saul B. (2006) *Defining Terrorism in International Law* OUP: Oxford at 147.

⁴¹ 1977 European Convention., Art. 1(d).

⁴² Saul B. (2006) *Defining Terrorism in International Law* OUP: Oxford at 148.

⁴³ 2003 Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190, Strasbourg, 15 May 2003).

⁴⁴ Saul B. (2006) op cit at 148.

⁴⁵ Saul B. (2006) op cit at 149; Articles 5-7 respectively. Articles 8 & 9 establish offences of complicity, organising / directing and conspiracy. Article 11 is used to show the nature and penalties.

⁴⁶ Preamble; see also Article 1, cited in Saul (2006) op cit at 149.

to European Union's different definition.⁴⁷ Such a complication relays an ambiguous and contradictory message, and epitomizes the lack of consensus within its own European borders, consequently 'allowing governments to unilaterally and subjectively define the scope of criminal liability'.⁴⁸ It is noteworthy that the 1977 and the 2005 Conventions served different purposes, so different approaches were to be expected, nevertheless, they are both complicit in empowering individual States to define terrorism as they wish to choose.

Spurred by September 11, the European Union's 2002 Framework Decision on Combating Terrorism had the aim of creating a 'European' definition of terrorism.⁴⁹ Article 1 states: 'terrorist offences include the following list of intentional acts which, given their nature or their context, may seriously damage a country or international organization where committed with the aim of: i. seriously intimidating a population, or ii. unduly compelling a Government or international organization to perform or abstain from performing any act, or iii. seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation'.⁵⁰ Scrutiny of the definition has provided with the analysis that it is 'complex and uncertain'.⁵¹ It is considered 'far wider' than previous Conventions, specifically in relation to acts (or threats) of personal injury and murder; criminal damage and its methodology. It also considers biological and chemical warfare.⁵² On the basis of this far wider definition, the States were urged to incorporate terrorism into their domestic legislation, the United Kingdom did not have to do anything because it already complied with the criteria with its comprehensive counter terrorism legislation.

4.2.3 International law definitions of Terrorism

It is contended that the definition of terrorism has to work within the context of international process but, to do so, must involve a legitimate formulation that cannot be moulded by any one

⁴⁷ Saul B. (2006), op cit at 149.

⁴⁸ Saul B. (2006) op cit at 152.

⁴⁹ See Commission Proposal for a Council Framework Decision on Combating Terrorism, 19 September 2001, COM (2001) 521 final; Duffy H. (2005) *The 'War on Terror' and the Framework of International Law*. Cambridge: Cambridge University Press, at 28.

⁵⁰ Article 1, Council Framework Decision on Combating Terrorism, 13 June 2002 (2002/475/JHA).

⁵¹ Guillaume G. (2003) 'Terrorism and International Law,' Grotius Lecture, British Institute of International and Comparative Law, London, 13 November 2003 at 4.

⁵² Peers.S. (2003) 'EU Responses to Terrorism', 2003, 52 *JCLQ* 227 at 232.

member State. It must enable consistency and transparency that is presently not always forthcoming.⁵³ In pursuit of this goal, the international community has valued the importance of having a 'generic definition' of terrorism since the 1920s, but has not been able to attain it.⁵⁴ Attempts made to formulate a universal definition have always been unsuccessful. Consequently, the international community's work on terrorism has often been 'to avoid confronting the contentious question of a general definition.'⁵⁵

In 1926 Romania unsuccessfully proposed to the League of Nations 'a convention to render terrorism universally punishable'.⁵⁶ It was not until 1934 that the League of Nations responded to international political pressure⁵⁷ to consider terrorism, and although the final draft was not forthcoming until 1937⁵⁸ at 'the Convention for the Prevention and Punishment of Terrorism' – but did not define the term 'terrorist activity'; but it offered optimism that discussion on terrorism is significant.⁵⁹ In addition it dealt only with international terrorism. Saul in analyzing the League of Nations response to 'terrorism' observes that the definition of terrorism encompassed a broad scope that led to varied interpretations and misinterpretations.⁶⁰ However, it was accepted that terrorism had to be distinguished from 'ordinary' crime because it 'deserves special condemnation'.⁶¹

Although the treaty never entered into force, the Convention is a significant landmark in its attempt to 'define' terrorism. It was considered in the 1994 General Assembly Declaration⁶² and

⁵³ Allott P. (1999) 'The concept of International Law' *1999 10 EJIL* 31 at 32; Jessup P (1964) 'Diversity and Uniformity' cited in Saul B (2006) op cit at 17.

⁵⁴ Saul B. (2005a) "Attempts to define 'Terrorism' in International Law" *NILR 2005 L11* 57-83.

⁵⁵ Saul B. (2006) op cit at 133.

⁵⁶ League of Nations, Committee of Experts for the Codification of International Criminal Law, Replies of Governments 1927, League of Nations Doc. C. 196. M. 70. 1927. V, p.221; quoted in Saul B. (2005), op cit at p.59.

⁵⁷ Following assassination of Yugoslavian King, and French foreign minister by ethnic separatists.

⁵⁸ First session, April-May 1935; second session, January 1936; third session April 1937; League of Nations, International Conference Proceedings on the Regression of Terrorism, Geneva, 1-16 November 1937, League of Nations Doc. C.94 M.47. 1938. V.annex I, p.183; League of Nations (LoN) (CIRT), Reports to Council, Geneva: 1st Session (8 May 1935, LoN Doc. C. 184. M. 102. 1935. V); 2nd session (10 February 1936, LoN Doc. A.7. 1936. V); 3rd session (26 April 1937, LoN Doc. V. Legal 1937. V.1); see also LoN Assembly (17th ordinary session). Records – Committee Meetings (1st Committee: Constitutional and Legal Questions), Geneva, LoN OJ (1936) (Special Supplement) p.156.

⁵⁹ Saul B. (2006b) "The Legal Response of the League of Nations to Terrorism". *Journal of International Criminal Justice* 2006, 4 (1): 78-102.

⁶⁰ Saul B. (2005a) op cit at 57-83.

⁶¹ Saul B. (2006b) op cit at 78-102.

⁶² UNGA Res. 49/60 (1994), annexed Declaration on Measures to Eliminate International Terrorism, para 3.

in the 1954 International Law Commission (ILC) Draft Code,⁶³ which was suspended and reconsidered in 1991 ILC Draft Code Article 24.⁶⁴ The final ILC Draft Code (Part II), whilst not a treaty was endorsed in 1996.⁶⁵ Similarly, in the Draft Rome Statute in 1998, 'no generally acceptable definition [of terrorism] could be agreed upon.'⁶⁶ Thus, the repeated attempts by the international community highlight the importance of having a generic definition of terrorism. This importance is perpetuated by the Sixth Committee of the United Nations General Assembly's on-going work on 'terrorism'.

Significantly the League of Nations is reflected in the Security Council Resolution 1566's definition of terrorism, (October 8, 2004), para 3:

'...that criminal acts, including against civilians, committed with intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or in a particular persons, intimidate a population or compel a movement or an international organization to do or obtain from doing any act, which constitutes offences within the scope of as defined in the international conventions of protocol relating to terrorism, there are in no circumstances justifiable by considerations of a political, philosophical , ideological, racial, ethnic, religious, or other similar feature.'

This definition empowers and enables the individual States to uphold and implement their unilateral definitions, thereby perpetuating subjectivity.⁶⁷ Likewise, the United Nation Security Council Resolution 1373 deliberately avoided the definition of terrorism in order to obtain consensus from its members.⁶⁸ Without a definition, 'universal jurisdiction over terrorism', may prove difficult. Instead, each individual nation's domestic laws will ultimately determine the effectiveness of this resolution.⁶⁹

⁶³ 1954 ILC Draft Code of Offences against the Peace and Security of Mankind (Part 1) in ILC 6th Session Report (3 June – 28 July 1954).

⁶⁴ "Undertaking, organizing, assisting, financing, encouraging or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public"; Draft Article 16(1) of 1990 is similar: ILC Yearbook (1990) p.336.

⁶⁵ ILC, Report on 48th session (6May – 26 July 1996) UN Dec A/51/10, ch II (2), paras 46-48.

⁶⁶ Res E, annexed to the Final Act of the UN Diplomatic Conference of Plenipotentiaries on an ICC, 17 July 1998, UN Doc. A/Conf.183/10; Saul (2005a) op cit at p.72.

⁶⁷ Saul B. (2005b) "Definition of 'Terrorism' in the UN Security Council 1985-2004". *Chinese Journal of International Law* 2005 4(1) 141-166.

⁶⁸ Saul B. (2005b), *ibid* at 141-166.

⁶⁹ Saul B. (2005b), *ibid* 141-166.

Since the definition of terrorism is limited in scope in international law,⁷⁰ most effective work arises within treaties which focus on specific areas, such as air transportation,⁷¹ and weapons.⁷² In addition the financing of terrorism has become pivotal,⁷³ and some treaties have included definitions of acts deemed to exceed the conventional treaty offences.⁷⁴ What is significant is that the actual acts of terrorism are considered to affect the international arena,⁷⁵ but do little to actually 'establish criminal offences'.⁷⁶ Perhaps there is justification to the assertion that such an approach ensures the 'broad multilateral support for many of the treaties, since it evades the political and prodigious technical difficulties of a generic, analytic, deductive, or comprehensive definition'.⁷⁷

In summary it is contended that such an evasion of a precise definition has led to 'widely differing approaches to jurisdiction';⁷⁸ as has been the case with the United States, which have avoided the 'traditional systems of criminal or military justice' which are not seen to be applicable in terrorist cases.⁷⁹ The differences in the definition of terrorism in the international

⁷⁰ See McWhinney E. (1987) *Aerial Piracy and International Terrorism* Martinus Nijhoff, Dordrecht; Alexander Y. & Sacher E. (editors) (1990) *Aerial Piracy & Aviation Security* Martinus Nijhoff, Dordrecht; Plant G. (1990) 'The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation' 1990, 39 *ICLQ* 27; Falvey A. (1986) 'Legislative Responses to International Terrorism: International and National Efforts to Deter and Punish Terrorists' 1986, 9 *BC ICLR* 323, 326-343; Murphy J. (1987) 'The Future of Multilateralism and Efforts to Combat International Terrorism' 1987; 25 *Col JTL* 35, 41-49; Cassesse A. (1989) 'The International Community's 'Legal' Response to Terrorism' 1989, 38 *ICLQ* 589, 591-596; Higgins R. & Flory M. (editors) (1997) *Terrorism and International Law*. Routledge: London.

⁷¹ See, e.g. 1970 Hague Convention; 1971 Montreal Convention & 1988 Montreal Protocol; 1973 Protected Persons Convention; 1994 UN Personnel Convention; 1988 Rome Convention; 1988 Rome Protocol. See also: 1970 Hague Convention; 1971 Montreal Convention; 1979 Hostages Convention.

⁷² See e.g. 1980 Vienna Convention; 1991 Montreal convention; 1997 Terrorist Bombings Convention; 2005 Nuclear Terrorism Convention..

⁷³ 1999 Terrorist Financing Convention.

⁷⁴ Such as attempt, threats complicity, abetting, organizing or directing, or intentionally contributing to the commission of an offence by a group of persons acting with a common purpose; see e.g. 1970 Hague Convention, Art., 1; 1971 Montreal Convention, Art., 1.

⁷⁵ 1972 Biological Weapons Convention; 1982 UNCLOS, Arts 100-107; 1944 Chicago Convention, Art 4; 1993 Chemical Weapons Convention; 1992 Biological Weapons Convention; UPU Resolution CA 1/2001 on Combating Terrorism; ICAO Resolutions A17-1 to A17-24 (1970); ICAO (Council) Resolution 1970, ICAO Doc 8923-C/998; Joint Statements of Heads of State and Government on International Terrorism, Bonn Summit Meeting, 17 July 1978, (1978) 78 State Department Bulletin No.2018, 5 (Bonn Declaration); Guidelines for the Application of the Bonn Declaration, London, 9 May 1979; NAM, XIII Confrence of Heads of State or Government, final document, Kuala Lumpur, 25 February 2003.

⁷⁶ 1963 Tokyo Convention; 1991 Plastic Explosives Convention. see: Saul (2006) op cit at 132-133.

⁷⁷ Saul B. (2006) op cit at 132-133.

⁷⁸ Peers S. (2003) 'EU Responses to Terrorism' 2003, 52 *ICLQ* 227 at 233.

⁷⁹ US Secretary of State, C. Rice, quoted in Saul B. (2006), op cit at 140-141. see also *Attorney General of Israel v Eichmann* (1961) 36 *ILR* 5 (District Court Jerusalem); *US v Alvarez-Machain* (1992) 31 *ILM* 902; Thrush B. (1994)

treaties has led to 'so much uncertainty and contradiction, so much fluctuation and discrepancy ... that it is not possible to discern in all this any constant and uniform usage, accepted as law.'⁸⁰

In order to avoid deadlock, the perpetual approach adapted by the international community is to focus 'on terrorist *acts* rather than the definition of terrorism',⁸¹ thus perpetuating the subjectivity - to suit individual sovereignty and local politics. For example, the Draft Rome Statute, 1998, reflected on the need to address terrorism when thirty four States⁸² advocated the need to include terrorism⁸³. However the States differed in their views on definition and 'criminalization'. Whilst some States wanted terrorism to incorporate all offences 'against humanity',⁸⁴ others such as Russia, advocated to limit terrorism to 'the most serious' offences; 'Turkey believed systematic and prolonged terrorism against a civilian population should be covered; and Albania argued that institutionalized State terrorism should be included.'⁸⁵ Egypt did not want to include nationalists movements, contrary to many other Islamic States that wanted to use the Arab League Convention's definition of terrorism.⁸⁶ Thus, the commonality of the international community stops at the condemnation of terrorism.⁸⁷ It has been observed that the consequent absence of a terrorism definition from the Rome Statute is normatively significant, since the Statute represents the most recent and 'authoritative expression of the legal views of a great number of States on international criminal law.'⁸⁸

'US Sanctioned Kidnappings Abroad' 1994, 11 *Ariz JICL* 181; Bush J. (1993) 'How Did We Get Here? Foreign Abduction after Alvarez-Machain' 1995, 45 *Stanford Law Review* 939; Halberstam M (1992) 'International Kidnapping' 86 *AJIL* 736; Glennon M. (1992) 'State Sponsored Abduction' 86 *AJIL* 746; Whitlock C. (2005) 'Police retrace CIA's expensive Italian job', *Sydney Morning Herald*, 27 June 2005.

⁸⁰ *Asylum case (Columbia v Peru)* (1950) ICJ Reports 266, 276-277 at 277.

⁸¹ Saul B. (2006) op cit at 147.

⁸² Draft Rome Statute (1998) vol. II, in *Official Records of the UN Diplomatic Conference of Plenipotentiaries on an ICC, Rome, 15 June – 17 July 1998, UN Doc A / CONF. 183/13, vol. II*; 34 States: Albania, 82; Algeria 73, 148, 177, 283; Armenia 78; Barbados 248, 354; Benin 286; Bolivia 347; Burundi 118; Cameroon 181; Camoros 287; Congo 117; Costa Rico 175; Cuba 181; Dominica 248, 354; Egypt 281; Ethiopia 288; India 87, 177-178, 323; Jamaica, 328; Kuwait 289; Kyrgyzstan 77; Libya 102; Macedonia 86; New Zealand 178; Nigeria 111; Pakistan 173; Russia 115, 117, 289; Saudi Arabia 179, 293; Sri Lanka 123, 176, 288, 339; Tajikistan 92; Thailand 332; Trinidad & Tobago 248, 354; Tunisia, 174, 292; Turkey 106, 124, 179, 276, 330; UAE 177; Yemen 178. see also: Sliverman C (1998) 'An appeal to the UN: Terrorism must come within the Jurisdiction of an International Criminal Court' 4 *New England & Comparative Law Annual*: www.nesl.edu/intljournal/VOL4/CS.HTM.

⁸³ Saul B. (2006) op cit at 180.

⁸⁴ Algeria, Camoros, India, Sri Lanka, Tunisia, Turkey.

⁸⁵ Saul B. (2006) op cit at 181.

⁸⁶ Saul B. (2006) op cit at 181.

⁸⁷ Resolution E, annexed to the Final Act of the UN Diplomatic Conference of Plenipotentiaries on an ICC, 17 July 1998, UN Doc A / Conf. 183/10.

⁸⁸ Saul B. (2006) op cit at 182-183.

In the absence of consensus, 'a number of conflicting definitions of terrorism have emerged in the practice of the UN General Assembly and the Security Council.'⁸⁹ Resolutions are legally non-binding, however the importance of United Nations General Assembly practice is paramount to the global community.⁹⁰ Resolutions play an imperative role in promoting and relaying imperative decisions undertaken by the international States. They are significant because they are used to clarify any ambiguity caused in domestic settings. In addition, when 'formed' as declarations they 'may have direct legal effect as authoritative interpretations of the Charter'.⁹¹

Resolution 1373⁹² has been described as 'the boldest resolution'⁹³ to be passed by the Security Council. Not only does the United Nations Security Council direct its Member States to implement into their domestic legislation counter terrorist law, but has also set into action 'a body of legal norms' that the Member States were compelled to implement.⁹⁴ It is mooted that it is a reformulation of the United States Patriot Act⁹⁵ and has been described as the 'international version' of the said Act. The political bias in the definition of terrorism is fuelled by the United State's hegemonic dominance in ensuring that Resolution 1373 was adapted and accepted by the Member States. Thus, the international community responded with its own 'broad' definitions of terrorism, leading one commentator to conclude that the international definitions of terrorism are indeed 'too vaguely defined, and potentially abusively enforced as a result of being vaguely defined.'⁹⁶

In brief, it is perhaps justified to observe that by not having a generic definition the 'international community reacted pragmatically to terrorism', as there are inevitable 'chronic' differences over 'freedom fighters' and those seeking legal 'self determination'.⁹⁷ Significantly, what is

⁸⁹ Saul B. (2006) op cit at 191.

⁹⁰ UNGA issues non-binding recommendations under Arts. 10-11 of the Charter, cited in Saul B (2006:191), *ibid*.

⁹¹ Saul B. (2006) op cit at 192-193.

⁹² UN Security Council Resolution 1373 (2001).

⁹³ Scheppele K. L. (2011) 'Global security law and the challenge to constitutionalism after 9/11.' *P.L. 2011, April*, 353-377 at 360.

⁹⁴ *Ibid* at 360.

⁹⁵ *Ibid* at 362.

⁹⁶ *Ibid* at 369.

⁹⁷ Saul B. (2006), op cit at 248.

universally accepted is that 'terrorism is a crime of special characteristics'.⁹⁸ It is also argued that the absence of a universal definition of terrorism can create practical difficulties in prosecuting terrorism in an international setting.⁹⁹ The lack of a universally accepted definition has perpetuated the academic discussion on terrorism, and thus the discussion on the definition of terrorism is not complete without due consideration to scholars and philosophers.

4.2.4 Scholarly / philosophical attempts to define terrorism

As the foregoing discussion has highlighted it has indeed been established that terrorism has insidiously worked its way into our contemporary, everyday vocabulary.¹⁰⁰ It cannot be denied that defining terrorism does indeed vary from country to country, and is often based on emotive social factors, economic and political ideology.¹⁰¹

It is argued that a definition of terrorism lacks concrete and value-free language. It is therefore readily applied to a ruler-rebel dichotomy,¹⁰² for instance those fighting a ruling government as in Syria, are automatically labeled terrorist. It is significant that earlier works such as that of Brian Crozier,¹⁰³ attempted to differentiate and identify terror as that employed by insurgents and rebels, and counter terror as the state's response against this insurgency.¹⁰⁴ However, despite its common application, such a dichotomy is held to be 'overly simplistic' as Thomas Perry Thornton noted of Crozier's early work, 'it is by no means inevitable that the insurgents will initiate terrorism; in some instances, they may be reacting to the terror of the incumbent's'.¹⁰⁵ His solution was to attempt to differentiate between 'enforcement terror' and 'agitational terror'.¹⁰⁶ Similarly, W.F.May referred to 'regime of terror' versus 'siege of terror'; Edward Herman referred to 'wholesale terror' versus 'retail terror'; and Richard Falk referred to 'functionary'

⁹⁸ Ibid

⁹⁹ Bellemare D. (2012) "Bringing terrorists before internal justice: a view from the front lines: notes for an address." *Crim L.F.* 2012, 23(4) 425-435.

¹⁰⁰ Hoffman B. (1998) *Inside Terrorism*. Columbia University Press, New York. p.13.

¹⁰¹ Lauderdale P. & Oliverio A. (2005) "Terrorism as Deviance or Social Control: Suggestions for Future Research" *International Journal of Comparative Sociology*, Vol. 46; 1-2; p.153.

¹⁰² Livingston (1994), op cit at p.5.

¹⁰³ Crozier B. (1960) *The Rebels: A Study of Post-war Insurrections*. Boston: Beacon Press.

¹⁰⁴ Livingston (1994), op cit at p.5.

¹⁰⁵ Thornton T.P. (1964) "Terror as a Weapon of Political Agitation", in Eckstein H. (editor) (1964) *Internal War: Problems & Approaches*. New York: Free Press of Glencoe. p.71.

¹⁰⁶ Livingston (1994), op cit at p.5.

terror and 'revolutionary' terror.¹⁰⁷ These works were criticised by subsequent scholars as deficient¹⁰⁸ of detailed analysis.¹⁰⁹

In seeking greater precision in terms Wilkinson¹¹⁰ recognised that terrorism is used incorrectly to mask political violence, and counter terrorism is employed in instances when the insurgents initiate an agenda that is not approved by the ruling government. Hence the term terrorism could be applied to a democratic revolution¹¹¹ as it was by the Ghadaffi government in Libya, when his regime referred to the uprising in the country as 'terrorism'. Thus Wilkinson's thesis encompasses the political nature of terrorism (discussed in detail in the subsequent section).

However, it has been accepted that terrorism differs from other forms of rebellion or violence because of its psychological impact and its indiscriminate nature which perpetuates fear. This is increased by the belief that anyone may be a victim of it, and hence no one is protected.¹¹² It is different from 'normal' crime, and this is reflected in the special laws against terrorism which involve different treatment within policing, the criminal justice system and the penal system.

On reflection, it is contended that the concept of terrorism used in the contemporary academic literature is essentially reflective of political values.¹¹³ The underlying goal of terrorism it is argued is first and foremost political, whether this is in the form of an Islamist aiming to eradicate the ruling governments and replace them with their selected leaders, their political motive is prevalent.¹¹⁴ Despite 'the worrying trend whereby powerful criminal groups such as the Italian Mafia¹¹⁵ and the Latin American macro-barons¹¹⁶, have adopted some of the tactics and

¹⁰⁷ May W.F. (1974) "Terrorism as strategy and Ecstasy" *Social Research* 41, 1974. pp.277-98; Falk R. (1988) *Revolutionaries & Functionaries: The Dual Face of Terrorism*. New York: E.P.Dutton;

Livingston (1994), op cit at p.5.

¹⁰⁸ Livingston op cit at 5.

¹⁰⁹ Wardlaw G. (1982), op cit at p.12.

¹¹⁰ Wilkinson P. (2003) "Implications of the attacks of 9/11 for the future of terrorism", in Buckley M. & Fawn R. (editors) (2003) *Global Responses to Terrorism: 9/11, Afghanistan and beyond*. New York: Routledge Publication.

¹¹¹ Wilkinson P. (2003), *ibid*, at p.27.

¹¹² Wilkinson P. op cit, at p.28.

¹¹³ Wilkinson P. op cit at 28.

¹¹⁴ Wilkinson P. op cit at, p.28.

¹¹⁵ Jamieson A. (1989) *The Modern Mafia* Conflict Studies, No.224, Research Institute of the Study of Conflict & Terrorism.

¹¹⁶ Clutterbuck R. (1990) *Terrorism and Guerilla Warfare*. London: Routledge. Pp.89-114.

weapons of terrorist groups ,’ but it differs from ‘contemporary terrorism that is intertwined with politics.’¹¹⁷

In turn, whether a terrorist organisation is good or bad involves a subjective analysis based on the political outlook at any given time.¹¹⁸ Academic commentary continually reinforces the ‘political end’ of terrorism. Whether it is indeed a bargaining tool employed by the weaker adversary, is not as relevant here as its persistent political nature.¹¹⁹ Terrorism thus forces the government to respond. Accordingly, it is submitted that the approach by the government mirrors Richard Posner’s theory of ‘economic logic’. Terrorism, as has been exemplified by the London bombings is painfully expensive for a society, not just because of the loss of human lives. The economic loss to any given society is thus considered in the structure of counter terrorism policies and legislation.¹²⁰

Hence, a ‘pragmatic’ approach to the definition should be favoured to a ‘philosophical’ approach¹²¹, in that ‘the winning parties actually compensate the losing parties’,¹²² although in terrorism there are no winning parties, but the public are compensated via counter terrorism legislation and policies. The risks taken by the government’s judicial and legislative decisions are justified.¹²³ Posner argues that under the theory of ‘wealth maximisation’,¹²⁴ the judiciary rules on the definition of terrorism according to the principles which will maximize society’s total wealth.¹²⁵ Brix views this as ‘law’s attempt to construct a more practical version of

¹¹⁷ Wilkinson P. (2003), op cit at p.28.

¹¹⁸ Rathbone A. & Rowley C.K. (2002) “Terrorism” *Public Choice* 111, 2002, cited in Ousman A. (2003) “Religious Violence and Absolute Solutions” *Queen’s Quarterly* Vol.110: Issue 3. Fall 2003. p.347. (Queen’s Quarterly; Gale Group).

¹¹⁹ Crenshaw M. (1988) “Theories of Terrorism: Instrumental & Organizational Approaches” in Rapoport D.C. (editor) (1988) *Inside Terrorist Organizations*. Columbia University Press. New York at p.13 and Schelling T.C. (1966) *Arms & Influence*. New Haven, CT: Yale University Press, especially “The Diplomacy of Violence” pp.1-34.

¹²⁰ Posner R.A. (1985) “An Economic Theory of the Criminal Law” *Columbia Law Review* October 1985.

¹²¹ Singer P. (2004) in Nussbaum M.C. & Sunstein C.R. (Eds) *Animal Rights: Current Debates and New Directions*. Oxford University Press at p.80.

¹²² Brix B. (1996) *Jurisprudence: theory and context*. Westview Press, Oxford, at p.165.

¹²³ See Posner R. (1979) “Utilitarianism, Economics and Legal Theory” 8 *Journal of Legal Studies*; Posner R. (2001) “The Speech Market” in *Frontiers of Legal Theory* 62-94; Posner R. (2001b) “Pragmatism Versus Purposivism in First Amendment Analysis” 54 *STAN.L.REV.* 737, 741.

¹²⁴ Cane P. (2005) “The Anatomy of Private Law Theory: A 25th Anniversary Essay” 25 *OXJLST* 203, Summer 2005.

¹²⁵ Brix B.(1996) op cit at p.171; ‘The “wealth” refers to the sum of all tangible and intangible goods and service’ Posner, *The Problems of Jurisprudence* cited at p.356.

utilitarianism'.¹²⁶ Therefore, government decisions or actions on the definition of terrorism are allowed on behalf of its citizens without their actual consent on the basis that the government's decision maximizes 'social wealth' and it leaves everyone (or almost everyone) better off. A key aspect of maximizing their 'investments', is the legislator's ability to 'signal credible long – term commitments to certain policy preferences'.¹²⁷ They argue that national security takes precedent over any potential conflict. Thus, Posner argues that if asked, everyone (or almost everyone) would have given consent to the government's decision.¹²⁸ In analyzing Posner's work Rubenfield offers examples of Posner's views (that can also be applied to UK legislation¹²⁹): 'Government may prohibit dissenting political opinions when the country 'feels' (the word is Posner's) that such opinions are dangerous'.¹³⁰ In such circumstances, the definition of terrorism can be very broad to cover every eventuality, which maximise's society's wealth by preventing terrorism that is costly to the citizens and the government. The government if seen to be doing very little may even have to forfeit their elected offices.

In line with this 'pragmatic' argument that the government is justified to act via its counter terrorism Walker¹³¹ argues that, irrespective of the difficulties, it is justifiable to make an attempt and include a legal definition of terrorism. Walker's justifications of counter terrorism legislation recognise the State's power to protect its citizens.¹³² Walker elaborates that 'State responsibility' takes precedent, and thus compels the State to act and take action against terrorism to protect its citizens. The rights of the citizen are essentially the State's priority under Articles 1 and 2 of the European Convention on Human Rights.¹³³ Moreover, irrespective of whether the 'political cause' is 'deemed legitimate' it has to be treated in line with war crimes.¹³⁴ Furthermore it is argued that since terrorism as a crime differs from other forms of crime, it therefore requires

¹²⁶ Brix B. (1996) op cit at p.172.

¹²⁷ Hirschi R. (2005) "Preserving Hegemony? Assessing the Political Origins of the EU constitution" 3 *Int'l J. Const. L.* 269, May 2005. See also: Landers W. M. & Posner R.A. (1975) "The Independent Judiciary in an Interest Group Perspective", 18 *J.L. & Econ.* 875.

¹²⁸ Brix B. (1996) op cit at p.173.

¹²⁹ An example is Terrorism Act 2006, specifically in relation to 'Glorification'.

¹³⁰ Rubenfield J. (2002) "A Reply to Posner", *Stanford Law Review*, Vol. 54, 2002.

¹³¹ Walker C. (2002) *The Anti-Terrorism Legislation*. Oxford: Oxford University Press, p.11.

¹³² Walker C.(2002) *ibid*, at p.12.

¹³³ Walker C.(2002) op cit at p.13; see United Nations General Assembly Resolutions 40/61 of 9 Dec., 1985; 49/60 of 9 Dec 1994; see also Donoghue L.K. (2001) *Counter- Terrorism Law*. Dublin: Irish Academic Press, pp.307-308.

¹³⁴ Walker C.(2002) op cit at p.13.

'special' counter terrorism laws emphasizing the gravity of the offence, and the lengthy investigation it requires.¹³⁵

Interestingly, the Joint Committee on Human Rights¹³⁶ 'considered the definition of terrorism [and] expressed concerns about the width of the definition, and that it needed to be changed'. But they found that 'a narrower definition of terrorism' would hinder the prosecution, whilst recognising that increased discretion had the potential to hinder community relations.¹³⁷ Thus, the Committee epitomized the trends that political convenience around national security is, the underlying consideration when defining terrorism.

The difficulty of defining terrorism is perpetuated by the endless subjectivity of the concept. Hence it is necessary to turn next to the academic commentary on terrorism's subjective nature.

4.2.5 The subjective definition of terrorism

The foregoing discussion about the definition of terrorism and its potential difficulties is imperative for the thesis. It will ultimately provide a link to the proposed sample's views on terrorism, and whether the 'varied' nature of the definition alienates the community or attracts support for the counter-terrorist legislation.

The preceding discussion has also highlighted that for some, terrorism is a process comprising several phases.¹³⁸ For others, it is a military strategy; for others still, a form of political violence¹³⁹ approximating to insurrection, rebellion, anarchy or political protest¹⁴⁰ or revolution.¹⁴¹ There is the ongoing discourse around the idea that one man's terrorist is another

¹³⁵ Walker C.(2002) op cit, at p.13.

¹³⁶ *Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights – Twenty-Fourth Report. HL 240 (HC 1576) Session 2005-06* Printed 24 July 2006.

¹³⁷ Ibid.

¹³⁸ Paust J.J. (1979) "A Definitional Focus" in Alexander Y. and Finger S.M. (editors) *Terrorism: Interdisciplinary Perspectives*. New York: John Jay Press; pp. 18-29.

¹³⁹ Miller J.A. (1979) "Political Terrorism and Insurgency: An Interrogative Approach" in Alexander Y. and Finger, op cit., pp65-91.

¹⁴⁰ Friedlander R.A. (1979) "The Origins of International Terrorism" in Alexander Y. and Finger, op cit., pp.30-45 at p.33.

¹⁴¹ Rapoport D. (1979) "The Politics of Atrocity" in Alexander & Finger, op cit., pp.46-61.

man's freedom fighter,¹⁴² and this idea reflects the basic subjectivity. Some authors have tried to isolate precisely those characteristics of political violence in given societies that may be said to describe terrorism. Attention is afforded to the antecedents and consequences, psychology of terrorists, their ideologies, their political position, and the terrorist's actual goals.¹⁴³

It is also argued that the language of terrorism automatically creates 'moral judgment'; terrorism is always viewed as criminal, and counter terrorism (irrespective of its methods) is righteous and correct.¹⁴⁴ This is simply saying that the ascription of the label 'terrorist' is pejorative, which indeed it is. Hence, law seeks to cement that label by using its own inherent legitimacy as a persuasive factor. It has been asserted that 'in its modern form, therefore, the language of terrorism has become the rhetorical servant of the established order, wherever it might be, and however heinous its own activities. Talking of 'terrorism' in this way flattens the world of international relations.'¹⁴⁵ Indeed, many authors point out that terrorism is a moral problem,¹⁴⁶ and highlight the fact that because terrorism is not the exclusive presence of the politically motivated but may be used by deviants and socio-paths, the problem of defining and identifying terrorism becomes more complex.¹⁴⁷

However, 'moral judgment' aside, when war, rebellions and dangers erupt, most constitutional governments step outside their usual procedures to deal with national preservation and national security agendas.¹⁴⁸ Therefore, there is the ongoing danger¹⁴⁹ as emphasised in earlier discussion,

¹⁴² Lodge (1988), op cit, at p.1-2.

¹⁴³ Lodge (1988) op cit at p.2.

¹⁴⁴ Gearty C. (2003) "Terrorism and Morality" *E.H.R.L.R.* 2003, 4, 377-383.

¹⁴⁵ Gearty, ibid.

¹⁴⁶ Wardlow G. (1982) *Political Terrorism: Theory, Tactics and Countermeasure*. Cambridge: CUP;

Rapoport D. & Alexander Y. (editors) (1982) *The Morality of Terrorism: Religious & Secular Justifications*. Oxford. Pergamon.

¹⁴⁷ Collins J. (1981) "Definitional Aspects" in Alexander Y. & Ebinger E. (editors) *Political Terrorism & Energy*.

New York: Praeger; Wardlow, (1982), ibid; Lodge, (1988), ibid, at p.2.

¹⁴⁸ Schepelle K.L. (2006) "North American Emergencies: The Use of Emergency Powers in Canada and The USA" April 2006: 4 *Int'l J.Const.L.* 213.

¹⁴⁹ Grieve D. (2006) "A well-ordered society? It's time to cry freedom" *The Times* May 16, 2006, at p.4 (London). An example of this is: 24 hours following the Omagh bombings in 1998, legislation was enacted which enabled the conviction of person, who was a member of a proscribed organization and sentenced upto 10 years imprisonment on little more than the opinion of a senior police officer. This procedure was never used and repealed two years later in the Terrorism Act 2000. See also: Pfaff W. (2003) "Terrorism: Bush II redefines the term". *Commonweal*. Vol.130. Issue 10. May 23, 2003, p.8.

that the governments may act impulsively to events and thus 'contingencies' have to be placed in advance to avoid legal injustices.¹⁵⁰

That said, the political concept of terrorism is clearly shaped by the state's emphasis on terrorism, and it has changed over history. Terrorism is clearly viewed through a political process not in line with 'normal' crime. It is a continuous process that distinguishes itself from 'normal' political crime such as 'one off' riots. In addition, violence defined in terrorism is described as 'exceptional'. An example of political process can be obtained from USA. President Bush's 'War on Terror' has led to global interest in terrorism.

Terrorism's challenge to the ruling governments and therefore creates inevitable instability,¹⁵¹ and due to its underlining political nature, terrorism is perceived subjectively. There are countless examples, such as Nelson Mandela, and that of George Washington who was viewed as a hero in USA, and while Gerry Adams was viewed as a terrorist. Yet it would be fair to state that all had a similar purpose.

Next, it is argued that a states terror is viewed as a legitimate use of force and therefore normal. Terrorism is the illegitimate use of force by non-state actors and therefore deviant.¹⁵² However, this is polemical, as not all state terror is viewed as legitimate as emphasized by the *Nuremberg* judgment,¹⁵³ which provides precedent for holding individuals subject to sanctions for the use of terror, irrespective of their rank, such as Saddam Hussein.¹⁵⁴ Helen Duffy argues that 'in exceptional circumstances [it is] the responsibility of other states to take measures to end the wrong in question'.¹⁵⁵ It is further submitted that wrongful acts that breach any international

¹⁵⁰ Walker C. (2002) *The Anti-Terrorism Legislation*. Oxford: Oxford University Press, at p.16.

¹⁵¹ Oliverio, A. (1997) "The State of Injustice: The Politics of Terrorism and the production of order". *International Journal of Comparative Sociology*. Vol. 38, 1-2; p. 48.

¹⁵² Lauderdale, P. & Oliverio, A. (2005b) "Introduction: Critical Prospective on Terrorism" *International Journal of Comparative Sociology*, Vol 46: 1-2: p. 3.

¹⁵³ Judgement in *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Part 22* (London, 1950), p.447.

¹⁵⁴ Duffy H. (2005) *The 'War on Terror' and the Framework of International Law*. Cambridge University Press.

¹⁵⁵ Duffy, *ibid* at p.47.

obligations of the state trigger the international responsibility of the state.¹⁵⁶ In addition, Duffy argues that 'where the state does not exercise the necessary control at the time of the conduct in question, it may nonetheless assume responsibility for the wrong *ex post facto*, where it subsequently 'acknowledges or accepts' the conduct as its own.'¹⁵⁷ The legitimacy of intervention is questioned in the absence of a universal definition, and actions however meaningful, appear politically motivated.¹⁵⁸

The political motivation in the definition of terrorism makes the state responsibility for acts of terrorism difficult to assess, and the 'critical issue is often not whether a wrong has occurred but whether the test for attribution has been satisfied, such that the state is responsible for the wrong'.¹⁵⁹ Importantly, 'state responsibility may result from wrongs committed through terrorism or counter-terrorism. The challenge to the injured parties is to ensure that international law is upheld and enforced against states involved in 'terrorism', or in unlawful responses thereto'.¹⁶⁰

It is further submitted that a state response to terrorism, even if not state terrorism itself, can create a 'breeding ground for terrorism and their causes when the Bush, Blair and other Governments respond with violence.' Such a response can compromise political legitimacy.¹⁶¹ The constitutional nation's 'institutionalized double standards' in defending their cause and their response can lead to violence, and perpetuate the sympathy for the terrorist cause.¹⁶² The 'breeding ground' and sympathy for the terrorist cause was acknowledged following the events of 7 July 2005: 'extremists could be created at any time through a very quick process'.¹⁶³ It is

¹⁵⁶ Article 2 of the Articles on Responsibility of States for Intentionally Wrongful Acts, adopted by the International Law Commission in 2001; *Report of the International Law Commission*, on the work of its 53rd session, UN Doc. A/56/10 (2001); Duffy, *ibid* at p.48.

¹⁵⁷ E.g. the *Tehran Hostages* case, where the ICJ held that Iran endorsed and perpetuated the hostage taking by the students: *United States Diplomatic and Consular Staff in Teheran (United States v. Iran)*, ICJ Reports, 1980; Duffy, *op cit* at p.51.

¹⁵⁸ Cassese A. (2012) "The legitimacy of international criminal tribunals and the current prospects of international criminal justice." *L. J. I. L.* 2012, 25(2), 491-501.

¹⁵⁹ Duffy (2005) *op cit* at p.57.

¹⁶⁰ Duffy (2005) *op cit* at p.70; note the SC Res. 1368 (2001), 12 September 2001, UN Doc. S/RES/1368 (2001).

¹⁶¹ Walker, R. B. J. (2003) "War, Terror, Judgment" *11th September 2001: War, Terror and Judgment*". Walker, R. B. J. & Gokay, B. (editors). London. Frank Cass. P. 62.

¹⁶² Walker R.B.J. (2003) *op cit* at 63.

¹⁶³ *Intelligence and Security Committee Report on the London Terrorist Attacks on 7 July 2005* (Cm.6785, London 2005), at p.34.

further acknowledged that 'their motivation appears to be typical of similar cases [and involved] fierce antagonism to perceived injustices by the West against Muslims'.¹⁶⁴ The video statement of Khan,¹⁶⁵ one of the four alleged 7 July 2005 bombers is evidence of the 'sympathy for the terrorist cause', Khan states: 'Your democratically elected governments continuously perpetuate atrocities against my people all over the world. And your support of them makes you directly responsible for protecting and avenging my Muslim brothers and sisters. Until we feel security, you will be our targets. And until you stop the bombing, gassing, imprisonment and torture of my people we will not stop this fight . . .'

The Bush's and the Blair's hegemonic attitudes are seen to act in the same manner as those whose actions they abhor and condemn. In essence, their attitudes created 'new pacts with violence',¹⁶⁶ by 'playing politics with the war on terror'.¹⁶⁷ Consequently, the lack of definition perpetuates the subjectivity of terrorism, which in turn, perpetuates the 'political propaganda' of the terrorist's cause¹⁶⁸ an example of this is highlighted by the preceding statement by Khan.

We live in an era where the 'ethics of revenge' legitimize 'massive displays of military power and de-legitimize' those that challenge the Bush/Blair regimes.¹⁶⁹ Thus, following 11th September 2001, 'an emergency was declared, an enemy was defined, violence was unleashed; democracy was once again subordinated to the claimed necessities of state', albeit, that the state itself may be viewed and defined as a terrorist, especially by those who are subjected to the fury of the Superpowers.¹⁷⁰

In conclusion because of the politicized concept of terrorism, there is no agreement of a single definition of terrorism, (although there is agreement on many of its elements¹⁷¹ and some moves

¹⁶⁴ HC Report of the Official Account of the Bombings in London on 7 July 2005. (2005-06 HC 1087), at p.26.

¹⁶⁵ Shown on al-Jazeera T.V. network, on 1 September 2005.

¹⁶⁶ Walker R.B.J. (2003), op cit at 64.

¹⁶⁷ Moran J. (2008) 'Politics, Security, Intelligence and Liberty after 9/11' in Moran J. & Phythian M. (eds.) *Intelligence, Security and Policing Post - 9/11.* Hampshire. Palgrave MacMillan at p.15.

¹⁶⁸ Romaniuk P. & Fink N.C. (2012) *From Input to Impact Evaluating Terrorism Preventing Programs.* Center on Global Counterterrorism Cooperation. (Canada, UK, Netherlands) at p.4.

¹⁶⁹ Walker R.B.J. (2003), op cit at 64.

¹⁷⁰ Walker R.B.J. (2003), op cit at 65.

¹⁷¹ UN based treaties ie Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. 14 December 1973; International Convention against the Taking of Hostages.

towards a universal concept in UN Security Council Resolutions 1373 and 1566). Practically, a person can be known as 'terrorist; freedom fighter and then leader of a state; a contemporary example is Nelson Mandela.¹⁷² The definition of terrorism as it stands, enables the ascription or relegation of opponents as 'terrorists' and, as the tragedy of 11th September 2001 has demonstrated, it has had a sudden a profound effect on the perception of terrorism.¹⁷³ It is now on the agenda of every state.¹⁷⁴

4.2.6 Summary

Terrorism continues to remain an enigmatic and elusive phenomena.¹⁷⁵ There is no unity in its definition, historically the definition has changed over the time, and its subjective nature is inevitable.¹⁷⁶ Hence in the words of Livingston, terrorism is summed up as the,

'the good faith effort to bridge the gap between language and violent practices account for the volume and range of definitions of terrorism formulated over the years. Yet greater specificity alone will not overcome the difficulties surrounding terrorism definition. The fundamental problem is found in the relationship between political language and values. Use of the term implies a moral judgment. If one party can successfully attach the label 'terrorist' to its opponent, then it has indirectly persuaded others to adapt its moral viewpoint. Terrorism is, after all, what the bad guys do. More precise definitions alone cannot distinguish 'terrorism',

17 December 1979; International Convention for the Suppression of Terrorist Bombings, 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, 9 December 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, 13 April 2005. The International Civil Aviation Organization sponsored conventions are: (Tokyo) Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963; (Hague) Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970; (Montreal) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 24 February 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991. The International Atomic Energy Agency has fostered the Convention on the Physical Protection of Nuclear Material. 3 March 1980. The International Maritime Organization has fostered the (Rome) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 10 March 1988. These 13 conventions form the basis of the work of the Counter-Terrorism Committee of the UN which all states report to. Furthermore, efforts continue to develop such a definition, especially in the Sixth Committee (Legal) of the UN General Assembly the Ad Hoc Committee on Terrorism of the General Assembly.

¹⁷² Suter K. (2005), "Terrorism on International Law". *Contemporary Review October 2005*. Vol 287:1677, at p. 216.

¹⁷³ Haque M. S. (2003), "The Revival of Realism in International Politics After September 11 and Its Ethical Impact". *International Journal of Politics and Ethics*. Vol 3 Issue 1, p. 135. Nova Science Publishers.

¹⁷⁴ UN Security Council Resolution 1373.

¹⁷⁵ Lauderdale & Oliverio, (2005) op cit at 3.

¹⁷⁶ Hoffman, (1998), op cit at p.43.

on the one hand, from the 'heroic struggle of freedom fighters' on the other. Nor can a more refined definition distinguish between 'enforcement terrorism' and the legitimate exercise of police power to insure public safety and law enforcement'.¹⁷⁷

To a large extent, the passing years, have reinvented and redefined terrorism; but 'political' is a word that further broadens the spectrum of terrorism.¹⁷⁸ Perhaps the only characteristic generally agreed upon is that terrorism always involves violence or the threat of violence.¹⁷⁹ The psychological impact of the terrorist threat is equally if not more important to the public than the terrorist act itself.¹⁸⁰ Commentators suggest that when analysing terrorism, it should incorporate all possibilities of 'violence and motivation' from sexual assault to the evasion of inheritance tax. Still others have insisted that unless leaders such as Hitler, and Pol Pot be considered terrorists, and feudalism, colonialism, imperialism, oppression viewed as antecedents the true analysis of terrorism is meaningless and empty.¹⁸¹ Perhaps it is fruitless to attempt to formulate a truly comprehensive definition. As Schmid¹⁸² admits, 'are we to conclude that terrorism is impervious to precise, much less accurate definition? Not entirely, if we cannot define terrorism, then we can at least usefully distinguish it from other types of violence and identify the characteristics that make terrorism the distinct phenomenon of political violence that it is'.¹⁸³ This message of political violence was reinforced by the same commentator twenty three years later.¹⁸⁴

Unlike the international community, academics have formulated many definitions of terrorism. Predictably, they are comprehensive, encompassing all the categories discussed in the preceding discussions. They effectively distinguish between those targeting only the military personnel and those targeting civilians indiscriminately. The definitions recognize state and non-state terrorism. Furthermore, the scholarly community distinguishes terrorism from organised crime and war crimes by recognising that terrorism is '*predominately political*.' Aside from the array of

¹⁷⁷ Livingston, (1994), op cit at p.6.

¹⁷⁸ Ronczkowski, M. R. (2004) "Terrorism and Organized Hate Crime: Intelligence Gathering Analysis, an Investigations" CRC Press: Boca Raton, FL. p. 17.

¹⁷⁹ Lacquer (1999), op cit p.5-6.

¹⁸⁰ Hoffman (1998), op cit at p.38.

¹⁸¹ Lacquer (1999), op cit at p.6.

¹⁸² Schmid, A.P., Jangman, A. J. et al., (1988) *Political terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*. Transaction Books, New Brunswick, at p5-6.

¹⁸³ Hoffman, (1998), op cit at p.39-40.

¹⁸⁴ Schmid A. P. (2011) (editor) *Handbook of Terrorism Research* London: Routledge. pp.86-87, cited in Schmid A.P. (2012) "The Revised Academic Consensus Definition of Terrorism." *Perspectives on Terrorism* May 2012, Vol.6, Issue 2: pp.158-159.

motivations listed, it is concluded that the underlying aim of terrorism is to 'form part of a *campaign* of violence which alone can, due to the serial character of acts of violence and threats of more to come, create a pervasive climate of fear that enables the terrorists to manipulate the political process.'¹⁸⁵ The comprehensive nature of terrorism can be reflected further by categorizing terrorism.

4.3.1 Categories of Terrorism

It is useful to explain categories of terrorism based on their cause and/or political motivation for this thesis since it also demonstrates the broad nature of what encompasses terrorism. As stated earlier, Pakistan justifies the militancy in Kashmir as the work of 'freedom fighters', while India views the same situation as 'terrorism'. Thus, this detailed analysis is imperative as it demonstrates that important distinctions can be made between *international* and *domestic* terrorism: the former is terrorist violence involving the citizens of more than one country, while the latter is confined within a particular locality in the country. Furthermore, distinction is useful for analytical and statistical purposes. Pragmatically, it is accepted that it is difficult to ascertain a terrorist organization that has a sole 'domestic' agenda; they usually require political and financial and practical support that is often obtained overseas.¹⁸⁶ In addition, at the present time almost all of the attention is focused on Islamic terrorism, 'but it is useful to remember from time to time that this was not always the case'.¹⁸⁷

4.3.2 State-Sponsored Terrorism

State terrorism it is argued has become the major justification for modern war.¹⁸⁸ State terrorism relates to the perceptions of terrorism and for the purpose of this thesis is of imperative significance. States use this type of terrorism both as a tool for domestic and foreign policy. Examples provided by commentators are those of Iran, who in order to promote domestic coerciveness, proposed to eliminate its opponents – including those overseas. Similarly when North Korea aimed to eradicate the South Korean government leaders in Rangoon, they did so to promote the interests of North Korea. However, it is recognized that state sponsorship of

¹⁸⁵ Ibid.

¹⁸⁶ Wilkinson, (2003) op cit at 29.

¹⁸⁷ Lacquer W. (2004) "The Terrorism to Come" *Policy Review* 126: 2004 at p.49 Hoover Institution Press.

¹⁸⁸ Mooney J. & Young J. (2005) "Imagining Terrorism: Terrorism and Anti-Terrorism; Two Ways of Doing Evil" *Social Justice*. Vol 23, Issue 1, 2005; p. 113.

terrorism's aim is to hide their participation and to 'sustain plausible denial'.¹⁸⁹ Such is the case in Kashmir, namely that India and Pakistan are at a continuous 'war' – with Pakistan's undeclared support for the militants in Kashmir.

During the Cold War, it became almost impossible to distinguish between conventional warfare and terrorism. It has been observed that to avoid the risk of nuclear warfare, the Soviet Union and the USA sponsored guerilla¹⁹⁰ organizations around differing parts of the world. Indeed, it was the United State's funding of Taliban in Afghanistan, to fight the Soviet invasion, which appeared economical at the time at the cost of three billion dollars, that eventually turned against them.¹⁹¹

In addition, the United States financed anti-government armed force in Nicaragua, known as the 'contras'. Nicaragua took the US to the International Court of Justice,¹⁹² although the United States did not accept the ruling of the Court,¹⁹³ important legal issues were provided in their decision.¹⁹⁴ The Court held that the United States had breached international law by aiding the contras.¹⁹⁵ The United States was complicit in the civil war by 'organising or encouraging the organization of irregular forces or armed bands . . . for incursion into the territory of another State' and by 'participating in acts of civil strife ... in another State'.¹⁹⁶ The Court rejected United States claim of 'self-defence', 'force used in self defense must be necessary, immediate and proportional to the seriousness of the armed attack'.¹⁹⁷ It was further held that interventions involving the use of force could not be justified by a third state such as the US; namely that 'one

¹⁸⁹ Wilkinson, (2003), op cit at p.30.

¹⁹⁰ It is important to note that not all guerilla groups use 'terrorist' activity.

¹⁹¹ Wilkinson (2003) op cit at 30.

¹⁹² *Nicaragua v USA* ICJ Rep. 1986, 14.

¹⁹³ For the Order on the discontinuance and removal of the case from the list of the Court see ILM 31 (1992), 103; *AJIL* 86 (1992), 173-4. On the dispute concerning the case, see D'Amato (1985) *Nicaragua and International Law: The 'Academic' and the Real*, *AJIL* 79 (1985), 657; Kahn (1987) *From Nuremberg to The Hague: The United States Position in Nicaragua v. United States and the Development of International Law*, *Yale JIL* 12 (1987), 1; Akehurst M. (1987) *Nicaragua v. United States of America*, *Indian JIL* 27 (1987), 357; Hight K. (1987) *Evidence, the Court, and the Nicaragua Case*, *AJIL* 81 (1987), 1; Gill T. (1989) *Litigation Strategy at the International Court, A Case Study of the Nicaragua v. United States Dispute*, 1989; Greenwood C. (1996) *The International Court of Justice and the use of Force*, in V.Lowe/M. Fitzmaurice (eds.), *Fifty Years of the International Court of Justice*, 1996, 373-85.

¹⁹⁴ Malanczuk P. (1997) *Akehurst's Modern Introduction to International Law* Routledge: London.

¹⁹⁵ Provost R. (2002) *International Human Rights and Humanitarian Law* Cambridge University Press, at p.138.

¹⁹⁶ Malanczuk (1997) op cit. at 318.

¹⁹⁷ ICJ Rep. 1986, 14, 135.

state may not defend another state unless that other state claims to be (and is) the victim of an armed attack and asks the first state to defend it'.¹⁹⁸ The decision echoes that of the United Nations General Assembly.¹⁹⁹

Security Council Resolution 748 (1992)²⁰⁰ acknowledged international terrorism in which a State (Libya), is directly or indirectly involved in acts of terrorism.²⁰¹ At the International Court of Justice, Libya²⁰² issued a suit against the UK and the US. A Security Council decision imposing economic sanctions on Libya because of its refusal to surrender accused terrorists was challenged by Libya as invalid. The Court denied Libya's request for interim measures to stay the Security Council's action,²⁰³ (thereby reiterating that state-sponsored terrorism is not justified). In essence, this signaled to the international community that while state terrorism exists, it should not be tolerated.

The blurred boundaries between terrorism and conventional warfare have created an effective environment for proxy wars,²⁰⁴ such as the alleged backing by Iran of Hamas against Israel, and the alleged backing of Pakistan in Kashmir against India. The situation is further escalated by the knowledge that terrorism does not accept laws and rules of warfare, whereas legitimate governments are bound by them.²⁰⁵

Thus, perhaps in response to the internationalization of terrorism, the sovereign states,²⁰⁶ also became involved in the planning, financing and execution of many acts of international terrorism.²⁰⁷ Just what is defined as international terrorism, state sponsorship has also become

¹⁹⁸ Malanczuk P. (1997) op cit at p.318.

¹⁹⁹ "No State shall organize, assist, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State', [21 December 1965, UNYb1965, 94; resolution passed by 109 votes to nil].

²⁰⁰ SC Res 748 (1992), 31 March 1992, UN Doc. S/RES/748 (1992).

²⁰¹ Duffy, (2005), op cit at p.171.

²⁰² "Questions of Interpretation & Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie' *Libya v UK; Libya v US*, 1992 ICJ Rep. 3, 114 (Orders of April 14).

²⁰³ Schachter O. (1994) "United Nations Law", in *American Journal of International Law*, Vol. 87, 1994.

²⁰⁴ Wilkinson (2003) op cit at 30.

²⁰⁵ Lacquer, W. (2004) "The Terrorism to Come". *Policy Review*, 126.2004. p. 49.

²⁰⁶ As discussed earlier in light of Bush and Blair's reactions to 9/11.

²⁰⁷ Almond H.H. Jr. (1984) "The Use of Organized Groups by State as Vehicles to Promote their Foreign Policy", in Henry Hyunwook Han (editor) *Terrorism, Political Violence & World Order*. Lanham, MD: University Press of America, pp.229-66; Cline R.S. & Alexander Y. (1986) *Terrorism as State-Sponsored Covert Warfare*. Fairfax, VA: Hero Books; Livingstone N.C. & Arnold T.E. (1986) (eds) *Fighting Back. Winning the War Against Terrorism*.

the theme of 'acrimonious debate'.²⁰⁸ State sponsorship is viewed to be a major consequence of having no 'universally accepted definition of terrorism.' It is accordingly manipulated by powerful governments to justify actions mimicking 'propaganda weapon.' And indeed used 'as a foreign policy tool itself'.²⁰⁹ Tam observes that 'the fight against terror may have effectively been abandoned if different factions within the international community again revert to the rhetoric of 'our' versus 'your' terrorists, the former fighting for legitimate causes, the latter engaging in criminal activities'.²¹⁰

4.3.3 State's manipulation of Non-state terror?

It is further argued that Western governments, especially the USA, (referred to earlier), have manipulated the public by exaggerating the threat from terrorism.²¹¹ It is imperative to consider that history has shown that 'over reaction' to 'a phantom enemy',²¹² can be as dangerous as the terrorist attacks themselves. Although there are allegations of exaggeration of the extent of the terrorist problem, it cannot be disputed that terrorism is a real problem that continues to plague the United Kingdom and the international community, and this is highlighted by the subsequent discussion on the varied groups that are recognised terrorist organisations.

4.3.4 Nationalist Terrorism

Nationalist or ethnic terrorists have a readymade, in built support system. 'Unlike ideological terrorists, they tend to be long-lasting. They can build logistical structures much easier than ideological terrorists and they can hide in a ready-made population',²¹³ and they draw support from a distinct constituency.

Lexington, MA: Lexington Books; Motley J.B. (1981) "International Terrorism. A New Mode of Warfare" *International Security Review* 6 (Spring 1981), pp93-123; Wright J.W. (1984) "Terrorism: A Mode of Warfare" *Military Review*. Oct. 1984. 35-45.

²⁰⁸ Wilkinson P. (1984) "State-Sponsored International Terrorism: The Problems of Response", *The World Today*, July 1984, 292-8; Herman E. (1982) *The Real Terror Network*. Boston: South End Press; Kirkpatrick J. (1984) "Defining Terrorism" *Catholicism in Crisis*. Sept.1984, 41-4; Laquer W. (1986) "Reflections on Terrorism" *Foreign Affairs* 65 (Fall, 1986), 86-100; Stohl M. (1984) "National Interests and State Terrorism in International Affairs" *Political Science* 36 (July 1984) 37-52; Stohl M. (1984b) "International Dimensions of State Terrorism" in Stohl M. and George A. (eds) *The State as Terrorists*. Westport, CT: Greenwood Press, p43-58; Wardlaw(1988), *ibid* at 237.

²⁰⁹ Wardlaw (1988), *op cit* at 237.

²¹⁰ Tam C.J. (2009) 'The use of force against terrorists' *E.J.I.L.* 2009, 20(2), 359-397.

²¹¹ Wardlaw, (1988) *op cit* at p.243.

²¹² Beckett A. (2004) "The making of the terror myth" *Guardian Feature* Pages. p.2 Oct 15, 2004.

²¹³ White J.R. (2003) *Terrorism 2002 Update* 4th edition. London: Thomson Wadsworth, at p.188.

4.3.4.1 Self Determination / National Liberation

Self determination is an issue that affects the definition of terrorism. Indeed as Saul observes, the problem of definition has 'haunted countries for decades, not least because of the difficulties posed by 'freedom fighters and State sponsored terrorism'.²¹⁴ Self determination and national liberation have caused a 'lacuna in present international legislation and international conventions, in order to develop a fundamental tool for international co-operation against terrorism.'²¹⁵ It is this lacuna that has led some to argue that the violence in Kashmir is not 'terrorism' as perceived by India, but a legitimate instance of self determination or national liberation.

It is accepted that terrorism is not generally endorsed by the international community, however, irrespective of the condemnation of terrorism, some States have mooted that violence in the name of self determination is not terrorism.²¹⁶ This is particularly important since the Arab League; the OIC Conventions and the OAU Convention have excluded national liberation – self determination from the definition of terrorism.²¹⁷

Following the disastrous events at the Munich Olympics in 1972, in its inquiry, the Security Council considered the antecedents of terrorism.²¹⁸ It proceeded to recognize '... the inalienable right to self determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and upholds the legitimacy of their struggle, in particular the struggle of national liberation movements in accordance with the principles and purposes of the Charter and the relevant resolutions of the organs of the United Nations ...'²¹⁹ Resolution 3034

²¹⁴ Saul (2006) op cit at 258.

²¹⁵ Ganor B. (2002) 'Defining Terrorism: Is one man's Terrorist another man's Freedom Fighter?' *Police Practice and Research* 3: 4, 287-304 at 295.

²¹⁶ Saul (2006) op cit at : 69; see also Cassesse A. (2003) *International Criminal Law* (OUP: Oxford, at 121.

²¹⁷ See: 1998 Arab Convention on the Suppression of Terrorism: Article 1(2); Organisation of Islamic Conference 1999 Convention Article 1(2); OAU Convention 1999 Article 3(1) and OAU 2004 Protocol.

²¹⁸ UNGA Resolution 3034 (XXVII) 1972.

²¹⁹ UNGA Resolutions (1972) para 3; 31/102 (1976) para 3; 32/147 (1977) para 3; 34/145 (1979) preamble; 36/109 (1981) preamble; 38/130 (1983) preamble; 40/61 (1985) preamble; 42/159 (1987) preamble; 44/29 (1989) preamble; 46/51 (1991) preamble.

(XXVII) is viewed as ‘a victory for those who supported the right to use all available measures to advance ends of self – determination and was of national liberation.’²²⁰

The significance of the underlying causes to terrorism was reaffirmed by the establishment of the Ad Hoc Committee.²²¹ The consequences of the committee discussions resulted in Protocol I which provided further advancement to the self determination justification, ‘armed conflicts in which people are fighting against racist regimes in the exercise of their right and self determination’,²²² and thus ‘legally distinguishing such movements from terrorist groups.’²²³ It was further recognized that self determination or national liberation was a fundamental cause and nothing ‘... could in any way prejudice the right to self determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right ... particularly peoples under colonial and racist regimes and foreign occupation or other forms of colonial domination, nor, in accordance with the principles of the Charter and in conformity with the above mentioned [1970] Declaration, the right of these peoples to struggle to this end and to seek and receive support ...’²²⁴ A provision that has been viewed as an exception on terrorism by its ‘national liberation’ justification.²²⁵

It is argued that justifications based on self determination or national liberation have to be given due consideration for there to be due process in the international or national criminal justice arena. In addition such an arena has to be seen as just for it to be taken seriously and prevent the perpetuation of further violence. This was observed by Habermas who states, ‘The spiral of violence begins as a spiral of distorted communication that leads through the spiral of uncontrolled reciprocal mistrust to the breakdown of communication’.²²⁶

²²⁰ Sofaer A. (1986) ‘Terrorism and the Law’ *Foreign Affairs* 901 at 905.

²²¹ See UNGAOR (28th Session) Ad Hoc Committee Report (1973), Supp 28, UN Doc A/9028 8; UNGAOR (34th Session), Ad Hoc Committee Report (1979), Supp 39, UN Doc A / 34 / 39, 12.

²²² Protocol I, Article 1(4).

²²³ Saul B. (2006) op cit at 73.

²²⁴ UNGA Resolutions 42/159 (1987) para14.

²²⁵ Saul (2006) op cit at 74.

²²⁶ Habermas quoted in Barradori G. (2003) *Philosophy in Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida* (University of Chicago Press, Chicago), at 64.

4.3.4.2 Nationalist Groups

Kashmiri nationalist groups have been discussed in Chapter Two. Nationalist groups include the ETA in Spain, the PKK in Turkey, the Liberation Tigers of Tamil Eelam in Sri Lanka, and the Irish Republicanism.

It is beyond the scope of the thesis to provide a detailed analysis of the Irish Republicanism, however a brief outline is necessary as this governed the British counter terrorism procedures, and it is this experience that is said to assist the security services in combating the 'Islamic terrorists'.²²⁷

In brief, UK's response to Northern Ireland is also used as an important comparison to the UK's response to the present 'War on Terror'. It is essential to note that the British referred to the Northern Ireland conflict as 'an internal matter' which was successfully accepted by the Security Council and the General Assembly.²²⁸ In addition, the British government viewed the situation 'criminal' rather than an 'armed conflict'. Northern Ireland effectively portrays that UK utilized 'shielding devices' against international humanitarian law and defined terms in the international legal field that were in their interest.²²⁹ It is further argued that the activities of the IRA in Britain (for example in Manchester 1996) have enabled the UK legislative body to draw on its extensive experience on counter-terrorism legislation thereby able 'to extend its control so easily',²³⁰ following the events of 11 September 2001. The 'emergency legislation' of 1974 following the Birmingham public house bombings: Prevention of Terrorism (Temporary Provisions) Act 1974, has been compared to the 7 July 2005 London bombings and the Prevention of Terrorism Act 2005, and the Terrorism Act 2006.²³¹

²²⁷ See: Maillot A. (2004) *The New Sinn Féin: Irish Republicanism in the Twenty-First Century* Routledge: New York at p.7; Neville P. (2001) "The Origins and Development of Irish Republicanism: Peter Neville Surveys the Growth of Republicanism in Ireland Up to the Present Day." *History Review*, 2001: p.35; Smith M.L.R. (1997) *Fighting for Ireland. The Military Strategy of the Irish Republican Movement*. Routledge: New York, at p.8.

²²⁸ Campbell, C. (2005) "Wars on Terror and Vicarious Hegemons: UK, International Law and the Northern Ireland Conflict" *International and Comparative Law Quarterly*, April 2005.

²²⁹ Campbell, *ibid*.

²³⁰ Walklate S. & Mythen G. (2006) "Criminology & Terrorism which Thesis? Risk Society or Governmentality?" *46BRITJ* 379, May 2006.

²³¹ Bonner D. (2006) "Responding to Crisis: Legislating Against Terrorism" *L.Q.R.* 2006, 122 (Oct), 602-631
Analysis of legislation will be considered in detail in the succeeding chapters.

4.3.5 Ideological Terrorism

It is asserted ideology is more effective than nationalistic issues in terrorism recruitment because ideology is a powerful mobile method that automatically travels from country to country, it has no demographic boundaries.²³² Before the fall of Communism, Raymond Canado and Rebecca Evans²³³ examined Western European terrorism, and concluded it has developed into a variety of forms with few common threads. Modern indigenous terrorism, however, developed from two bases: left-wing and right-wing ideology and nationalism.²³⁴ Canado and Evans argued that fundamental difference between ideological and nationalist terrorists can be found in their aims. For instance, the ideological terrorists in Europe aim to dismantle the capitalist structure, and create a 'new' state and constitution. Interestingly, despite their differences, both left and the right wing aim for this goal of new order. Nationalists, however, aim for self determination and often have no desire to change the capitalist order.²³⁵ Examples of ideological groups include Germany's Red Army Faction, Italy's Red Brigades, The Japanese Red Army and Neofascism.

It is argued that ideology is no longer about 'left / right' issues, but rather about issues of globalisation, and not focused to a particular country. These are protracted and globalised issues that have a magnetic appeal in a way which national based leftist group could not achieve. And perhaps the ultimate ideology is based on globalization and religion.

4.3.6 The International Network of Al-Qaeda

Although the international network of Al-Qaeda is ideological, it remains predominantly political. This view is reiterated by the recent rhetoric about the 'war on terror'.

4.3.6.1 'Islamic Fascists?'

The Bush administration's 'war on terror' is becoming the 'war on Islamic fascism', reinforcing the stereotype that a 'Muslim fundamentalist' is now 'an internationally accepted definition of terrorism.'²³⁶ In August 2006, President Bush referred to the British based suicide attempt on

²³² Lauderdale & Oliverio, (2005), op cit at p.3.

²³³ 1988: 373-444, cited in White J.R (2003) *Terrorism 2002 Update* 4th edition. London: Thomson Wadsworth, p.172.

²³⁴ White, (2003), ibid at p.172.

²³⁵ White, ibid at 172.

²³⁶ Awan I. (2012) "Misconceptions of Islam." *C. L. & J.* 2012, 176(18), 253.

Transatlantic airlines, 'a stark reminder that this nation is at war with Islamic fascists'.²³⁷ This statement was condemned by the Muslim Association of Britain. Indeed even within its own senate, the Bush's 'Islamic fascism' statement received criticism, 'Fascist ideology doesn't have anything to do with the overwhelming majority of Muslims around the world who practice the peaceful teachings of Islam'.²³⁸ Thus, leading commentary from the national newspapers concludes that the concept of Islamic fascists created ambiguity by labeling all Muslims as 'the enemy.' The link to religion, it was argued, failed to recognise the salient cause namely 'resistance to transcendence'.²³⁹

4.3.6.2 Al-Qaeda

Osama bin Laden and his Al-Qaeda (the Base) network have become very prominent actors worldwide.²⁴⁰ This is discussed further in Chapter Five. However for the purposes of the present discussion, its ideology can be adapted universally.²⁴¹

In addition to 'its central leadership' that facilitates military, legal and publicity issues, al-Qaeda is said to have a 'worldwide network of operational and preparative cells and affiliated organizations capable of being activated at any time and carrying out terrorist attacks on their own initiative'.²⁴² The advantage that this particular group has is its loose organization and the movement of people. It effectively utilizes the modern transport, finance and communications facilities (such as the internet). Via 'periodic pronouncements, speeches and writings', that are issued by its leaders, the organization perpetuates the support and its indoctrination.²⁴³ The loss of one cell does not hinder the wider network.²⁴⁴ It has the robust capacity to regenerate extensive membership that has no limits of ethnicity, class or nationality²⁴⁵ It is because of this, despite the major setback of losing its safe haven in Afghanistan, and the loss of its leaders including Bin Laden, that the global network is still capable of continuing the terrorist campaign.

²³⁷ Pollitt K. (2006) "Wrong War, Wrong Word" *The Nation* September 11, 2006 issue.

²³⁸ Senator Feingold, at http://www.gazetteextra.com/feingold_muslims091306.asp.

²³⁹ Ignatius D. (2006) "Are we Fighting Islamic Fascists?" *Washington Post* 18 August, 2006: p.A21.

²⁴⁰ Lutz B. & Lutz J. (2004) *Global Terrorism* New York, Routledge, at p.82.

²⁴¹ Gunaratna R. (2003) *Inside Al Qaeda Global Network of Terror* New York: Berkley Books, at p.73.

²⁴² Wilkinson (2003) op cit at p.33-34.

²⁴³ Gunaratna (2003) op cit at p.75-76.

²⁴⁴ Lutz & Lutz (2004) op cit at p.83.

²⁴⁵ Gunaratna (2003) op cit at p.72.

11 September 2001, and subsequent attacks around the world, including London, highlight that the al - Qaeda ideology is a new form of terrorism that has meticulous engineering that is able to employ catastrophic consequences, and bring a superpower to a standstill.²⁴⁶ Thus, it is evident that Al-Qaida utilizes the highly competent network that even the sophisticated intelligent services of the Superpowers are struggling to eradicate.

Its practical weaknesses do not affect its ideology or its magnetic recruitment of young Muslims²⁴⁷ Gunaratna argues that Al Qaeda has 'inherited' a good foundation, namely the extensive and elaborate military funded by the governments²⁴⁸ who wanted to 'oust' the Russian forces from Afghanistan. Its strengths and skills went unchallenged by the world 'for about five years, until 1993'.²⁴⁹

Its covert financial network is maintained via the auspicious of charities and 'wealthy Arab benefactors in the Middle East'; businesses in that region are used as 'fronts' to Al Qaeda business.²⁵⁰ Gunaratna observes that 'Al Qaeda's financial network in the West has proved durable.'²⁵¹ Moreover, Gunaratna's interview with New Scotland Yard revealed that in Europe Al Qaeda receives funding from 'credit card fraud' known as 'Algerians'. In 1997, within six months, it received almost 200000GBP from a single cell in Britain.²⁵²

It is argued that Al Qaeda's attacks on the West are designed with the purpose of bringing about change in the respective countries foreign policies, and equally to dismantle the House of Saud in Saudi Arabia.²⁵³ Traditionally, terrorists wanted the attention, not the fatalities,²⁵⁴ but al-Qaeda aims for maximum casualties that create worldwide media spectacle.²⁵⁵

²⁴⁶ Wilkinson (2003) op cit at p.34.

²⁴⁷ Gunaratna (2003) op cit at p.73.

²⁴⁸ US, Europe, Saudia Arabia, to mention a few.

²⁴⁹ Gunaratna (2003) op cit at p.74.

²⁵⁰ Ibid at p.82-83.

²⁵¹ Gunaratna (2003) op cit at p.84-85.

²⁵² Gunaratna (2003) op cit at p.87.

²⁵³ Walker R. (2003), op cit. p. 77.

²⁵⁴ Jenkins B. (1985) *International Terrorism: The Other World War*. Santa Monica: RAND, at p.22.

²⁵⁵ Wilkinson (2003) op cit at p.34.

4.3.7 Summary

To summarise, contemporary international terrorism, enjoys the power created by the media when it broadcasts to the worldwide audience; the availability of armour that can be easily purchased, and imperatively the vulnerability of governing nations, via their transportations such as airplanes.²⁵⁶ Moreover, the international networking of terrorist cells has extended its boundaries and blurred the traditional categories thereby creating a greater challenge to those in the counter terrorism field.²⁵⁷

Furthermore it has been highlighted that the range of categories in terrorism perpetuate the difficulties in 'one' internationally recognised definition. Terrorism's political nature is reiterated via State and non State involvement, and the evolving global phenomena. Recognising the categories fuels the debate that terrorism is as subjective as it is dangerous.

4.4 Terrorism and Religion - New generation of ideological terror?

There can be no doubt that religion is dominant in the 11 September 2001 and 7 July 2005 attacks, it provides legitimisation of the terrorist's cause or does it? Indeed, it is submitted that it is intertwined with political ideology.

Consideration is given to religion as a motivator for terrorism, and a tool for political opposition. The salient and imperative point of religion as a 'legitimate' tool for terrorism will be considered in Chapter Five, as this is an aspect that requires detailed analysis and discussion of Islamic jurisprudence; namely the area of suicide attacks; Jihad and 'Ummah'.

4.5 Fieldwork analysis on the concept of 'terrorism'

It is interesting to see how the participants interviewed view the legal definition. For counter terrorism to be effective it is of paramount importance that it does not alienate the community it seeks to protect. The fear is that any legal condemnation of terrorism may have less authority than with other areas of deviance. So, to call a person a terrorist may not be readily accepted as calling them a murderer or a thief. It was proposed that the research will establish the views and

²⁵⁶ Jenkins, (1987), op cit at p.150-1.

²⁵⁷ Pillar, (2001), op cit at 34.

perceptions of British Kashmiris on terrorism especially when it is applied to Kashmiri affairs. The imperative question is whether they are persuaded that persons or groups linked to political violence in Kashmir, including sympathizers in the United Kingdom, are legitimately called 'terrorists'.

4.5.1 Research Findings

What the term 'terrorism' means to each individual was explored and discussed in the fieldwork. Just as there are inevitable disagreements amongst the scholars, there was divergence amongst the participants interviewed.

The meanings the term terrorism relayed by the participants was based on their personal perceptions or experiences. It is a term that evoked passionate responses from some and apathy from others, combined with disgust as to how 'one of us' would be 'researching such a topic' Int.25. Nevertheless it evoked above all responses that emphasise that the perception of terrorism is interlinked to the effectiveness of the counter terrorism legislation.

Analysis of the fieldwork data emphasises the range of responses to the 'meaning' of the term terrorism. Some deliberated on the causes and solutions of terrorism:

'There are three elements to terrorism, First, terrorism is created by the USA. Osama Bin Laden is trained and equipped by USA against Russia. As soon as he evicted Russia, he wanted USA out of Saudi, he wanted to defeat the Royal Family there. When USA stayed in Saudi, he retaliated against USA. He did wrong. Second, Taliban, given money by those anti USA and anti Pakistan, brainwashing those youngsters to commit suicide. Third, those innocent lives taken, whether it is a daughter, sister, mother, wife, family members join out of revenge, [against the injustice done to them]. To end terrorism, [we have to] listen [sit] at the table. For example, Pakistan spends ten billion fighting terrorism yet they do give help there, they (their Western partners) need to strengthen Pakistan to fight terrorism and simultaneously 'table-talk' to end it.' Int.19.

Others offered brief explanations of what terrorism means: 'Terrorism means one person's destruction or rage of war against group of people over religious or political beliefs.' Int.2.

'Terrorism is simply a guerrilla army, not recognised by the international community as a country's defence force;' Int.20 'terrorism is indiscriminate killing of innocent human beings.' Int. 27.

Some participants elaborated to support terrorism in some situations such as Afghanistan or Iraq: 'they are freedom-fighters trying to get their rights back. They want Americans out. These Americans they pay people to become terrorists and blame other governments.' Int.10. They appeared to have justifications, 'a person gets so fed up and to revenge this, he becomes a terrorist. They only become terrorists because they have been wronged, not in normal circumstances.' Int. 24. 'Media showed Belgrade jail; I saw today on T.V. the US army killing journalists in Iraq. We only see one incident, they may have killed millions this way. NATO bus in Afghanistan with children and women. So that's why people take arms and go against. Terrorism is just a name for Muslims. Palestine they have issued identity cards, it's all cruel and inhumane, when treated so badly whether Muslim or Jew, they will take arms. Palestinians without identity cards will get seven years imprisonment. A person slave of UK or US is ok, and one that is not is a terrorist, if not doing as UK or US ask they are seen as terrorism.' Int.11

But for some, terrorism is not acceptable in given circumstances: 'terrorism is wrong when killing indiscriminately innocent, but if war then mujahideen. In Kashmir, is fighting for its land, so not terrorism.' Int. 9. The common opinion was that: 'In Kashmir [its] not terrorism. In Afghanistan elected by the people there. Yet Mugabe does things we don't agree with, yet we don't attack Zimbabwe. No evidence about Afghanistan yet targeted Taliban, whom I don't agree with, but they are not terrorists, only fought for their rights. Not insurgents, always been there. American terrorists in Iraq, they go round in their apache helicopters shooting people, so they go round to get a high score. Russian terrorists because of what they did in Chechnya and then they wonder why Muslim world is reacting the way it is.' Int.13. The theme of state terrorism was echoed by several interviewees, 'terrorism means killing innocent people for a political gain. But it is also terrorism to go over with carpet bombs and phosphate. I don't see a distinction between state and individual terrorism – it's difficult.' Int.17. The subjective nature of what terrorism is was highlighted by one participant's response, 'people call killing in secret, it's a western term [terrorism] – they call it.' Int.4.

It was proposed that the fieldwork would attempt to establish 'the reality' of how terrorism is understood by the selected participants. The foregoing discussion has demonstrated that whilst terrorism on the one hand 'means indiscriminate killing. It's very bad – we do not like them,' Int.3, on the other hand it means to, "terrorize a population, to make them live in fear – all the stuff going on in Pakistan – the Taliban situation – Israelis doing in Palestine – as terrorism and Hamas rockets, terrorism, can understand it. If I was occupied I would resist by all means possible.' Int.8. Thus 'the reality' is rife with discourse and ambivalence, 'the killing of innocent people – 9/11 a perfect example of that, majority of the people that died in it, oblivious to USA, Taliban and Al-Qaeda. Another aspect is the initiating and provoking of a war in another country – also terrorism. Sometimes people misinterpret defending one's own country as terrorism – I don't think its terrorism, its war isn't it really.' Int.22

Some participants believed that terrorism was incorrectly linked to Islam. As one articulated, 'terrorism, not very clear term at the moment; international media has put the term in a carton. No classification of terrorism, whoever is doing any movement, whether its freedom – they class everyone as terrorism. They join them all in one group. No one knows the origin of terrorism-international media is trying to show that Islamic countries are creating terrorism. They are unconsciously brainwashing people that it is in danger of Islam – of these groups.' Int. 16.

Interestingly, irrespective of what the participants believed as to what terrorism means, there is overwhelming support, for section 1 of the Terrorism Act 2000. It is important to assert that this was not reflective of their opinion of other aspects of the British counter terrorist policy and legislation. The unwavering endorsement is reflected by the participant's responses: 'it's a fair definition;' Int. 5; 'yes it needs to be broad because terrorism is so. As long as intention to protect the UK, it's a good thing, as long as they have done the research.' Int.1. 'It sounds like a good idea' Int.7, with 'yes I accept it, we live here so must accept the law.' Int.9. 'I do agree with it, there are other ways of getting the point across without harming people.' Int.22.

The underlying reasoning for the approval was 'because I should abide by the law.' Int.10, and 'I agree with it because they [terrorists] are doing wrong,' Int.21; 'meaning is good, when done wrong, they are wrong.' Int.24. This theme was repeated, 'we need definition to keep peace. Law should be obeyed, we are tied by the law.' Int.11; 'It's a fair definition shouldn't do it at all – not

to disturb the law.' Int.14; 'I agree because any taking of lives we are against it, ideology we are against it.' Int.18. There was also the opinion that the Terrorism Act 2000 was not sufficient, 'I don't think it's extreme enough for terrorism, terrorism is at a larger scale,' Int.23 and 'if done deliberately should be punished severely.' Int.19. Some participants held reservations but were fuelled by the necessity of section 1 of the Terrorism Act 2000, 'I accept most of it, Muslims have wonderful victimhood, but now people killing people, I don't know why; the definition is difficult because used as a blanket policy to apply to Muslims who disagree with it. But I understand it, it's used for the unseen enemy;' Int.17 and 'It needs to be broad I understand that but it can be open to abuse. However, I trust our judiciary – they have to date always upheld the law and protected us – even spoke against Guantanamo Bay, so I accept the definition because the judiciary will challenge any of its shortcomings.' Int.27.

Nevertheless, this confidence in the judiciary was not shared by some dissenters,²⁵⁸ 'it is not acceptable when suspicious circumstances make one terrorist, for example, Pakistani students in Manchester, they were wrongly arrested, gave all a bad reputation, they, the Labour Government apologised to the students. When I met John Prescott the Deputy Prime Minister, he said so, but the damage was already done.' Int.12. Others expressed concern that section 1 is 'too broad, it scares me, it opens it up. What if someone stayed in my house the night before the bombing, and I did not know anything about it.' Int.13

This anxiety was elaborated: 'any problem is how you perceive it, obviously we live in this country, if we are attacked they will kill everyone, no class or religion. If harmful to country or society, it's perceived as terrorism, how its defined, it's a bad term, it's hard to class who is bad or not. Recently Pakistani students here in Manchester, some in lock up; the same in Buckinghamshire, British born are arrested, we don't know what happens to them, even if innocent, one person's terrorist for others it's not.' Int.16. Some disagreed with the definition not because of personal anxieties but because they perceived it as 'unfair': 'No I don't agree with it. If bombing an empty building they are not hurting anyone, I can understand what the IRA are doing, why they are doing it, because the British in Ireland were just as bad, they were terrorizing the Catholics.' Int.26. 'I feel it's unfair because there are countries without army, for

²⁵⁸ These responses are all to the same question on section 1 of the TA 2000.

example Palestine, Kashmir, Chechnya, fighters for their defence considered terrorist, it's unfair.' Int.20.

Although there was the perhaps inevitable indifference, those who expressed, 'no real opinion,' Int. 2 and 'there's a definition? I suppose I'm indifferent.' Int. 25, Section 1 of the Terrorism Act 2000 evoked spontaneous response from other participants.

4.5.2 Summary of the Fieldwork findings

It has to be acknowledged that the participants whilst they overwhelmingly accepted the legal definition of the Terrorism Act 2000, but they also struggled with the application of the term 'terrorism'. As the foregoing discussion has highlighted, some of the participants found it difficult to understand how the situation in Kashmir could be perceived as terrorism, thereby, highlighting the difficulty of separating the law from the political decision making. It has to be conceded based on the said findings, that the views on the concept of terrorism are affected by deeds and practices of the State rather than by laws, and for counter terrorism to work effectively this has to be taken into consideration.

4.6 Conclusion

This thesis proposes to establish the 'reality' of how the definition of terrorism is understood. The British Kashmir population was perceived as an ideal sample. They are not only aware of the political and national issues that address contemporary Kashmir, but also the religious issues that govern all Muslims. Thus they echo the disparity of opinion shared by academics and political scientists. Indeed it has been highlighted that people turn to terrorism for various reasons. Many terrorists act from political, ideological and religious convictions. The writer submits that the law should ensure safeguards in order to curtail further injustices that may be created by 'public panic and 'scare-mongering'.²⁵⁹ Indeed, the coverage of the attack on the World Trade Centre on September 11, 2001, and its aftermath, (more recently 7 July 2005) has been unprecedented as a propaganda war that is conducted alongside more conventional warfare.²⁶⁰ It is such propaganda that leads one to conclude that terrorism is a loaded term that is

²⁵⁹ See: House of Lords Constitution Committee (2008-09) *Fast Track Legislation* (2008-09 HL 116).

²⁶⁰ Spence D. (2002) "Shocking News" *Ent L.R.* 2002, 13(2), 27-30.

intertwined with politics. It is important to emphasise that however we choose to define terrorism, the imperative and inevitable element and indeed driving force are politics – and the law should be an anchor for safeguards in order to prevent politics from exploiting or even creating a situation – that can lead to catastrophic consequences – worse than the acts of terrorism that will haunt us for generations.

The purpose of this thesis is to provide an understanding between private and public discourses about 'terrorism'. In ascertaining the views of the British Kashmiri Muslims, the writer aims to take a 'step' towards understanding what 'terrorism' actually means, and subsequently consider the effectiveness of the law. 'It is regrettable that decisive improvements are yet to come, especially at universal level.'²⁶¹ Granted that the 'legal developments related to terrorism have not been paralysed by the impasse in achieving a global definition,'²⁶² nevertheless, the lack of a universal definition has revealed a disparity of opinion in the interviewee responses, especially in relation to the situation in Kashmir, whom they describe not as terrorists but as freedom fighters.

Based on the fieldwork findings, it can be tentatively argued although the participants of the British Kashmiri Muslim community commonly accepted the legal definition as identified by section 1 of the Terrorism Act 2000, they simultaneously struggled with what constitutes terrorism. A bombing on British territory was unanimously deemed to be an act of terrorism, but the events in Kashmir (and some of the other overseas Muslim territories) were described as an act of independence or self determination. In line with these findings, the perception of what constitutes terrorism is diverse and complex. But it reflects opinions and views that can be used to turn individuals against the government, as was the case of the July 2005 bombers. Thus in order to address such complexities, the international community has to adapt via the United Nations, a thoughtful and detailed definition of terrorism that also condemns state terrorism.²⁶³ In

²⁶¹ Filippo M.D. (2008) 'Terrorism crimes and international cooperation: critical remarks on the definition and inclusion of terrorism in the category of international crimes'. *E.J.I.L* 2008, 19(3), 533-570.

²⁶² Duffy (2005) op cit at p.18.

²⁶³ Aust H.P. (2012) 'Publication Review. State Responsibility for International Terrorism. Problems and Prospects. Kimberly N. Trapp.' *E. J. I. L.* 2012, 23(1), 275-278.

addition, effective 'cross-border co-operation' in counter terrorism requires a definition of terrorism that is internationally accepted and adhered to.²⁶⁴

It has been established that terrorism has changing definitions and notions, and that there is now an 'ideological shift from more political to more religious motives, at least in the explicit ideology of the group.'²⁶⁵ The lack of a universally accepted definition coupled with this ideological shift has the danger of creating 'even stiffer measures in a crisis.'²⁶⁶ This does little to appease the anxiety of critics that maintain that the term terrorism is very broad and thus open to manipulation and state control.

Analysis of terrorism – its conception and its contested perceptions and whether they are shaped by the state, or by the individual or communal ideology – are vital for the foundation of this thesis. The results provide a 'guide' and perhaps enable comparison of the view of the 'interviewed' community and that of academia. As the foregoing discussion has highlighted, for effective safeguards and indeed community cooperation towards a 'terror safe' world – there has to be some element of discussion with the very community that is being protected, and that can simultaneously create potential terror.

It is important that political rhetoric is not confused with the rule of law.²⁶⁷ Indeed there is concern 'that across the whole of the counter-terrorism community the development of the home-grown threat and the radicalization of British citizens were not fully understood or applied to strategic thinking'.²⁶⁸ Thus it is acknowledged that 'we must work in partnership with communities to identify and respond to the risk that extremism poses. The potential factor to extremism is a sense of personal alienation'.²⁶⁹ It is submitted that in order to 'work in partnership with communities',²⁷⁰ it is of paramount importance that the views of those

²⁶⁴ Sovndal V., De Kerchove G. & Emmerson B. (2012) 'Remembering the victims of terrorism: a collective commitment to respect for human rights.' *E.H.R.L.R* 2012. 3, 247-248.

²⁶⁵ Bergesen A.J. & Han Y. (2005) "New Directions for Terrorism Research" *International Journal of Comparative Sociology* Vol.46. Issue 1-2. Page 133.

²⁶⁶ Walker C. & Horne A. (2012) 'Legislative Comment. The Terrorism Prevention and Investigations Measures Act 2011: one thing but not much the other.' *Crim. L. R* 2012, 6, 421-438 at 426-427.

²⁶⁷ Fiss O. (2006) "The War Against Terrorism and the Rule of Law" *Oxford Journal of Legal Studies* Summer 2006

²⁶⁸ 2005-06 HC 1087, op cit.

²⁶⁹ HM July 2006, Cm 6888, op cit.

²⁷⁰ Discussed in subsequent chapters 6 and 7.

communities be acknowledged to evaluate the current concepts of terrorism and indeed counter-terrorism legislation. The next chapter will elaborate on some of the issues identified in this discussion, specifically those related to religion and ideology when discussing terrorism and Islam.

Chapter 5

Terrorism in the name of Islam

5.1 Introduction

The previous chapter considered the concept of terrorism and the issues related to it. This chapter will provide discussion about Islam and its teachings on terrorism. Islam is a religion that is often now associated with 'threatening images of theocracy and terrorism';¹ and 'as news of a particularly unpleasant sort'.² Hence, the issue of Islam and Muslims dominates the attention of both UK and international audiences,³ via images of 'war on terror' and the 'clash of civilizations'.⁴ Consequently, 'Islam has never been of greater interest to the people of Britain than it is today',⁵ and this 'interest' continues to perpetuate. The visible, permanent presence of 'politically active Muslim population in Britain'⁶ has caused considerable anxiety in some parts of the country especially after the events of July 2005.⁷

The purpose of this chapter is not to state what is right or wrong about Islamic teachings, but rather the focus in this chapter is to enable the reader to understand the differences within Islam and how these differences have the potential to be misinterpreted and exploited to create and perpetuate terrorism. The issues addressed in this chapter will reflect some of the concerns expressed by the participants in the fieldwork analysis. The British Kashmiri Muslims, as discussed in Chapter Two have not traditionally followed the Islam advocated by Al Qaeda, but British born Muslims have been recruited into terrorism as demonstrated by the London bombings. This chapter will attempt to address some of the conditions and issues within the Muslim communities that perhaps make this recruitment process possible.

¹ Kurzman C. (Editor) (1998) *Liberal Islam: A Source Book* OUP: Oxford, at p.3.

² Fluehr-Lobban C. (1994) *Islamic Society in Practice* University press of Florida: Florida, at p.1.

³ Rehman J. (2000) 'Accommodating religious identities in an Islamic state: International law, freedom of religion and the rights of religious minorities' *International Journal on minority and Group Rights* 7, 139-165; Rehman J. (2003/4) 'Islamophobia after 9/11: International terrorism, Sharia and Muslim minorities in Europe: The case of the UK', 3 *European Yearbook of Minority Issues* 217-35; Rehman J. (2007) 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq' 21 *INT JLPF* 108.

⁴ Rehman J. (2007), *ibid* at 108.

⁵ Sear L.H. (2001) in *The News International*. Nov.21 2001, p.10.

⁶ Vertovec S. (2002) in Haddad Y. (editor) *Muslims in the West: From Sojourners to citizens* Oxford: Oxford University Press at p.19.

⁷ White op cit at p.153.

It is imperative for the purposes of this thesis, namely to provide insight into one British Muslim community's views on terrorism and counter terrorism, that a chapter be dedicated to the brief overview of Islam, specifically in relation to terrorism. The chapter will commence with the issue of religion in general, and subsequently to consider terrorism specifically in relation to Islam. It is beyond the scope of this thesis to consider a comprehensive overview of Islamic jurisprudence. However, to understand the teachings of Islam, a basic overview of Islamic law is necessary. Subsequent to this, a discussion of whether Islam legitimizes terrorism; Islam's role on war, jihad and suicide attacks will be held. Fieldwork analysis of the meanings of 'jihad' and how Islam relates to terrorism will be submitted. Consideration will also be given to what motivates the so-called 'Islamic' terrorists. The final part of the chapter will benefit from a discussion on Islamophobia, to assess whether prejudice affecting the Muslim communities affects their views on counter terrorism.

5.2 Terrorism and Religion

Many historical and contemporary terrorist groups have demonstrated a strong religious affiliation. These comprise examples such as the Jewish organizations in the pre - independence Israel era; the Catholic IRA; the Islamic FLN in Algeria; and the Islamic PLO. However these groups are dominated by their political aspirations, rather than their religion; thus their aim for nationalistic - self determination prevails.⁸ Similarly, it is argued that the religious militant groups operating from Kashmir also possess primarily political agendas.

5.2.1 Religion as the Motivator of Terrorism

Religion has been used and usurped to enhance the terrorist's political agenda in other situations. It is argued that 'the religious imperative for terrorism is the most important defining characteristic of terrorist activity today'.⁹ In relation to the events that occurred on September 11 2001, Juergensmeyer argues that the al Qaeda ideology utilized by Bin Laden, exploits the 'estranged and disaffected' as may be the case for British subjects of Kashmiri origin, for its specific political agenda.¹⁰

⁸ Hoffman B. (1998), *Inside Terrorism*. Columbia University Press, New York, at p.87.

⁹ Hoffman, *ibid* at 87.

¹⁰ Juergensmeyer M. (2001) quoted in Dart J. (2001) "Bin Laden's Strategy: War and the Religious Imagination" *The Christian Century*, Vol.118; Issue: 30. Nov.7 2001 at p.4.

In a similar vein it is argued that terrorism and religion have been intertwined over the centuries with the sixteenth and seventeenth century wars in Western Europe,¹¹ and modern examples comprise of the attack on the Twin Towers in 2001, and Aum Shrinkyo's attack on the Tokyo underground in 1995. They all have the shared ideology that their actions are permitted and sanctioned by God. This belief exists irrespective of their differences. Thus religion is used to motivate and retain support for the sacred mission advocating terrorism.¹² The present Islamist religious terrorism is said to derive from an ideology perpetuated in the Arab Peninsula by increased poverty and political instability. It was even encouraged by the Western nations to counter the Soviet Union's communist ideology in regions such as Sudan, Iraq, Yemen. Interestingly it was an objective shared by the USA and Saudi Arabia.¹³

Nevertheless the motivation for religious ideology is combined with politics, thus creating difficulty in differentiating between the religious and political aspirations of such groups.¹⁴ An example often highlighted is that of Hamas and Hizb'allah, who despite their Islamic affiliations, operate in the political spheres of Palestine and Lebanon. This complexity is perpetuated by the element of 'state sponsorship'¹⁵ discussed in the previous chapter. This also applies to the Kashmiri situation where it is submitted that the militants knowingly or unknowingly advance Pakistan's foreign policy agenda against India, whilst simultaneously proposing to liberate their homeland from the non-believers of Islam. Hence, religion is used to justify political violence.¹⁶

5.2.2 Religion a tool for political opposition

It is argued that 'other than a few strictly millenarian or messianic groups (such as Aum Shirinkyo or some Christian white supremacist movements), almost all the contemporary terrorist groups with a distinct religious imperative are either offshoots or on the fringe of

¹¹ Jakab A. (2011) 'Breaching constitutional law on moral grounds in the fight against terrorism: implied presuppositions and proposed solutions in the discourse on 'the rule of law versus terrorism'.' *I. J. C. L.* 2011, 9(1), 58-78.

¹² Keene S. D. (2011) 'Terrorism and the Internet: a double - edged sword.' *J. M. L. C.* 2011, 14(4), 359-370.

¹³ Jabara A. (2002) "Introduction" *Arab Studies Quarterly*. 2002; p.1.

¹⁴ Berko A., Erez E. & Globoker J.L. (2010) 'Gender, crime and terrorism: the case of Arab / Palestinian women in Israel.' *Brit. J. Criminol.* 2010, 50(4), 670-689.

¹⁵ Ranstorp M. (1996) "Terrorism in the Name of Religion", *Journal of International Affairs*. Vol.50, Issue1 p.41.

¹⁶ Amigo B.A. (2010) 'Identity, international terrorism and negotiating peace: Hamas and ethics based considerations from critical restorative justice.' *Brit. J. Criminol.* 2010, 50(4), 772-790 at 780.

broader political movements.¹⁷ Consequently, even where the extremists 'break away' from particular organizations, they are usually governed by their political aspirations. It is argued that their objectives are formed by their differing agendas and their opposition to the secular ideology, which is perceived and portrayed as a major hindrance to their ultimate goal. Where the secularization is supported or encouraged by Western societies, the threat is further magnified, and their feelings of isolation are further perpetuated. 'Thus, religious terrorism serves as the only effective vehicle for political opposition'.¹⁸ In essence, the ruling government feels compelled to respond to such opposition in a manner when left 'unchecked' mirrors the 'repressive action',¹⁹ thereby perpetuating the sympathy for terrorism.

This view is also advocated by others,²⁰ who provide examples of religious communities living in peace in one area of the globe, and the same communities are in a state of conflict in another part of the world - - such as the Sinhalese Buddhists and Tamil Hindus in Sri Lanka and India. Though Hindus and Muslims are involved in constant conflicts in the Indian subcontinent, they are at peace in Indonesia. Oommen's point is that there is nothing in the religious affiliation that encourages or creates violence, it is only when they seek political power that they 'become sources of violence.'²¹

Religion has been described as an effective base for legitimizing political violence. Hoffman refers to the Jewish terrorist movements in Israel. According to Hoffman, these movements receive their ideology from the late Rabbi Meir Kahane and exist under Kach ('Thus'). Hoffman elaborates that the assassination of Prime Minister Rabin in 1995 was the result of 'extremist rabbis' uncompromising blend of religious fervour coupled with the intense enmity towards Israel's secular government.' The Rabbis had viewed Rabin as the 'enemy' of both Israel and the Jewish people.²² Ironically, it is held that 'there is a great degree of similarity between the stands of the Jewish Kach and Islamic Hamas organization.'²³ Both possess a revulsion for Western

¹⁷ Jabara A. (2002) op cit at 1.

¹⁸ Ranstorp, (1996), op cit at 41. See also: Amigo B A (2010) op cit at 772-790.

¹⁹ Londras F. and Davis F. (2010) 'Controlling the executive in times of terrorism: competing perspectives on effective oversight mechanism.' *O.J.L.S* (2010), 30(1), 19 - 47 at 47.

²⁰ Oommen T.K. (2001) "Religion as Source of Violence" *The Ecumenical Review*. Vol.53, 2001. p.168.

²¹ Oommen, *ibid*.

²² Hoffman, (1998), op cit p.102.

²³ Ranstorp (1996), op cit at 41.

ideology, and aim to create a State that is obscure of anything 'alien or secular.' The individuals are attracted to the groups by their unity in the beliefs and struggles, and the endorsement and reinforcement of these beliefs by their religious leaders.²⁴ The religious terrorists justify their violent actions as the 'war' against those that are their 'enemies'. For example, this is reinforced perpetually by the literature distributed 'by the terrorists, as exemplified by Yigal Amir's justification for assassinating Rabin,²⁵ or by Hamas' path to heaven via 'death for the sake of Allah.'²⁶

5.2.3 Al – Qaeda & Religious Terrorism

It is widely believed, 'at present, that the Muslim terrorists, in general and specifically, Osama bin Laden and al-Qaida are a threat worldwide. Indeed the nature and scale of the attacks on September 11, 2001 by al-Qaida suggested that terrorism had developed a 'Third Millennium'²⁷ format that lacks the traditional nationalist or political ideology, and it is now flexible with ideas deeply rooted in religion. Walker argues that al-Qaeda's threat was foreseen by United Kingdom prior to September 2001, as it was legally proscribed seven months earlier in February 2001. 'Nevertheless, the apprehension remains that al-Qaida activities has been occurring within UK for some years. Out of the nineteen hijackers, eleven had links with the UK'.²⁸ Importantly, it is worth noting that the majority of the proscribed organizations under the 2001 Proscribed Organisations Order²⁹ are of Islamic origin.³⁰ It has become a common place among analysts to talk about Islamic terrorists.³¹

Al-Qaeda is the most famous recent example of an older phenomenon: 'religious terrorism'.³² Sedgwick asserts that religion governs the salient features of al Qaeda's constitution: its primary goal for a Islamic nation or nations, and its aim to recruit individuals from the Muslim

²⁴ Ibid at 41.

²⁵ Ibid.

²⁶ Amigo B.A. (2010) op cit at 772-790.

²⁷ Walker C. (2004) "Terrorism & Criminal Justice: Past, Present & Future". *Crim. L.R* 2004 May, 311-327.

²⁸ Walker C. (2004), *ibid*.

²⁹ Terrorism Act 2000 (Proscribed Organisations) (Amendment) Orders 2001-10, S12001/1261. Proscription of groups is discussed further in Chapter Seven.

³⁰ Walker C. (2011) *Terrorism and the Law*. Oxford University Press: Oxford at p.346 - 348.

³¹ Cooper B. (2004) *New Political Religions, Or an Analysis of Modern Terrorism* University of Missouri Press. Columbia, MO at p.2.

³² Sedgwick M. (2004) "Al-Qaeda and the Nature of Religious Terrorism" *Terrorism & Political Violence*, Vol. 16, No.4 (Winter 2004) pp.795-814. Publishers: Taylor & Francis. Inc., at p.795.

communities. However, irrespective of its religious objectives, it is submitted that it shares political³³ 'objectives' similar to any other terrorist organisation.³⁴

Al Qaeda is an 'infrastructural organisation' that has allocated roles and duties for its continuous governance. Its hierarchy reflects its formality. It functions effectively as a religious organisation because it has no 'fixed' base, and via its global ideology it easily replaces and fulfils the role of its lost leaders. As discussed in Chapter Four, despite the death of its prominent leader, Osama Bin Laden, it continues to flourish. It is its Islamic (Wahhabi) religious ideology that enables it to exist as a global group, and indeed as a powerful, influential, and a dangerous 'guerilla and terrorist organisation.'³⁵ (Thus the organisation of Al Qaeda is often seen as post modern, although traditionally Islam, similar to other religions, was heavily formalised with Ayatollahs, Muftis and so on, Al Qaeda has instead opted for its networks).

Indeed, it has been highlighted that the religion of a 'terrorist' is a political choice. Indeed, religion as religion cannot in and of itself be an independent source of violence,³⁶ since it has an inevitable link with politics. Although religion is the chosen rhetoric for any given society, political imperative is the underlying ideology governing the current aspects of religious terror. Nevertheless Islam is perceived to be interlinked with politics, hence it is imperative that due consideration be given to Islamic teachings and 'terrorism' so as to disentangle the two.

5.3 Overview of the teachings of Islam

5.3.1 Islamic law

Islamic law or Shari'a completely incorporates the rules and regulations, and the jurisprudence of the religion.³⁷ Islam means 'submission', 'submission to God (Allah) the one and only deity in the uncompromising monotheistic faith'.³⁸ It is argued that irrespective of their demographic

³³ Croft S. & Moore C. (2010) 'The evolution of threat narratives in the age of terror: understanding threats in Britain.' *International Affairs* 86:4; 2010, 821-835 at 823.

³⁴ Sedgwick, op cit at p.795-796.

³⁵ Gunaratna R. & Oreg A. (2010) 'Al Qaeda's Organizational Structure and its Evolution.' *Studies in Conflict & Terrorism* 33: 1043-1078, 2010 at 1043 - 1044.

³⁶ Oommen, (2001), op cit at 168.

³⁷ Badar M.E. (2011) 'Islamic law (Sharia) and the jurisdiction of the International Criminal Court.' *L. J. I. L.* 2011, 24(2) 411-433 at 414. see also: Nyazee I.A.K. (2000) *Islamic Jurisprudence* (Usul al - Fiqh). Islamabad: Islamic Research Institute Press, at p.17.

³⁸ Fleuehr-Lobben (1994) op cit at 18.

situation, Muslims worldwide believe in one Islam.³⁹ In short, Islam is the 'complete way of life' for its followers, and Shari'a 'the pathway'.⁴⁰ Thus, the law of Islam is viewed as the 'all embracing body of religious duties'.⁴¹

According to the common understanding, the teachings of Islam have 'four fundamental 'roots'; the Quran (the word of Allah), the Sunnah (hadith- Hadith as having developed from the Prophetic Sunna the latter as its basis);⁴² the consensus of Muslim jurists: *ijma*, it is argued that *ijma* forms the bulk of Islamic jurisprudence;⁴³ and analogical reasoning (*usul al-fiqh*),⁴⁴ also referred to as the 'product of human reason',⁴⁵ which can be employed, 'if no guidance is available on the point under discussion in any of the other three sources of law'.⁴⁶

The Quran states issues of belief and practice for the individual Muslim and for the Islamic society, collectively known as 'the *Umma*'.⁴⁷ Subsequent to the Quran is the 'Sunna' of the Prophet, believed to be 'the words and practice of Prophet Muhammad during his lifetime'. These two sources are authoritative, but subject to 'interpretation'.⁴⁸

5.3.2 Compulsory duties that derive from the sources

Irrespective of the differing schools of Islamic legal interpretation, they unanimously recognise and accept the five pillars of Islamic faith that form the foundation for the Islamic practices.

In brief, *Shahada*, the first pillar of Islam, represents the 'uncompromising monotheism of Islam' and Prophet Muhammad as the Messenger of God. *Salat* the second pillar of Islam, is the

³⁹ Ramadan T. (2004) *Western Muslims and the Future of Islam* Oxford University Press: Oxford, p.9.

⁴⁰ Lahlou M.S. & Tanega J. (2007) 'Islamic Securitisation: Part II – A proposal for International Standards, legal guidelines and structures'. *J.I.B.L.R* 2007, 22 (7), 359-372 at 359.

⁴¹ Pease R. (2005) 'Estate Planning for Middle East clients'. *P.C.B* 2005, 3, 143-154.

⁴² Fazlur Rahman (1965) 'Islamic Methodology in History' p.76, cited in Motzki H. (2002) *The Origins of Islamic Jurisprudence. Meccan Fiqh before the Classic Schools* Brill: Boston at p.38.

⁴³ Hassan F. (1982) 'The Sources of Islamic Law', 1982, 76 *Proceedings of the American Society of International Law* 67; Ali S.S. & Rehman J. (2005) 'The Concept of Jihad in International Law' *C&S Law*, 2005 10(321).

⁴⁴ Weiss B.G. (2002) (editor) *Studies in Islamic Legal Theory* Publisher: Brill, Boston at xvii.

⁴⁵ Badar M.E. (2011) op cit at 414.

⁴⁶ Ali & Rehman (2005), op cit at 321.

⁴⁷ Fleuhr-Lobban (1994) op cit at 20.

⁴⁸ Ibid. see also: Awn J.P. (1984) in Kelly M. (editor) (1984) *Islam: The Religion and Political Life of a World Community*. Praeger: New York, at p.16.

obligatory pray that occurs five times daily; ‘communal pray in the mosque is considered higher of prayer’⁴⁹, as its participation involves the community. Friday prayers are significant as they are obligatory, and are usually followed by a sermon, be it ‘social, political or religious’.⁵⁰ The third pillar of Islam is called the *Zakat*, which means ‘purification’.⁵¹ It is an obligatory contribution of 2.5 per cent of the individual’s wealth and assets, and functions as a welfare system in the Muslim community. It is not a charity, but demonstration of thanksgiving that God has placed the individuals’ in a position where they can assist others that are in ‘need’. *Sawn*, is fasting in the month of Ramadan, is the fourth pillar that is obligatory for healthy adult Muslims, when they abstain from food and drink from sunrise to sunset. It ‘is intended to stimulate reflection on human frailty and dependence upon God, focus on spiritual values, and identification with and response to the less fortunate’.⁵² The final pillar is *Hajj* – it is a pilgrimage to Mecca and Medina.⁵³ It is performed once in the lifetime and by those that have the financial and physical means.

5.3.3 Discourse in the belief of ‘one Islam’

The ‘sources’ and the essential principles that form the basis of Islam are ‘unanimously recognised’.⁵⁴ In addition, there remains an element of the Muslim community that interpret the texts in such a manner that prohibits any development in interpretation. Such communities are said to be present in Britain among Indo-Pakistani groups (including those of Kashmiri origin), and ‘are concerned mostly with religious practice that does not envisage social, civil or political involvement’ in the society that they live in.⁵⁵ Hence, assimilation or participation in the ‘western social milieu’ is rejected, and they are often isolated in ‘the prism of their traditional reading’.⁵⁶ It has led some to conclude that inclusion of the Muslim community in the British and European society is difficult and ‘diffusion’ impossible.⁵⁷ The discourse within Islam enables some Islamic preachers specifically in the West to ‘propagate hate,’ via their rigid and selective

⁴⁹ Fleuhr-Lobban(1994) op cit at 26.

⁵⁰ Ibid. (these sermons can in their extreme form lead to violence).

⁵¹ Esposito J.L. (2002) *What Everyone needs to Know about Islam* Oxford: Oxford University Press at p.20.

⁵² Esposito, ibid.

⁵³ In Saudi Arabia.

⁵⁴ Ramadhan T. (2004) op cit at 24.

⁵⁵ Ramadhan, (2004) op cit at 25.

⁵⁶ Ramadhan (2004) op cit at 25.

⁵⁷ Gould M. (2008) ‘Islam, the Law and the sovereignty of God’ *Policy Review* 0:149; p.3.

application of Islamic law, such as Abu Hamza, Sheikh Omar Abdel Rahman and Ayman al-Zawahiri.⁵⁸

Part of the reasoning for controversial interpretations that may lead to social alienation and perpetuate antagonism where Muslims are in the minority, can be identified via the terms, 'customary Islam' and 'revivalist Islam'. In 'customary Islam', practices are based on the combination of regional traditions and Islamic beliefs that are universally shared. These regional traditions include 'reverence for saintly figures' in Morocco; 'displays of spirituality and power' that are Indonesian traditions; Iranians celebrate 'holy dates and pre-Islamic New Year'; whereas 'caste-like social hierarchies' and 'locality pilgrimage to sacred stones is regarded as an acceptable substitute for the hajj' in South Asia.⁵⁹ In contrast, 'revivalist Islam', abhorred and openly criticised the customary interpretation as being contradictory 'to the letter of Islamic doctrine'.⁶⁰ Tayyib Uqbi of Algeria⁶¹ is quoted to have said, 'I have never performed the circumambulation [of a saint's shrine] . . . nor propitiatory sacrifices . . . I do not invoke the dead . . . Invoke them you will, I shall never surrender to your idolatory'.⁶²

The 'relegation'⁶³ of the Islamic law to customary law highlights that the Islamic law can be misconstrued efficiently and effectively. Islamic law can be re-formulated to suit the agenda of a particular regime, particularly in parts of the world where the Muslim population are illiterate, for example in some parts of Kashmir, and thus accepting of what they are told by the governing administration. Similarly Islamic law can be presented to a naïve teenager, seeking the 'righteous path' in the United Kingdom, in a manner that contradicts the actual teachings of Islam. This view was accepted by some of the participants interviewed: 'Our problem is not that we don't believe in Allah's creation, but because we don't properly understand the teachings [Islamic], and we start believing in the wrong kind of Islam, not knowing how incorrect it actually is.' Int. 15. The fact that there exists a problem was acknowledged by the first generation British Kashmiri

⁵⁸ Rehman J. (2007b) 'Islam, 'War on Terror' and the Future of Muslim Minorities in the UK: Dilemmas of Multiculturalism.' *Human Rights Quarterly*, 29(4), 2007, 831-878 at 838.

⁵⁹ Kurzman C. (editor) (1998) *Liberal Islam: A Source Book* OUP: Oxford and New York at p.5.

⁶⁰ Kurzman, 1998:5, *ibid*.

⁶¹ Died 1960.

⁶² Quoted in Gelher E. (1981) *Muslim Society* Cambridge: CUP, p.156; see also Kurzman C. 1998:6, *ibid*.

⁶³ Oba A.A. (2002) "Islamic law as customary law: the changing perspective in Nigeria" *ICLQ* 817.

Muslims also, 'Our young when they stop believing in the true Islam [Sufism], then they are taken on the wrong path.' Int. 11. The question on the discourse of Islam was never posed to the participants, they spontaneously talked about this, 'It is very sad that my parents find my interpretation of Islam embarrassing. My father even criticises his best friend whose son a practising Muslim does not practice Sufism. My mother is more accepting of my non-practising sisters, than of me, a practising Muslim. And I am not able to relate to Sufism. I often get treated as though I am so wrong, and ignored. Why is that I wonder.' Int. 27. It is perhaps the conflicts within Islam that have perpetuated the discussion on Islam and terrorism.

5.4 Does Islam legitimize terrorism?

It is accepted that the impact of 11 September 2001 has had a dramatic influence on Islamic thoughts and practices. Extremism and 'radical Islamist discourse' is evident throughout the world, with Osama Bin Laden featuring as a main 'reference'.⁶⁴ In addition the events of 11 September 2001 have provided 'ammunition ... to those suspicious' of the Islamic societies.⁶⁵ Thus in an era when 'Islamic themes and terminology dominate political discourse', politics and religion become intertwined, irrespective of whether they are viewed by those inside the Muslim societies or externally.⁶⁶ It is further submitted that the events following 11 September 2001, have resulted in Islam being placed under the magnifying glass – with some struggling to distinguish between terrorism and Islam.⁶⁷

As already discussed, it is not a new concept to link terrorism with religion.⁶⁸ However, Hoffman argues that in contemporary terrorism religion is used as a 'means of communication.' It is observed that despite Bin Laden's lack of theological credentials, his fatwas are accepted by people in a manner described as 'truly is a perversion of religion'.⁶⁹ The data analysis of the fieldwork reveals the common view that 'You should know, our religion does not guide us to

⁶⁴ Nathan K. S. & Kamal M.H. (2005) (editors) *Islam in Southeast Asia: Political, Social & Strategic Challenges for the Twenty-first century*. Institute of Southeast Asian Studies: Singapore at p. xxii.

⁶⁵ Rehman J. (2005) *Islamic State Practices. International Law and the Threat from Terrorism*. Hart Publishing: Oxford.

⁶⁶ Mayer A.E. (1991) *Islam and Human Rights: Tradition and Politics*. Westview Press: Boulder, CO at p.xii.

⁶⁷ Malika A. in Yahya H. (2002) *Islam Denounces Terrorism* Amal Press: Bristol, at p.7.

⁶⁸ Osho (2006) in http://www.oshoworld.com/newsletter/PDF/aug06/religion_and_terrorism.pdf last visited July 2009; see also earlier discussion related to 'religion and terrorism'.

⁶⁹ Hoffman B. (2002) 'Religion and Terrorism Interview with Dr Bruce Hoffman'

http://www.religioscope.com/info/articles/003_Hoffman_terrorism.htm 22/2/2002, last visited July 2009.

terrorism. Islam meaning is love and share with everyone, and live happily.' Int. 14. Another participant believed that Islam was being deliberately tarnished but not from within Islam itself, 'Islam is against innocent killings of life. If one kills one innocent person then kill a nation - but system is pre-planning of the Jews and Christians.' Int. 11. Thus consideration will be given to how terrorism is legitimised in the name Islam.

In considering whether the teachings of Islam legitimize terrorism, Rehman argues that 'the modern Islamic State practices are broadly in agreement with international laws prohibiting acts of terrorism'.⁷⁰ However 'Islam, as all religious civilizations, represents a complex system of values and ritual, theology and folklore, law and faith. Like all religions, it contains within it both the deep and the simple, the sublime and the cruel, the exulted and the ignoble'.⁷¹ There are indeed differences and 'splits' within the Muslim communities.⁷² Nevertheless, the fact that terrorist acts are 'perpetrated in the name of Islam'⁷³ has led some to question the 'religious culture in which this phenomenon is rooted and nurtured'.⁷⁴ The apparent threat from this religious culture is further perpetuated by the knowledge that it embraces 'more than one-fifth of the world's population'.⁷⁵ In addition, it is argued that there continues to exist a presence in the Muslim communities that support terrorism, and this is attributed to the basic perception and belief that it is Islam itself that is violent.⁷⁶

Muslims are instructed by the Quran and the Hadith- Sunna to find a 'middle way' and to avoid extremism; 'to act with justice, perseverance and patience'.⁷⁷ Islam is viewed as a religion of peace, and terrorism is seen as an attack against religion itself.⁷⁸ This view was continuously

⁷⁰ Rehman J. (2005) op cit.

⁷¹ Firestone R. (1999) *Jihad: The Origin of Holy War in Islam*. Oxford: OUP at p.13.

⁷² Ibid.

⁷³ Bar S. (2004) 'The Religious Sources of Islamic Terrorism' *Policy Review* No.125, 2004.

⁷⁴ Bar S. (2004), *ibid*; see also: Mazarr M.J (2004) ;The Psychological Sources of Islamic Terrorism: Alienation and Identity in the Arab World.' *Policy Review* 125:39.

⁷⁵ Esposito J. (1992) *The Islamic Threat: Myth or Reality?* OUP:Oxford at p.2.

⁷⁶ Carrington C.J. (2001) 'What is the Truth about Islamic Terrorism', <http://www.onthruuth.com/islamwtc.html>. last visited July 2009, and <http://www.islamreligion.com/articles/238/modified> on 24 April 2008. See also: Huntington S.P. (1996) *The Clash of Civilizations and the Remaking of World Order* Simon & Schuster: London, at p.263; see also: Malik A.A. (2002) in Yahya H. (2002) *Islam Denounces Terrorism*. Amal Press: Bristol, and Rehman J. (2005) *Islamic State Practices, International Law and The Threat from Terrorism: A Critique of the 'clash of civilizations' in the New World Order*. Hart Publishing: Oxford, at p.3.

⁷⁷ Yahya H. (2002) op cit at 9.

⁷⁸ Yahya, (2002) op cit at 14.

reiterated by the participants interviewed, 'It is haraam - it should not occur. Muslims are anti terrorism especially in the UK. We condemn July 2005 - we don't want to kill any innocent people of any nation.' Int. 18. Others whilst sharing this common perspective, also believed that they were incorrectly portrayed, 'Islam is against terrorism, clear ruling that cannot kill innocent people - only kill in war, at the moment what the media shows goes against that. Not following religion when killing people.' Int. 16. Thus Muslims are said to be responsible for preventing terror, in essence perpetuating justice and peace to society. 'Islamic terror' is seen as an erroneous concept which contradicts Islam's message.⁷⁹ Indeed it is further argued that Islam itself does not legitimise terrorism: 'God does not forbid you from showing kindness and dealing justly with those who have not fought you about religion and have not driven you out of your homes. God loves just dealers'.⁸⁰ The Prophet Muhammad (PBH) prohibited the killing of women and children by the soldiers,⁸¹ and stated 'Do not betray, do not be excessive, do not kill a newborn child',⁸² and elaborated, 'whoever has killed a person having a treaty with the Muslims shall not smell the fragrance of Paradise'.⁸³

The fact that Islam does not permit terrorism through its respect for human rights was an argument relayed by one participant interviewed, 'We respect the human rights of all people, whether they are Christians or Hindus, so we as Muslims should not and cannot kill anyone except in war, but London bombing was not war, and neither was September 11, all this stuff is not war. You write this: we respect human rights, it is in our Islam. If I was a scholar I would give you quotes, but you write this ok.' Int. 3 The assertion that Islamic law dictates the preservation and practice of human rights is conceded by the Organisation of Islamic Conference in 1990,⁸⁴ when it accepted the 'Declaration on Human Rights in Islam'. Thus human rights are viewed as a crucial tenet of Islam and thus cannot be violated or ignored. The preservation of these rights is deemed to be the duty of all Muslims.⁸⁵ It is accepted that the inhumane methods of some of the contemporary Islamic States makes an oxymoron of the concept of 'human rights

⁷⁹ Yahya, (2002) op cit at 14; see also Rehman J (2005), op cit.

⁸⁰ Quran: 60:8 cited in <http://www.islamreligion.com/articles/238/>.

⁸¹ Narrated in *Saheeh Muslim*, #1744, & *Saheeh Al-Bukhari* # 3015.

⁸² Narrated in *Saheeh Muslim* #1731, & *Al Tirmizi* #1408.

⁸³ Narrated in *Saheeh Al-Bukhari*, #3166, & *Ibn Majah*, #2686.

The last three footnotes are cited in <http://www.islamreligion.com/articles/238/>.

⁸⁴ Also known as OIC, in 1990.

⁸⁵ 4th Preambular Paragraph of the *Cairo Declaration on Human Rights in Islam* (1990).

and Islam'. Nevertheless there is clear evidence that these inhumane practices are not governed by the Islamic law. States responsibility in ensuring the practice of human rights is dictated in the doctrine of Islamic law.⁸⁶ Hence even the Archbishop of England to comment that '[t]he principles of Islamic law ... are principles that lay heavy stress on dignity and respect ...'⁸⁷.

5.5 Islam and the role of war

It has been observed that 'western prejudice toward Islam is as old as Islam itself.' Despite Islam's progression in the scientific and other intellectual areas, the West has always 'epitomized Islam as cruel, evil and uncivilized.'⁸⁸ Thus war is viewed as an integral part of Islam⁸⁹ and the hypothesis that 'it is the principal process by which Islam spread throughout the world'.⁹⁰ As the foregoing discussion has briefly highlighted the question that is often posed in the contemporary world is about Islam's views on war, especially since al-Qaeda has equated their terrorist activities with 'just war'. Thus they justify their actions under the umbrella of Islamic law.

It is asserted that the justification of the 'holy war' in Islam can be found in some teachings in the kingdom of Saudi Arabia. Religion and politics are often intertwined in Saudi Arabia, and it is from this basis that a Islamic theologian, Muhammad ibn Abd al-Wahhab created 'a movement, Wahhabism'.⁹¹ Wahhabism continues to flourish in contemporary Saudi Arabia. 'It is a strict, puritanical faith that emphasizes literal interpretation of the Quran and Sunnah . . . thus holy war is required' to unite the *ummah*.⁹² Bin laden uses his Saudi Arabian heritage of Wahhabism to justify his actions and deeds, and this ideology lead to the creation of al-Qaeda (the base).⁹³

⁸⁶ Coulson N.J. (1957) 'The State and the Individual in Islamic Law' 6 *ICLQ* 1957 49 at 51. see: *Quran* at 17:70 and Senurk R. (2002) 'Adamiyyah and Ismah: The Contested Relationship between Humanity and Human Rights in Classic Islamic Law' 2002 8 *Islam Arastirmalan Dergisi* [Turkish Journal of Islamic Studies] 39-69.

⁸⁷ Williams R. (2008) 'Civil and religious law in England: a religious perspective' *ELJ* 262 at 277.

⁸⁸ Firestone R. (1999) op cit at 13.

⁸⁹ Cavanaugh K. (2012) 'Speaking law to war.' *J.C. & S.L* 2012, 17(1). 3-24.

⁹⁰ Nafziger G.F. & Watton M.W. (2003) *Islam at war: A History*. Praeger Publishers: Westport at p.vii.

⁹¹ Esposito(2003) op cit at 6.

⁹² Ibid.

⁹³ Gunaratna R. & Oreg A. (2010) op cit at 1047.

However, there is the school of thought that asserts that the accurate interpretation of the Islamic teachings contradicts the ideology of al-Qaeda and other similar groups.⁹⁴ It is further submitted that Bin Laden whilst not wholly ignorant of the Islamic teachings and law, is selective in its interpretation to aid his 'cause'.⁹⁵ Hence, 'some Western readers find the Islamic rulings on war to be contradictory'.⁹⁶ To understand the teachings, scholars argue that the Quran must be analyzed as a 'whole' and not in selective pieces,⁹⁷ 'And those who are firmly grounded in knowledge say: "We believe in the Books; the whole of it is from our Lord": and none will grasp the Message except men of understanding'.⁹⁸ Thus, it is observed that the concept of war in Islam has gradually 'evolved carrying layers of corrective interpretation'.⁹⁹ Armstrong concludes that the Quran does not sanctify warfare. It develops the notion of a just war, of self defence, to protect decent values, but condemns the killing and aggression.¹⁰⁰

Moreover, *indiscriminate killing* is prohibited in the Quran as evidenced by Surah al-Maida, verse 32. Thus attacks on civilians violate Islamic law. 'It has been narrated on the authority of Abu Haraira that the Messenger of God said: 'Do not desire an encounter with the enemy; but when you encounter them be firm'.¹⁰¹ It is further narrated on the authority of Abdullah that a woman was found killed in one of the battles fought by the Messenger of God. He disapproved of the killing of women and children.¹⁰² It is narrated by Ibn Umar that a woman was found killed in one of these battles; the Messenger of Allah forbade the killing of women and children.¹⁰³ In the hadith narrated by Abdullah ibn Amr ibn al-As, Prophet Muhammad said: 'You are neither hard-hearted nor fierce character, nor one who shouts in the markets. You do not return evil for evil, but excuse and forgive'.¹⁰⁴

⁹⁴ Lovelace D. (2004) in Aboul-Enein Y.H. & Zuhur S. (2004) *Islamic Rulings on Warfare*. Strategic Studies Institute: Carlisle Barricks.

⁹⁵ Aboul-Enein Y.H. & Zuhur S. (2004) *Islamic Rulings on Warfare*. Strategic Studies Institute: Carlisle Barricks, at p.1.

⁹⁶ Ibid at p.2.

⁹⁷ Bader M.E. (2011) op cit at 415.

⁹⁸ Quran: Surah3, al-Imran, verse 7.

⁹⁹ Aboul-Enein, et al., (2004) op cit at 4.

¹⁰⁰ Armstrong K. (2002) *Islam A Short History* Random House, NY & Toronto, p.30.

¹⁰¹ Muslim Book 19, hadith no:4313.

¹⁰² Muslim Book 19: hadith no 4319.

¹⁰³ Muslim Book 19, hadith no 4320.

¹⁰⁴ Al-Bukhari, Vol 6, Book 60, hadith no 362.

Footnotes 101-104 cited in Aboul-Enein et al (2004) op cit at 22.

5.6 Use of the term 'Jihad'

There exists an unceasing and detailed assertion that Islamic law condones and perpetuates terrorism. This debate centres around what Harris refers to as the 'peculiar institution of Islam',¹⁰⁵ namely *Jihad*. Rehman observes that 'the terminology of jihad is often erroneously applied as being synonymous with terrorism or violence'.¹⁰⁶ Perhaps this should not be surprise when Osama Bin Laden declared in 1998 that, '... jihad is an individual duty if the enemy destroys the Muslim countries... as for the fighting to repulse, it is armed at defending sanctity and religion, it is a duty...'¹⁰⁷ Thus *jihad* is often associated with the theory that 'it is a religiously sanctioned violence'.¹⁰⁸ Islamic law is thereby seen to advocate terror in the form of jihad, Mushkat advocates that jihad is an obligation imposed on Muslims to increase the Muslim community, and join forces against the non-believers of Islam.¹⁰⁹ Similarly, Busuttil elaborates on Mushkat's views, and argues, that the sole purpose of Islam is to convert the non - believers by the 'sword'.¹¹⁰ Anxiety about such an 'aggressive and violent' faith is further fuelled by leading Muslim jurist, such as Majid Khadduri,¹¹¹ who advocated that Islam's purpose is to usurp the world, and no-one outside of Islam had 'equal status'.¹¹²

Jihad is viewed simply as dividing *Dar al-Islam* (Muslim controlled territory), and *Dar al-harb* (all areas not under the Islamic rule).¹¹³ Aboul-Enein and Zuhr assert that aggression that is conducted as 'jihad', has clear evidence that it is contrary to what is provided in the teachings of Islam. For a person to declare a jihad, he has to be the 'Commander of the faithful', and the contemporary Muslim world has no 'allegiance' to one 'Caliph'.¹¹⁴ Nevertheless, such acts of jihad perpetuate the thesis that Islam is indeed 'a religion of the sword... and a concept of non-violence is absent from Muslim doctrine and practice'.¹¹⁵

¹⁰⁵ Harris L. (2006) 'Jihad Then and Now' *Policy Review* 2006, 139:71.

¹⁰⁶ Rehman J. (2005) *Islamic State Practices, International Law and the Threat from Terrorism* Hart Publishing: Oxford, at 51.

¹⁰⁷ Cited in Knapp M.G. (2003) 'The Concept and Practice of Jihad in Islam' *Parameters* 2003, 33(1):82.

¹⁰⁸ Ali & Rehman (2005), op cit at 51.

¹⁰⁹ Mushkat R. (1987) 'Is War Ever Justifiable?' *International & Comparative Law Journal* 1987, 9, 227.

¹¹⁰ Busuttil J. (1991) 'Humanitarian Law in Islam' *The Military Law & Law of War Review* 1991, 30, 113.

¹¹¹ Khadduri M. (1955) 'War & Peace in the Law of Islam' 51-54 cited in Ali & Rehman, 2005, op cit.

¹¹² Ibid.

¹¹³ Knapp M.G. (2003), op cit at 82.

¹¹⁴ Aboul-Enein E.H. & Zuhr S. (2004) op cit at 5.

¹¹⁵ Huntington S.P. (1996) 'The Clash of Civilization and the Remaking of World Order' 263 cited in Ali & Rehman (2005) op cit.

In contrast to the above ideology, Jihad is more often viewed as a 'non-violent' concept. It is incorrectly linked to war, since the word in Arabic for war or fighting is 'harb'.¹¹⁶ *Jihad al saghir* (lesser jihad) or *jihad bin saif* (jihad of the sword), is viewed in Islam as lesser struggle than the large, inner struggle referred to as *jihad alkabir*.¹¹⁷ For the purposes of the present discussion, and certainly to those justifying warfare in Islam, *jihad al saghir* is projected to the forefront.¹¹⁸ Professor Rehman elaborates on the definition of jihad when he writes, '[t]he term *jihad* is adopted from the Arabic verb jahada, which connotes exerting oneself, labour or toil. In essence *jihad* is an expression of endeavour and struggle in the cause of Allah'.¹¹⁹

Jihad is in this sense conducted in non-violent manner 'with persuasion' as the key element.¹²⁰ This is based on evidence from Islamic law, where it is argued that jihad is used in the Quran to guide the individual closer to Allah.¹²¹ On jihad the Quran states, 'O Ye who believe! Shall I guide you to a commerce that will save you from painful chastisement? Is that you believe in Allah and His Messenger, and strive in the cause of Allah with your belongings and your persons. That is better for you. If ye have knowledge, He will forgive your sins, and will admit you to Gardens beneath which river flow, and to pure and pleasant dwellings in Gardens of Eternity. That is the supreme triumph'.¹²² In short, jihad is equated to 'striving with one's person and one's wealth for the sake of God'.¹²³

¹¹⁶ Burki S. K. (2011) 'Haraam or Halal? Islamists' Use of Suicide Attacks as 'jihad'.' *Terrorism and Political Violence*, 23: 582-601 at 584.

¹¹⁷ Burki (2011) *ibid* at 585. Jihad al kabir (the greater jihad) also called jihad bil nafs (the struggle of the conscience or ego) has been pivotal to mystical teachings of Sufism. However this is viewed as an 'anathema' by the Mawahhidun/Wahhabi/salafi teachings of Islam, who as discussed in Chapter Two view the customs of Sufism as 'bida' (innovations), and accordingly prohibited or haraam in Islam.

¹¹⁸ Burki (2011) *ibid* at 585.

¹¹⁹ Rehman J. (2005) *op cit* at 51; see also Zawati H.M. (2001) *Is Jihad a Just War? War, Peace and Human Rights under Islamic and Public International Law*. Edwin Mellen Press, Lewiston, NY.

¹²⁰ Rehman (2005) *op cit* at 51.

¹²¹ Burki (2011) *op cit* at 582-601.

¹²² The Quran, 61:11-13

¹²³ Heck P. (2004) 'Jihad Revisited' *Journal of Religious Ethics*, 32(1), 2004: 96-98. see also: Khaddhuri M. (1955) *War and Peace in the Law of Islam* The John Hopkins Press, Baltimore & London, at 55-56; Khaddhuri M. (1966) *The Islamic Law of Nations – Shaybani's Siyar: Translated with an introduction notes and appendices by M Khaddhuri*. The John Hopkin's Press, Baltimore, Maryland at 15 see also: Bakiraoglu O. (2010) 'A socio-legal analysis of the concept of jihad.' *I. C. L.Q.* 2010, 59(2), 413-440 at 417, and An-Na'im A.A. (2002) 'Upholding International Legality Against Islamic and American jihad', in Booth K. and Dunne T. (editors) *Worlds in Collision: Terror and the Future of Global Order*. Palgrave: London, at 166.

It has been argued that the 'concept of 'just war' permeates the jihad ideology and has been invoked, contemporaneously to legitimize struggles in Kashmir.¹²⁴ Indeed this was reflected in some of the data obtained from the fieldwork: 'bombing people is not jihad. It's a great league of Muslims. Let me give you an example - Jammu Kashmir, fighting for freedom is jihad.' Int. 14. However not everyone is certain of what it entails, but its abuse was acknowledged, 'I don't actually know what jihad is, but a lot of terrorists use it as an excuse to carry out attacks.' Int. 20. The reality that the jihad propaganda is continuously used to recruit 'home grown' terrorists is reflected in the *Iqbal* case.¹²⁵ In brief, *Iqbal* was arrested with co-accused at Manchester Airport, they intended to go to Finland. On arrest, he had in his possession material promoting terrorism. A later search of their home revealed material on jihad and video images of Iqbal mimicking jihadi acts - such as holding a boy by the throat, with two swords and saying, 'This is what I am going to do to somebody, God willing, when I find a kuffar, this is how I am going to take his head off.' Further videos showed celebration of beheadings. The defence argued that the defendants were 'dreamers obsessed with weapons and action films.' Whether they were 'dreamers' or those 'fascinated' with jihad, this case highlights the many dangers that encompass the distorted version of jihad to young British Muslims. As the trial judge concluded, they were 'more taken with the vanity than reality.' But the case reflects the serious need to educate the British Muslims that audio files such as those identified in this case entitled 'Come on let's do jihad', contradict Islam. And this education can only come from within the community, by those that these potential terrorists respect. One participant's solution was to work with the national security services, 'they have to be educated that what they are doing is wrong by someone they can relate to.' Int. 7

In Islamic law, it is emphasised that the ideal option should be of peace. The Quran emphasises, 'And, if they incline to peace, incline thou also to it and trust in God, Lo! He is the Hearer, the Knower',¹²⁶ Furthermore, 'if two parties among the believers fall into a quarrel, make ye peace between them'.¹²⁷ Thus the fieldwork data generated responses which reflected a peaceful outlook. 'Jihad is a struggle, whether it's personal to be a better human being. It is misconstrued by those who exploit Islam and has been wrongly linked with terrorism. Jihad can be a 'just

¹²⁴ Cavanaugh K. (2012) 'Speaking law to war.' *J. C. & S. L.* 2012, 17(1), 3-24 at 4.

¹²⁵ *R v Iqbal (Abbas Niazi)* [2010] EWCA Crim 3215 (CA Criminal Division).

¹²⁶ The Quran, 8:60-61.

¹²⁷ Cited in Ali & Rehman, 2005 op cit at 51.

war', which terrorism clearly is not, the whole purpose of jihad is to struggle for the righteous path – terrorism is the opposite to that. Does that make sense?' Int.27. There was the common acknowledgement that the terrorists' abuse of Islam, has distorted the image of jihad and that the concept of jihad is sometimes blurred: 'Jihad is the fight for your own country, for freedom and rights. Maybe related to terrorism because that's how they recruit.' Int. 21. Jihad's links with terrorism had an uncomfortable impact on some of the participants interviewed: 'Jihad in the time of our Prophet peace be upon him, was different, it was part of the Islamic law like a sixth pillar. Now jihad is not of killing innocent people. Ummah is against it and says it is haraam¹²⁸ not jihad, (make sure you write this), we condemn it all, all of us in the UK, this is our second home.' Int.18.

The participants were keen to distant their religion from terrorism thus despite being unfamiliar with the Islamic teachings. The common theme was that 'Islam is against terrorism' reflected even amongst those 'not well read about Islam, but contrary to the preaching's of Islam.' Int. 15; 'Not really studied Islam yet. Can't make a judgement, shouldn't kill innocent, don't believe in persecution; whether it relates to Islam or not – but from a moral perspective it's wrong.' Int.8; 'Islam does not allow terrorism, I don't think so.' Int.26. 'Not sure. Not looked at it enough. Not an expert. Innocent people should not be harmed.' Int.7.

The notion that jihad should be used 'to convert the entire world' into Muslim Ummah is challenged.¹²⁹ The Quran clearly states 'There is no compulsion in religion...'¹³⁰ Although it is argued that 'apostasy' is comparable to the 'modern laws [of] treason',¹³¹ forced conversion to Islam is clearly not sanctioned by Islamic law. This is further emphasised by the verses of the Quran, 'Invite all to the way of your Lord with wisdom, reason and clear intentions. Truly your Lord knows best who has gone astray from His Path, and He is the best aware of those who are guided'.¹³²

¹²⁸ Prohibited.

¹²⁹ Aboul-Enein Y.H. & Zuhur S. (2004) op cit at 7).

¹³⁰ The Quran, 2:256;(al-Baqarah, verse 256).

¹³¹ Ali & Rehman, (2005) op cit at 321.

¹³² The Quran, Surah Al-Nahl, verse 125.

The use of jihad to forcibly convert into Islam is evidently contradicted by the Islamic law, this is emphasised in the above verses of the Quran. Thus, it is argued that since the essential elements of *dar al Islam* and *dar al harb* have evolved over the centuries, the definition of *dar al Islam* as 'any territory whose inhabitants observe Muslim law', applies to Western nations such as the United Kingdom. The analogy used for this is that of British India, referred to by Islamic scholars as a *dar al Islam*, because it fulfills the criteria of holding Friday and Eid Prays.¹³³

On a similar vein, the fieldwork data reiterated the participants' common views on terrorism and its links to jihad, 'Jihad is meant to be a struggle, these days only hear about it when people fight.' Int. 8; 'Jihad is just about taking the religion forward, personal goal, not necessarily violent. The term is hijacked by terrorism and seen as a fight against Islamic forces – misinterpretation of what is in the Quran – but precisely their views.' Int.7. Some viewed jihad as 'dying for one's country and religion – not for Islam to be insulted.' Int. 10, and 'jihad is different from terrorism. Jihad is about holy war, Muslims have to follow strict rules – very different from terrorism – no links.' Int.24. Others applied jihad to their surroundings, as one participant explained, 'In Sufism, jihad is about nafs – pursuing yourself. The legal definition is the just war theory adapted by St. Augustine, it's based on Islamic teachings, allowed and accepted even by the Geneva Convention. People are now taking it out of context and saying you can kill, like terrorism. In my area people are dealing drugs, this takes priority, can't conquer the world when neighbourhood is not sorted out. That is my jihad.' Int.17. Some participants appeared to view it as an opportunity to correct a misconception, others expressed some annoyance that the researcher as a Muslim was also linking it to terrorism, 'I am surprised that you of all people need to ask such a question.' Int. 11 Having considered some of the views from the fieldwork, further discussion is warranted on what justifications if any are offered by those undertaking and advocating terrorism in the name of Islam.

5.7 The concept of suicide in Islamic law

Suicide is viewed as the paradigmatic spectacle of Islamist terrorism; 'a favoured method of Al Qaeda type terrorism'.¹³⁴ Via suicide there is the portrayal of the terrorist as 'noble, terrible,

¹³³ Ali & Rehman,(2005) op cit.

¹³⁴ Greer S. (2008) 'Human rights and struggle against terrorism in the UK' *EHRLR 2008, 2, 163-172* at 166.

irresistibly fascinating, for he combines in himself the two sublimities of human grandeur: the martyr and the hero'.¹³⁵ When Wafar Idris, one of the first Muslim female committed suicide, in 2003, she was described in emotive language that perpetuated the 'spectacle'; as 'illuminating spirit and purity', with 'spirit raging, her heart filled with anger'.¹³⁶ 'Her sacrifice was [described as] a supreme act of beauty'.¹³⁷ Such concepts of suicide overlook the reality that suicide bombing is a 'frightening' weapon that has 'catastrophic effect[s]'.¹³⁸

Yet, suicide is not sanctioned within the Islamic law. It is submitted that throughout the history of Islam suicide has been held to be prohibited. This is based on the belief that only Allah has the power to give and take life, and thus suicide is considered 'sacrilegious'.¹³⁹ Burki observes that suicide missions are also referred to by those sanctioning them as 'martyrdom operations'.¹⁴⁰ Despite the evidence in the Quran¹⁴¹ and the Sunna¹⁴² that such operations are forbidden, nevertheless they are justified by Al - Qaeda as necessary and just under the circumstances. The circumstances relayed by Al Qaeda advocates are of where the enemy is more powerful, and any encounter will lead to an inevitable death.¹⁴³ A dominant advocate of 'martyrdom or self sacrifice operations'¹⁴⁴ was Sheikh Yusuf Salih Al-Uyayri, who declared that 'suicide bombings' is a terminology fabricated by the Jews 'to discourage our brothers from such activities'.¹⁴⁵

¹³⁵ Stepiak (Russian anarchist who assassinated Tsarist General Mesentzoff in 1878), quote from his essay *underground* cited in Houen A. (2002) *Terrorism and Modern Literature: From Joseph Conrad to Claran Carson*. OUP: Oxford, at 57.

¹³⁶ Journal Al-Arabi cited in Ward I. (2008) 'God, terror and law' *Oxford Journal of Legal Studies* 2008, 28(4), 783-796 (at 789-790).

¹³⁷ Ward I. (2008) op cit at 790. see also: Israeli R. (2004) 'Palestinian Women: The Quest for Voice in the Public Square Through Islamikaze Martyrdom' *Terrorism and Political Violence* 2004, 16: 66-96, at 84-8.

¹³⁸ Leivesley S. (2006) 'Terrorism PLC: funding spectaculars and catastrophic risk in law'. *JMLC* 2006, 9 (2), 141-156 at 147.

¹³⁹ Burki S. K. (2011) 'Haraam or Halal? Islamists' use of Suicide Attacks as Jihad.' *Terrorism and Political Violence*, 23: 582-601 at 583. see also: El-Ayouty Y. (1999) 'International Terrorism under the Law' *Journal of International and Comparative Law* 1999, 5ILSA at 489.

¹⁴⁰ Burki S. (2011) op cit at 586.

¹⁴¹ Sura An-Nisa 4: 29-30 and Sura Al Baqara 2:195.

¹⁴² Hadith Bukhari 2: 445, narrated by Thabit bin Ad - Dahhak, Accessed at <http://muttaqun.com/suicide.html>;

Hadith Bukhari 7: 670, narrated by Abu Huraira. accessed at <http://muttagun.com/suicide.html>.

¹⁴³ Al Uyayri Y. (2003) 'The Islamic Ruling on the Permissibility of Self Sacrificial Operations: Suicide or Martyrdom?' (Translated in English by At-Tibyan, 2003). see also: Hegghammer T. (2010) *Jihad in Saudi Arabia - Violence and Pan Islamism since 1979*. Cambridge: CUP at pp 125-126.

¹⁴⁴ Burki S. (2011) op cit at 587.

¹⁴⁵ Al-Uyayri Y. (2003) op cit at 8.

It is further argued that the success of the martyrdom missions in Beirut by Hizballah has created a justification for suicide or the 'Evolving Islamic Martyrdom',¹⁴⁶ within the Muslim world, be they in London or Kashmir.¹⁴⁷ In addition the perceived injustices of the 'Israeli occupation' has 'legitimized the use of' suicide.¹⁴⁸ The consistent argument used by the advocates of suicide is that the 'ends justify the means', and that it is a necessary method that is permitted with 'pure intention', whilst causing substantial damage and fear in the enemy, simultaneously increases the 'Muslim morale'.¹⁴⁹ However 'this weak case' received no support from the Grand Mufti of Saudi Arabia, Sheikh Abdul Aziz al-Sheikh.¹⁵⁰ Similarly other Islamic scholars have condemned suicide,¹⁵¹ including Sheikh Gomaa, who issued a statement that suicide bombing of a Church in Alexandria on January 2011, was prohibited and therefore against Islam.¹⁵² Nevertheless 'the ends justify the means' case in advocating suicide especially in Israel is seen to be advocated via the medium of *Al Jazeera*, 'watched by over sixty million people every week'.¹⁵³ The alleged slogan that it is only 'martyrdom . . . if it targeted Israelis,' prevails.¹⁵⁴

One Ayat from the Quran (An-Nisa 4:74), often used to justify suicide, is challenged as it does not 'suggest or imply a violent self - sacrifice by one's own hand'.¹⁵⁵ In addition it clearly states in the same Sura that ' . . . And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you.' (An-Nisa 4:29). Thus, the 'cherry picking' of ayats is another method of misinterpreting the Islamic teachings.¹⁵⁶ A lay person's view can be summed by the words of one participant, 'I am not a scholar, but I know that nothing can defend or justify this terrorism of car bombs and airplanes crashing into buildings. What happened on 7th of July in my own country, Allah will not forgive, and Allah has not said that anyone can take innocent lives.' Int. 15.

¹⁴⁶ Acosta B. (2010) 'The Suicide Bomber as Sunni - Shi'i Hybrid.' *Middle Eastern Quarterly* 17(3), Summer 2010. at p.13.

¹⁴⁷ Burki S. (2011) op cit at 588.

¹⁴⁸ Burki S. (2011) op cit at 588.

¹⁴⁹ Ibid at 588.

¹⁵⁰ Quoted in 'Grand Mufti of Saudi Arabia: No to Suicide Bombings.' *Al Hayat* Nov. 27, 2009, cited in Bukri (2011) op cit at 589 and 599; (original article not accessible).

¹⁵¹ Burki S. (2011) op cit at 589.

¹⁵² Washington Post (2011) 'Egypt's top Muslim leader responds to suicide bombing.' *Washington Post* January 2, 2011. Accessed at: http://onfaith.washingtonpost.com/on/faith/guestvoices/2011/01/egypts_top_muslim_leader_responds_to_suicide_bombing.html

See also: Burki S. (2011) op cit at 590.

¹⁵³ Burki S. (2011) op cit at 591.

¹⁵⁴ Ibid at 591.

¹⁵⁵ Burki S. (2011) op cit at 592.

¹⁵⁶ Ibid at 592.

5.8 What motivates Islamic terrorists?

The fact that "Islam itself is against terrorism" Int. 1, is reinforced by the scholars of Islam, and the participants interviewed, leads to the inevitable question of what actually motivates Islamic terrorists. As the foregoing discussion has highlighted, Muslims and non-Muslims often cite radical Islam to justify terrorist activities. But Islam, be it radical or liberal does not promote terrorism; however distorted perceptions and misinterpretations enhance the terrorists' agenda.

It is imperative to note that 'majority of the Muslims are not fluent in Arabic, for example, Pakistan, Afghanistan, India, Indonesia. Little attention is given to explaining the actual implications and applications of [the Quran], Prophet Muhammad's words or the differences in interpretations that can be lost in translation'.¹⁵⁷ In addition crucial elements of the law are omitted to justify the terrorist agenda. Bruce Hoffman advocates that the underlying motivation of terrorism is predominately political and that terrorism is utilised to achieve the political aspirations.¹⁵⁸

'Terrorism research' conducted using '400 biographies' compiled mainly from trial records of those who had no 'nationalistic' agenda and had targeted foreign land, namely the United States, found that the individuals recruited for jihad had no common profile, but were 'not very religious.' Their common aim was to seek familiar people and social interaction in a mosque. In the mosques their loneliness was exploited and converted into terrorism.¹⁵⁹ This longing to belong was identified in the fieldwork analysis. Despite being British and not foreign born, some of the second and third generation participants identified with Sageman's hypothesis of belonging to a 'community'. One participant in the research conducted for this thesis articulated the common dilemma encountered by the British born, 'You are told that you are a Muslim, yet

¹⁵⁷ Aboul-Enein & Zuhur, (2004) op cit at 9.

¹⁵⁸ Hoffman B. (2006) *Inside Terrorism* revised edition. Columbia University Press: New York at p.2; Shaw C.J. (2007) 'Worldwide war on terrorist finance' *JIBLR* 2007, 22(9), 469-486 at 470; Croft S. and Moore C. (2010) 'the evolution of threat narratives in the age of terror: understanding terrorist threats in Britain.' *International Affairs* 86:4 (2010) 821-835 at 826-7; Hoffman B. (2008) 'The myth of grass roots terrorism: why Osama bin Laden still matters.' *Foreign Affairs* 87(3), May-June 2008, 133-138.

¹⁵⁹ Sageman M. (2004) *Understanding Terror Networks* 1 Nov.2004:

<http://www.fpri.org/enotes/2004/101.middleeast.sageman.understandingterrornetworks.html> last visited 13 July, 2009.

you know nothing about your religion. I learned to read the Quran in Arabic but did not know what it said. I wanted to learn more about my religion and be accepted by it. I felt quite different and isolated. I did not drink alcohol, ate only halal food. I wanted to understand my religion. Although I was accepted by non-Muslim friends, I wanted more. I had this emptiness and a longing to learn more. This is what leads to terrorism - if you receive the wrong interpretation of Islam, you think that's it. It is a slippery slope, and I strongly believe that no one is born a terrorist, they are often manipulated into becoming one. And that manipulation is so easy when you have no or limited knowledge.' Int. 27.

In his sample, Sageman, found no 'recruiter'. Sageman's findings indicate that prior to September 2001, young men volunteered to fight in Afghanistan. They had no intention of becoming 'terrorists'.¹⁶⁰ Like Sageman in 2004, Bakker,¹⁶¹ two years later, published his findings on jihadi terrorists in Europe. He also relied on data from trial and media records. Similar to Sageman, Bakker found that the individuals being researched,¹⁶² were not attracted to extremism because of al Qaeda but through existing jihadi movements.¹⁶³ Group loyalty was a common feature in both studies. The individual's newly acquired 'faith' isolated them from their families and their previous social settings, thereby increasing their dependency on the new found group.¹⁶⁴

The assertion that there is no 'central leadership' is elaborated in later writings in 2008. Furthermore Sageman, does little to advance Hoffman's 'political' hypothesis, instead he argues that contemporary terrorists are motivated by their 'feelings', whereas political motivated behaviour involves thoughts and ideology.¹⁶⁵ 'The new generation of terrorists consists of home grown wannabes - - self recruited, without leadership, and globally connected through the

¹⁶⁰ Sageman, 2004: *ibid.*

¹⁶¹ Bakker E. (2006) *Jihadi terrorists in Europe, their characteristics and the circumstances in which they joined the jihad: An exploratory study.* Clingendael Institute: The Hague.

¹⁶² 242 individuals studied.

¹⁶³ Silke A. (2008) 'Holy Warriors: Exploring the Psychological Processes of Jihadi Radicalization'. *European Journal of Criminology*, 2008;5:99 at 111.

¹⁶⁴ Silke A. (2008), *ibid.*

¹⁶⁵ Sageman M. (2008) 'The Next Generation of Terror: The World's Most Dangerous Jihadists No Longer Answer to Al Qaeda. The Terrorists we should fear most are self-recruited wannabes who find purpose in terror and comrades on the web. This new generation is even more frightening and unpredictable than its predecessors, but its evolution just may reveal the key to its demise.' *Foreign Policy*. 2008, 165:36.

Internet. They are young people seeking thrills and a sense of significance and belonging in their lives'.¹⁶⁶ Sageman asserts that this form of terrorism consists of informal structure with no central funding. Their ideology and goals are unified by the internet.¹⁶⁷

Alarming, Sageman provides evidence that forms the basis of his views. The case of Younis Tsouli, who was arrested by the British police in his London resident, transformed from a 'computer geek to radical jihadist'. He was a 'crucial global organizer of online terrorist networks'.¹⁶⁸ Similarly, Mohammed Bouyeri, member of the 'Hofstad Network' 'brutally murdered Dutch filmmaker Theo Van Gogh on an Amsterdam street'.¹⁶⁹ Madrid bombers,¹⁷⁰ are cited as 'another example of the self-recruited leaderless jihad'. In Canada, 'mostly second generation Canadians' were found with 'vast quantities of bomb making materials' to attack Ottawa and Toronto. They were part of the 'Religious Awareness Club' that was formed online. Just as other groups, they too had no direct links to al Qaeda, although they too shared the ideology.¹⁷¹ Sageman observes that such movements of terrorism attract individuals that feel alienated in the society they live in. This alienation is transferred into frustration and they seek empathy and support from the online resources that also advocate and legitimise terrorist ideology and activities.¹⁷²

It is argued that the internet is a more effective forum than personal recruitment. It is a form of social networking where potential terrorists can share their grievances. The online forums¹⁷³ do impact some British Muslims, as one participant stated, 'They shouldn't have gone there in Iraq or Afghanistan. For example if this is your house and attacked, you would defend it as in Iraq. The British Army and the Americans are committing terrorism. I have great feeling that killing of brothers and sisters. British forces killed for no reason. Do not need to be there. Iraqis being killed every day.' Int. 14. He elaborates, 'I am totally against terrorism. Nothing the government [British] could do to motivate me.' Int. 14.

¹⁶⁶ Sageman M. (2008), *ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ Sageman M. (2008), *ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ March 2004.

¹⁷¹ Sageman, 2008, *ibid.*

¹⁷² *Ibid.*

¹⁷³ Keene S. D. (2011) 'Terrorism and the internet: a double - edged sword.' *J.M.L.C* 2011, 14(4), 359-370 at 362.

Another perspective provided on the motivation of terrorists is based on findings from the statements 'of collaboration of justice (so – called supergrass, referred to in Italy as repenters)' and 'the documents of an ideological nature produced by the terrorist organisation'.¹⁷⁴ Just as Sageman did, Spataro found that the 'collaborators' were not motivated by 'poverty or ignorance'. They all had upbringings that consistently viewed 'the West as an enemy and Westerners as infidels'.¹⁷⁵ These prejudices were further perpetuated by the media images of the 'negative treatment' of Muslim communities. Nevertheless, as Sageman had found these individuals in Spataro's research did not hold radical beliefs in their places of origin, nor were they religious. However in Italy, the 'marginalization' led them to search 'for a feeling of belonging to a [Muslim] community'.¹⁷⁶ Manipulation of the events, namely the individual's vulnerability and the longing to belong to a 'homely' environment are used to transform them into terrorists.

In line with the above argument of 'belonging', it is further asserted that Al Qaeda's recruitment across Europe is achieved through the attractiveness of its 'Global Jihad' ideology.¹⁷⁷ According to Gunaratna and Oreg, it sustains its support by utilising the individual's 'feeling[s] of deprivation and poor socio economic status; a feeling resonated across some Muslim communities in Europe'.¹⁷⁸ Hegghammer elaborates on this concept to argue that 'the increased role of religion' in conflicts such as Kashmir attracts Muslim foreign fighters.¹⁷⁹ Although there are no official statistics as to how many British Muslims embark on jihadi missions overseas, the fact that they do is evidenced by one participant's comments, 'I had a distant relative, the family talk about him. I was told that he left England for the first time in his life, it happened around twenty years ago and went to join the fight for independence in Kashmir. He died out there around six or seven years ago. We do not know how, it's all sad.' Int. 5¹⁸⁰

¹⁷⁴ Spataro A. (2008) 'Why do people become terrorists? A prosecutor's experience' *JICJ* 2008, 6(3), 507-524 at 509.

¹⁷⁵ Spataro, (2008) op cit at 510.

¹⁷⁶ Spataro, (2008) op cit at 511.

¹⁷⁷ Gunaratna R. & Oreg (2010) op cit at 1051.

¹⁷⁸ Gunaratna & Oreg (2010) op cit at 1053.

¹⁷⁹ Hegghammer T. (2010/11) 'The Rise of Muslim Foreign Fighters. Islam and the Globalization of Jihad.'

International Security 35(3), Winter 2010/11, 53-94 at p.67.

¹⁸⁰ Curiously, no other participant commented on British Muslims going overseas to fight.

This transformation into terrorism, according to Burke, consists of three stages. Once the individuals identify a cause that they wish to correct, they then embark on the second stage of believing that they can personally solve the injustice. The final stage transforms them into terrorists, as they overcome the social boundaries for their ideology.¹⁸¹

In addition it is argued that the 'indoctrination process' conducted by al Qaeda for example, has a 'pernicious influence' on the individuals leading to their terrorist acts.¹⁸² The underlying motivation – or the foundation of their cause is based on the 'distorted view of the principles of the Islamic religion and a violent and criminal interpretation of the obligation of *Jihad*.'¹⁸³ The distorted view of Islam is further evidence in the recruitment literature seized by the authorities.¹⁸⁴ These documents included the 'Military Studies for the Jihad against the Tyrants', which was found in Manchester, May 2000; the identical version found in a flat in Milan July 2002, albeit the latter was in Arabic and the former in English. Other documents seized in Italy between 2003 and 2004, contained similar distortions of the Islamic law, which according to Spataro was the motivator of their terrorist activities.¹⁸⁵ A conclusion is that 'religion [clearly] serves as a cultural adaptation for facilitating terrorism and war. They permit the take-over groups by disenfranchised young males'.¹⁸⁶

Such findings consistently reveal the 'distorted interpretations' of the Islamic law governed and motivated the terrorists' actions. Interestingly, these findings concurred with Sageman's theory of the 'leaderless jihad', but they (the collaborators here) are *not* home-grown terrorists.

¹⁸¹ Burke J. (2003) *Al Qaeda – Casting a Shadow of Terror*. I.B. Town's: London, at 247-248.

¹⁸² Spataro, (2008) op cit at 513.

¹⁸³ Spataro, (2008) op cit at 514.

¹⁸⁴ Hegghammer T. (2010/11) op cit at 72. see also: Spataro (2008) op cit at 515.

¹⁸⁵ Ibid at 515-516.

¹⁸⁶ Anderson J. (2003) 'Killer Apes on American Airlines, or : How Religion was the Main Hijacker on September 11', in Varvin S. & Volkan V.D. (editors) (2003) *Violence or Dialogue? Psychoanalytic Insights on Terror and Terrorism*. Institute of Psychoanalytic Association: London at 82. Spataro's findings revealed that in addition to the religious factors, finances were another motivator especially in suicide, when families of the 'suicide attacker' would receive *zakat*.

Nevertheless, just as Spataro had done Hegghammer, submits that there now exists a movement of jihadis that despite not having contact with each other share a unified ideology.¹⁸⁷

However, once the 'collaborators' were physically away from the 'indoctrination' environment upon reflection, they realised that their actions contradicted Islam.¹⁸⁸ This suggests that these are 'highly suggestible individuals attracted to cult-type figures for inspiration and leadership.'¹⁸⁹ The indoctrination by their religious mentor, and their eagerness to embrace Islam made them ideal candidates for the terrorist movement.¹⁹⁰ Indeed as Sarwono asserts the chosen individuals are 'youths who are longing for values, self-identification, or wanting to escape some stressful environment'.¹⁹¹ Although they are psychologically healthy individuals, they are described as 'ambivalent people who are disorientated in looking into (their) future and (not knowing) what option ... to take.'¹⁹² This scenario was discussed in the fieldwork, 'It is easy to become one of them you know a bad one because you are looking for something like directions. I feel sorry for some of these fanatics, they have just got into the wrong crowd. I was lucky that even though I did not know about my religion, I knew what is right and what is wrong. I was there for less than five minutes, and I got away as fast as I could. It was a back street cafe, oh man, I still remember it and that was years ago. But if you are not strong, they can easily brainwash you. We want to learn, we feel no one understands us, they become your friends, and then teach you the wrong stuff. They have so much evil in them, and the poor guys they believe their b*** thinking it's the truth. It's a dangerous group, I hope that you do not meet one.' Int. 20

The events in London on 7 July 2005 led to the inevitable questioning of the motivations and the antecedents of the perpetrators by all levels of government. The House of Commons in their report highlight the difficulties in understanding the motivation of the terrorists – why them indeed? The Report states:

¹⁸⁷ Hegghammer T. (2010/11) op cit at 74 and Spataro, (2008): op cit at 519.

¹⁸⁸ Spataro, (2008) op cit at 524.

¹⁸⁹ Lowenstein L. (2006) 'The Psychological Aspects of Terrorism' *JPN*, 2006, 170, 752.

¹⁹⁰ Lowenstein, *ibid*.

¹⁹¹ Sarwono S.W. (2006) 'What is in their minds? The Psychology of suicide bombers in Indonesia' Paper given at *ICP Annual Convention*, Kos, Greece, cited in Lowenstein (2006), op cit.

¹⁹² Stein R. (2003) 'Evil as love and liberation: The mind of a suicidal religious terrorist', in Moss D. (editor) (2003) *Hating in the first person plural: Psychoanalytic essays on racism, homophobia, misogyny and terror*. Other Press: New York, at 281-310.

‘What we know of previous extremists in the UK shows that there is not a consistent profile to help identify who may be vulnerable to radicalization. Of the four individuals here, three were second generation British citizens whose parents were of Pakistani origin and one whose parents were of Jamaican origin; Kamel Bourgass, convicted of the Ricin plot, was an Algerian failed asylum seeker; Richard Reid, the failed shoe bomber, had an English mother and Jamaican father. Others of interest have been white converts. Some have been well-educated, some less so. Some genuinely poor, some less so. Some apparently well integrated in the UK, others not. Most single, but some family men with children. Some previously law abiding, others with a history of petty crime. In a few cases there is evidence of abuse or other trauma in early life, but in others their upbringing has been stable and loving.’¹⁹³

Thus, it is asserted that ‘the security services can identify neither a uniform pattern by which a process occurs nor a particular type that is susceptible’.¹⁹⁴

There exists a vast number of the population that share the same ‘antecedents’ or influences as the 7/7 terrorists, yet they remain immune from the illicit terrorist activities. Ansari et al.,¹⁹⁵ conducted questionnaires amongst eighty practising British Muslims, with thirteen interviews, and found that ‘social identity had a major impact on attitudes: respondents who felt their primary identity was Muslim held more positive views towards jihad and martyrdom, whereas respondents with a dominant British identity did not’.¹⁹⁶ Thus, empathy for the ‘cause’ is seen as a strong motivator.¹⁹⁷ This view is echoed in the fieldwork findings. One participant stated in relation to the events of Iraq and Afghanistan, ‘Overall it’s wrong to go to another country and free what you want. In Iraq, there were no nuclear weapons. The real problem is that it is creating terrorism. Also in Afghanistan, there is no real evidence. It is wrong for England and other countries. As a Muslim it affects me, as a human I don’t feel good about killing innocent people and destroy[ing] the country. As a Muslim, kill[ing] people provokes those left alive to

¹⁹³ House of Commons (2006b) *Report of the Official Account of the Bombings in London on 7th July 2005*. HMSO: London at 31.

¹⁹⁴ Bux S. (2007) ‘Muslim Youths, Islam and Violent Radicalisation: Addressing some Myths’, *PJ*, 80, 3 (267).

¹⁹⁵ Ansari H., Cinnirella M., Rogers M.B., Loewenthal K.M., & Lewis C.A. (2006) ‘Perceptions of Martyrdom and terrorism amongst British Muslims’, in Rogers M.B., Lewis C.A., Loewenthal K.M., Cinnirella M., Amlot R. & Ansari H. (editors) ‘Proceedings of the British Psychological Society Seminar Series Aspects of Terrorism and Martyrdom’, *eCommunity: International Journal of Mental Health and Addiction*, 2006.

¹⁹⁶ Silkes A. (2008) op cit at 102.

¹⁹⁷ See: Sageman M. (2004) & (2008), op cit; Spataro (2008), op cit; Silkes (2008), op cit.

fight against and creates the problem [of terrorism], bad picture for Muslims and affects me as well.' Int. 16. Another participant argues, 'It has not helped our fight against terrorism, but the British Army has been very good, unlike the Americans. I am proud of the British Army, they are under so much restraint. They abide by the rules. But whether the British administration should have gone there, both wars are unjustified, and we won't win, no-one will. It's all wrong; we are losing the lives of our armed forces, and innocent civilians are dying out there. I believe in peaceful means of punishment such as sanctions, or get one of their own to topple Saddam for example. We should not be there, we are playing right into the hands of the terrorists.' Int. 27. Thereby emphasising that the participants viewed the British foreign policy in Iraq and Afghanistan, as a contributing factor that motivated terrorists.

Others argue that terrorism is ultimately 'a career choice'; as in the 'case of Amar Khyam, the ringleader of the fertiliser bomb-plot'. Motivation of terrorism is viewed as 'an attractive choice'¹⁹⁸. Professor Silke observes that this attractive choice is motivated by the 'danger and excitement [that] feature [in the] life [of a] terrorist'.¹⁹⁹ Irrespective of the preceding analysis of motivation, the raw truth, especially following July 2005, is that 'the homegrown terrorists simply do not feel bound to the national laws of the country where they live.'²⁰⁰ One interviewee explained, 'Our Prophet, Peace be upon Him, said something along the lines, that we have to protect our nation, and they were a minority religion at the time, just as we are here. But we have a duty to obey the laws of this country, and not harm anyone. We have to give a good image of Muslims by our good deeds.' Int. 17.

¹⁹⁸ Bux S. (2007), *op cit* at 267.

¹⁹⁹ Silke A. (2008) *op cit* at 116. This is epitomised by a former IRA member: 'A part of me missed being in the IRA. I had spend six years leading an action-packed existence, living each day with the excitement of feeling I was playing a part in taking the Orange State. At the very least, such activity gave a strange edge to my life: I lived each day in a heightened state of alertness. Everything I did, however trivial, could seem meaningful. Life outside the IRA could often feel terribly mundane ... I lived life with a weird intensity. I felt myself part of a large family whose members had powerful emotional links to each other. The idea of turning my back on the IRA had become as repugnant to me as turning my back on my children. As soon as I left this intense environment I found myself missing my comrades: the dangers and risks we shared brought us together.' Collins E. with McGovern M. (1997) *Killing Rage*. GrantaBooks: London, 158, and 363. Similarly former Italian terrorist stated that he missed 'the fact of being totally at risk' DeCataldo Newburger L. & Valentini T. (1996) *Women and Terrorism*, Macmillan: London at 137.

²⁰⁰ Cliteur P. (2012) 'State and religion against the backdrop of religious radicalism.' *I.J.C.L* 2012, 10(1), 127-152.

The preceding discussion, on what motivates a terrorist to become a terrorist, has highlighted that this is a 'long term project with no quick fixes'.²⁰¹ They do not fit 'the stereotypes that shape public expectations'.²⁰² Whether we accept Gunaratna's assertion of Al Qaeda as a structural organisation, or Sageman's internet theory or Hoffman's salient assertion that motivation is political with a religious guise, there is no disputing that the religious ideology underlying the al Qaeda continues to thrive. However, there is the 'new wave' of leaderless threat, in that there is no central base, and those who may lack any clear religious or political ideology but are equally if not more dangerous than those who do. They are connected via the internet, and rather than diminishing appear to be expanding. The process of manipulative socialisation coupled with the distorted perception of religion often entices and motivates such individuals to terrorist organisations and its activities. This problem is further deepened by the alleged 'clash' of Western ideology and Islamic teachings.

5.9 The 'Clash'.

There is discourse to suggest that Islam's clash with Western lifestyle²⁰³ is a motivator for Islamic terrorism. Indeed it is recognised that in contemporary globalised world, there may be inevitable clashes to compete with the 'open markets and free trade'.²⁰⁴ However, some scholars have championed globalization, such as Francis Fukuyama.²⁰⁵ Fukuyama argues that liberal societies inspire modernity which incorporates Western democracy of free expression and economy. The crucial, imperative issue for Fukuyama is that democracy is the 'fundamental end,' since it imparts with it the 'equal personal dignity and recognition' that is available for all its citizens. In turn, Fukuyama actively urges the democratic superpowers to promote their 'politics' on a global sphere.²⁰⁶

²⁰¹ Bux S. (2007) op cit at 267.

²⁰² Silkes A. (2008) op cit at 118.

²⁰³ Rather than Western religion.

²⁰⁴ Forst B. (2009) *Terrorism, Crime and Public Policy*. Cambridge: Cambridge University Press at p.75.

²⁰⁵ Fukuyama F. (1992) *The End of History and the Last Man*. New York: Free Press; see also Fukuyama F. (1995) *Trust*. New York: Free Press; Fukuyama F. (2001) 'History is Still Going our Way - Liberal Democracy will Inevitably Prevail.' *Wall Street Journal*. October 5, 2001.

²⁰⁶ Kurtz S. (2002) 'The Future of 'History': Francis Fukuyama vs Samuel P Huntington.' *Policy Review*. p.43.

Fukuyama views the 11 September 2001 attacks as the 'desperate backlash against modernity'.²⁰⁷ He elaborates that 'the single area in which my thinking has changed the most dramatically from 1989 to the present concerns the likelihood and speed with which modernization and democratization will occur - what one might call the 'timetable' questions.' Thus when referring to the 'timetable', Fukuyama is perhaps linking it to his 'train' as he writes: 'modernity is a powerful freight train that will not be derailed by recent events,' Fukuyama's insistence that modernity and with it democracy will prevail, is grounded in his use of G.W.F Hegel's philosophy. Fukuyama adapts Hegel's account of the master and slave to demonstrate that 'formal and mutual recognition' of democratic values will prevail²⁰⁸ - as it could be argued is the case of the 'Arab spring' affecting the landscape of the Middle East. The democratic revolution of the 'Arab spring' reinforces Fukuyama's theory that 'traditional dictatorships' deny the citizens of their 'humanity'.²⁰⁹

Fukuyama advocates that 'if true supporters of liberal democracy and free markets are ever to compete successfully with the Islamists and populists of the world, they need to have a social agenda that gives some hope not just to the middle - class and educated, but to those who are isolated and excluded as well. Above all we need to stop seeing this issue through the old left - right ideological lens of American domestic politics, and recognise that our influence is dependant in large measure on our ability to offer people around the world what they want, and not what we think they should want.'²¹⁰ In brief, according to Fukuyama's theory the Islamic terrorism is viewed as a rebellion against the prevailing modernity.

Another perspective is offered by Samuel Huntington who argues that 'Western intervention in the affairs of other civilizations is probably the single most dangerous source of instability and potential global conflict in a multicivilizational world.'²¹¹ He views the Muslim world as a civilization that is in 'clash' with the Western worlds. And it is this clash that led to the events of

²⁰⁷ Fukuyama F. (2006) 'The 'End of History' Symposium: A Response.' *Open Democracy* August 25, 2006; at http://www.opendemocracy.net/democracy-fukuyama/fukuyama_3852.jsp.

²⁰⁸ Kurtz S. (2002) op cit at 43.

²⁰⁹ Kurtz S. (2002) op cit at 43.

²¹⁰ Fukuyama F. (2007) 'Keeping up with the Chavezes' *Wall Street Journal* February 1 2007, p.A17.

²¹¹ Huntington S.P. (1996) *The Clash of Civilizations and the Remaking of the World Order*. New York: Simon & Schuster at p.312.

11 September 2001. He argues that 'modernization' is the cause of the Islamic 'fundamentalist reaction'.

In the analysis of Huntington's theory, Kurtz notes: 'Huntington does put forward a very nice account of the social roots of Islamic fundamentalism. Yet that account only begs the question of the long - term effects of modernization. Huntington rightly notes that the tendency of modernization to break traditional social bonds have actually stimulated an identity - preserving return to Islam . . . ' However, Huntington does not deny the possibility that with long term exposure to technology and economic prosperity, traditional societies can embrace Western 'individualism'.²¹²

Nevertheless, Huntington pragmatically urges the Western powers not to promote their democratic ideology, and views the Islamic world as a threat.²¹³ This threat is triggered by what Huntington refers to as the increase in the younger demographics of the Muslim world,²¹⁴ and thus, accordingly the 'confidence' in societies where regimes have been replaced by democratic 'Arab Spring' is what Huntington had predicted would 'clash' with Western values. Yet Fukuyama argues that it is these aspirations of democracy that will prevent rather than perpetuate the 'clash' between the Islamic world and the Western powers.

Huntington's view is that the 'clash of cultures'²¹⁵ has led to a 'clash of civilizations', and the consequence of this is terrorism. Huntington writes, 'Somewhere in the Middle East a half dozen young men could be well dressed in jeans, drinking Coke, listening to rap, and, between their bows to Mecca, putting together a bomb to blow up an American airliner.'²¹⁶ Huntington boldly submits that the followers of Islam possess a 'high propensity to resort to violence', and 'Islam's borders are bloody, and so are its innards.'²¹⁷

²¹² Kurtz S. (2002) op cit at 43.

²¹³ Bakircioglu O. (2010) "A socio - legal analysis of the concept of jihad." *I. C. L. Q* 2010, 59(2), 413-440 at 413.

²¹⁴ Huntington S. P. (1996) op cit at p.103.

²¹⁵ Forst (2009) op cit at p.90.

²¹⁶ Huntington (1996) op cit at p.58.

²¹⁷ Huntington (1996) op cit at p.258.

One of Huntington's critic, the late Edward Said, argues that 'the clash of civilizations' is a gimmick like 'The War of the Worlds,' better for reinforcing defensive self pride than for critical understanding of the bewildering interdependence of our time.²¹⁸ Said asserts that Huntington's theory overlooks nationality and identity, instead focuses on creating a prejudiced image of them (the Muslims) and us (in the West).²¹⁹ In line with the criticism of Huntington's work, it is argued that there are more struggles within the Islamist world than against other civilizations.²²⁰

Furthermore, Huntington's view that Western national security is compromised by 'immigrants from other civilizations who reject assimilation and continue to adhere to and to propagate the values, customs, and cultures of their home societies. This phenomenon is most notable among Muslims in Europe, who are, however, a small minority;²²¹ is echoed in the subsequent discussion highlighting Islamaphobia - that views Muslim as the 'dangerous' threat.

The fieldwork analysis did not directly reveal any direct support for either Huntington's or Fukuyama's work, and the participants were not directly asked about either theory. Nevertheless, the data did reflect that on the one hand, the participants believed that their lives were as good as they are because of the democracy they live in: 'I am British, and it is a privilege to be in a country that accepts all religions and cultures, and we live so well together, how many other people in the world can say this.' Int 7. However the other perspective was based on the belief that the State did not understand their religion and culture: 'They do not understand or accept our way of life. They tell us that we can't wear niqab [veil], the government should not be interfering with my religion.' Int. 23

²¹⁸ Said E.W. (2001) 'The Clash of Ignorance' *The Nation*. October 22, 2001.

²¹⁹ 'How finally inadequate are the labels, generalizations, and cultural assertions. At some level, for instance, primitive passions and sophisticated know - how coverage in ways that give the lie to a fortified boundary not only between 'West' and 'Islam' but also between past and present, us and them, to say nothing of the very concepts of identity and nationality about which there is unending disagreement and debate.' *ibid*.

²²⁰ Aslan R. (2004) 'Why do they Hate US?' *Slate*. August 6 2007: 'From most of the Western world, September 11, 2001, signaled the commencement of a world wide struggle between Islam and the West - the ultimate manifestation of the clash of civilizations. From the Islamic perspective, however, the attacks on New York and Washington were part of a continuing clash between the Muslims who strive to reconcile their religious values with the realities of the modern world, and those who react to modernism and reform by reverting - sometimes fanatically - to the 'fundamentals' of their faith.' at p.xx.

²²¹ Huntington (1996) *op cit* at 312.

Thus, whether one accepts Fukuyama's 'collective' and ultimate goal of global democracy, or Huntington's inevitable clash of civilizations and differing societies, they both address the predicament encountered by the counter terrorist lobby. The ultimate goal of collective democracy will encounter opposition by those wanting to remain loyal to their 'pre - modern' life, and the clash will occur as they perceive the powerful West's hegemonic policies a threat to their 'religious' ideology. Neither theory resolves the threat of terrorism, but merely seeks to offer an explanation for the basis of the threat.

5.10.1 Islamaphobia

Discussion about Islamaphobia is imperative because it will highlight whether prejudice from 'White' communities has further isolated the Muslim communities. Moreover it is submitted that tensions within the communities potentially created by Islamaphobia may hinder their co-operation in counter terrorism. One British born woman refused to be interviewed, and offered an apologetic explanation, 'After the London bombings, aside from my skin colour they had nothing to identify me as a Muslim, and I still got spat at and called many names.' Anon. However the participants interviewed did not directly talk about Islamaphobia, though they talked about 'suspect community', which will be discussed in subsequent chapters.

It is often held that 'the objectification of Muslims and Islam as the 'dangerous other' in contemporary western democratic societies is not new nor particularly surprising.'²²² The 'hysteria'²²³ around Islam and its credentials has fuelled a growth in Islamaphobia, 'that is, fear or hatred of Muslims and Islam'.²²⁴ It is observed that, 'Islamaphobia has been shown to be widespread in much of society'.²²⁵ The Runnymede Report defined Islamaphobia as 'an unfounded hostility towards Islam, and therefore fear or dislike of all or most Muslims'.²²⁶ Ironically the Muslim beliefs are indeed 'better understood now' than at any other time,²²⁷ nevertheless Islamic beliefs are now distorted and 'the term 'Muslim fundamentalist' is

²²² Bono S. (2008) 'In pursuit of religious and legal diversity: a response to the Archbishop of Canterbury and the 'Sharia debate' in Britain', *EccL.J* 2008, 10(3), 283-309 .

²²³ Wheatley S. (2007) 'Democracy, Minorities and International Law', *EHRLR*, 2007, 2, 206-209.

²²⁴ Rehman J. (2005) op cit at 227.

²²⁵ Khaliq U. (2002) 'The accommodation and regulation of Islam and Muslim practices in English law', *EccL.J.* 2002, 6(31), 332-351 at 351.

²²⁶ The Runnymede Commission Report (1997) *Islamaphobia: a challenge for us all*. London, at 4.

²²⁷ McGoldrick D. (2005) 'Multiculturalism and its discontents' *HRL.Rev* 2005, 5(1), 27-56 at 47.

commonly used and misused.²²⁸ It is such misconceptions that ignite and perpetuate the flames of prejudice and fear leading to Islamaphobia.²²⁹ Indeed, it is such misconceptions that have prompted governments to justify surveillance and profiling of 'Muslim communities'; the German Federal Prosecutor states 'seeming religious tolerance and kindness towards strangers as well as a generous practice of toleration and naturalisation have contributed to an Islamic fundamentalist subculture in our country'. His sentiments were echoed by the former Home Secretary 'as the Germans and French are often pointing out, we have a larger host community of those who the Germans and French allege are organising for international terror.'²³⁰

The terrorist attacks of September 2001 and July 2005 were condemned by Muslims and seen as violations of the Islamic teachings.²³¹ Nonetheless, in the aftermath of 11 September 2001, there were reports of numerous attacks on the British Muslim population.²³² According to the 'Islamic Human Rights Commission during September 2001 a total of 206 incidents of assault, violence, verbal and physical abuse and other forms of malicious acts were recorded in Britain'.²³³

Muslim leaders in Britain condemned the July 2005 attacks as 'utterly criminal, totally reprehensible and absolutely unIslamic.... absolutely no sanction in Islam...'.²³⁴ Nonetheless, Muslims were attacked and even murdered in the aftermath of 7th July 2005, and '[i]slamaphobia

²²⁸ McGoldrick D. (2005) *ibid* at 47.

²²⁹ See: Richardson (editor) (2004) *Islamaphobia: Issues Challenges and Action*. Trentham Books: Stoke; Morris (2004) 'Islamaphobia: The Making of a Nasty British Myth', *Sunday Times*, 6th June, 2004.

²³⁰ Cited in Moeckli D. (2005) 'Discriminatory profiles: law enforcement after 9/11 and 7/7', *E.H.R.L.R.* 2005, 5, 517-532 at 524.

²³¹ Rehman J. (2005) *op cit* at 227.

²³² 'Muslim adults and children were attacked, physically and verbally. They were punched, spat at, hit with umbrellas at bus stops, publicly doused with alcohol and pelted with fruits and vegetables. Dog excrement and fireworks were pushed through the letterboxes and bricks were thrown through their windows. They were called murderers and excluded from social gatherings. One woman in Swindon was hospitalised after being beaten with a metal baseball bat; two Cambridge University students had their headscarves ripped off, in broad daylight outside a police station; Sabra Zaman, who, in July 2001, had her scarf pulled off and two of her ribs broken in Tooting, London was stopped and searched by the police three times in two weeks following the terrorist attacks in the USA. In west London, an Afghani taxi driver Hamidullah Gharwal, was attacked shortly after 11 September, and left paralysed from the neck down ... Vandals attacked mosques and Asian run businesses around the country. Nine pigs' heads were dumped outside a mosque in Exeter. Many were said not to have reported attacks because of fear of reprisals.'

Ansari H. (2002) *Muslims in Britain* Minority Rights Group: London, at p.4; Rehman J (2005):227-228, *ibid*.

²³³ Rehman, 2005:227, *ibid*; Islamic HRC (2001) *UK Today: The Anti-Muslim Backlash in the Wake of 11th September 2001*. London.

²³⁴ *The Guardian*, July 15, 2005, 'Attacks absolutely un-Islamic, says Muslim scholars'.

is blamed for [the] attack[s].'²³⁵ Similarly, following the 'failed' terrorist attacks in Glasgow and other regions of UK, the Muslim community promptly condemned such terrorism.²³⁶ There is also the formulation by the British Muslims, of 'Not in Our Name' campaign, reinforcing the message that 'all our communities are united against terrorism'.²³⁷

Furthermore it is asserted that there is an onslaught on British Muslims, using the religion of Islam to perpetuate misunderstandings and increase the hostility, it is thus viewed 'as uniquely evil, or uniquely backward.' The most explicit example offered is that of the British National Party, which issued thousands of anti-Muslim leaflets after the London bombings with a graphic illustration of the devastated No.30 bus. According to the BNP, multiculturalism was to blame.²³⁸ In the weeks following July 7 it was widely reported that hate crimes against Asians had increased dramatically,²³⁹ with increased physical attacks.²⁴⁰ Islamophobia, is said to have been 'already high before the London bombings' has been perpetuated further with the attacks.²⁴¹

Since the London bombings, mainstream media highlighted that counter terrorism policies may be compromised by increased public anxiety and consequently alienate young Muslims.²⁴² Bunting elaborates that the official reaction to the perceived threat from Islamist terrorism will have a lasting impact on 'some British Muslims'.²⁴³ One participant categorically stated that he had "possible sympathy" for terrorism and that 'Britain can end the world's terrorism.' Int. 9.

²³⁵ Dodd V. (2005c) 'Murder: Islamophobia is blamed for attack'. *The Guardian*: London; Guardian Home Pages: 5.

²³⁶ Buncombe A. & Marks K. (2007) 'Trial and Terror: On 7/7 Anniversary, Jeep Passenger Appears in Court over Bomb Attacks.' *The Independent* 8 July, 2007.

²³⁷ Bux S. (2007), op cit, cites the message from a rally in Glasgow, 2007. see also: Milne S. (2005) *Comment and Debate: This law won't fight terror- it is an incitement to terrorism: Censorship, internment and bans on non-violent political parties will increase the likelihood of further attacks in Britain*. The Guardian (London) – Final Edition. Guardian Comment & Debate, Pages. p.33. October 13, 2005.

²³⁸ Jasper (2005) op cit at p.32.

²³⁹ Nagarajah S. (2005) *G2: Inside story: Mistaken identity: Since the July 7 bombings much attention has been focused on the Muslim community while attacks on Hindus and Sikhs have been largely ignored*. Guardian Feature Pages. The Guardian (London). September 6 2005, at p.6.

²⁴⁰ Dodd V. (2005b) *Attacks on London* Guardian Home Pages. (London) August 4, 2005 at p.6.

²⁴¹ Dodd V. (2005c) *Attacks on London: Murder: Islamophobia blamed for attack*. Guardian Home Pages, The Guardian (London) Final Edition. July 13, 2005 at p.5.

²⁴² Bunting M. (2005) *Comment & Analysis: Fear and loathing: Anxiety about terrorism is now shaping all of Britain's political debate and refining allegiances*. Guardian Leader Pages. The Guardian (London) Final Edition. August 29 2005, at p.15.

²⁴³ Ibid at 15 see also: Garland J., Spalek B., Chakraborti N., (2006) 'Hearing Lost Voices. Issues in Researching 'Hidden' Minority Ethnic Communities'. *406 Brit J. Criminology* 2006, 423 and Silke A. (2008) op cit at 112-113.. Silkes elaborates that compared with the UK population as a whole, Muslims have three times the unemployment

It is argued that the government's anti terror plans, unveiled in the wake of the London bombings, created a perception that the war on terror was in fact a war on Islam.²⁴⁴ Thus, the 'real danger is that' of driving the 'militant' wing underground in 'suppressing' discussion on ideology and ultimately challenging it.²⁴⁵ It is imperative that the response to the terrorist threat does not 'compound' the 'original' terror. Declaring war, specifically global war on terrorism is in the views of some 'doomed to fail,' and viewed as global Islamaphobia. It not only silences those Muslims challenging terrorism, but also hinders community cooperation.²⁴⁶

Based on the fieldwork findings, it is difficult to assess whether Islamaphobia has created counter violence from within the Muslim communities, but it has created the need for more community cohesion. According to commentators, the 'Trojan horse' for 'multiculturalism' is that it promotes differences and perpetuates segregation, and is used by the right wing groups to promote Islamaphobia.²⁴⁷ The solution by Ruth Kelly, the then Secretary of State for Communities and Local Government, was to identify and promote the need for 'integration and cohesion', which led to the *Commission on Integration and Cohesion*.²⁴⁸

rate; a higher proportion are unqualified; and a higher concentration are living in deprived areas. In addition, Muslims are grossly overrepresented in among prison populations. See also: Joly D. (2005) *Muslims in prisons: A European challenge. Full Research Report*. Economic and Social Research Council: Swindon.

²⁴⁴ Milne S. (2005) 'Comment and Debate: The law won't fight terror' *The Guardian* - Final Edition, Comment and Debate: p.33. October 13, 2005.

²⁴⁵ Curtis A. (2005) 'Comment and Analysis: Creating Islamist phantoms: We dreamed up 'al Qaida' Let's not do it again with 'evil ideology' *The Guardian Leader Pages*, The Guardian (London). August 30, 2005, at p.18.

Further discussion on this area in chapters 6 and 7.

²⁴⁶ Cook R. (2005) *Comment & Analysis: The struggle against terrorism cannot be won by military means: The G8 must seize the opportunity to address the wider issues at the root of such atrocities*. The Guardian (London). Final Edition. July 8, 2005, at p.24.

²⁴⁷ Jasper L. (2005) *Comment and Debate: Trevor Philips is in danger of giving succour to racists: Any chair of the CRE who doesn't know whether 'coloured' is inappropriate term should consider his position*. The Guardian (London) Final Edition. October 12, 2005, p.32.

²⁴⁸ Commission was announced on 28 June 2006. It is worth noting some aspects of Ruth Kelly's speech on integration on cohesion on August 24, 2006: "it is time now to engage in a new and honest debate about integration in the UK . . . global tensions are being reflected on the streets of local communities . . . Muslims feel the reverberations from the Middle East . . . for some communities, we need to acknowledge that life in Britain has started to feel markedly different since the attacks on 9/11 in New York and 7/7 in London- . . . We must not be censored by political correctness, and we must not tiptoe around important issues".

It is also hoped that the Racial and Religious Hatred Act 2006,²⁴⁹ will appease some of the anxieties governing Islamophobia. It has been submitted that its enactment 'provides a satisfactory response for religiously aggravated offences'.²⁵⁰ The Racial and Religious Hatred Act clearly signals a message that religious hatred such as islamaphobia will not be tolerated by the legislature, which had been reinforced in the decision of the earlier case of *Norwood v UK*.²⁵¹ In a similar vein it is observed that the 'rise in Islamaphobia following the events of 9/11 and terrorist attacks since then appears to have increased the political impetus within the United Nations human rights bodies to adopt further resolution²⁵² on combating defamation of religions'.²⁵³

5.10.2 Global Islamaphobia

The 'war on terror' declared in the global arena by the United States is seen to be unjustly targeting Muslims, and is a legitimate face of Islamaphobia. It is pertinent to address the issue of 'global Islamaphobia' as it is such conceptions that have led to the empathy of the terrorist's cause.²⁵⁴ The global events appear to concern the British Muslims interviewed, on the one hand they demonstrated respect for the British Army but believed that global terrorism and the alleged hatred for Muslims could be prevented. 'The Army are honorable, they are merely doing their jobs, like servants they follow orders, it's not their fault. I have met many [army personnel] they are very nice. The army are so nice and sympathetic, they themselves acknowledge that what is going on is wrong. [However], the UK and America can stop the terrorism. In Palestine, Chechnya, Kashmir, can bring about peace and extremism can then be eliminated. People are fighting against injustices. This suicide started off in Israel - in Tel Aviv, and then spread all over

²⁴⁹ Analysed in depth in the preceding chapters.

²⁵⁰ Olivia J.G. (2007) 'The legal protection of believers and beliefs in the UK'. *Ecc L.J.* 2007, 9(1), 66-86 at 85-86.

²⁵¹ Application No: 23131/03, November 16, 2004. The facts: 'The applicant was a local representative of the British national Party. Between November 2001 and January 2002 the applicant displayed a poster in the window of his flat which stated "Islam out of Britain" and "Protect the British people". It also had a photograph of one of the twin towers of the World Trade Centre in flames on September 11, 2001 and a crescent and a star surrounded by a prohibition sign. Following a complaint, he was charged with an aggravated offence under s.5(1) of the Public Order Act 1986. His conviction was upheld by the European Court of Human Rights.'

Cited in *EHRLR* 2005, 215-217: 'Case Comment. Crime and sentencing: display of poster attacking Muslims'.

²⁵² March 2009, resolution on combating Defamation of Religion.

²⁵³ Parmar S. (2009) 'The challenge of 'defamation of religions' to freedom of expression and the interval human rights' *EHRLR* 2009, 3, 353-375, at 355.

²⁵⁴ Silkes A. (2008), *op cit*.

the world. The Jews have started this, and buy people, Muslims, our people. Suicide is now spreading everywhere, inside Pakistan and Afghanistan.' Int. 11.

The events of 11th September 2001, and subsequent terrorist attacks are atrocious crimes that require genuine international concern. However, there is the anxiety that such genuine international concern has paved the way and opened the door to random acts of abuse to those of Islamic faith. 'The Government is very unhelpful because of our foreign policy. We should not have gone to war in Iraq; we are not pushing for peace in Kashmir and other regions around the world. We are not the voice for the people of Kashmir. Our foreign policy is quite aggressive, leads to a lot of new terrorists activity within Britain and outside against the British people.' Int.20.

The justification relayed by the United Kingdom Government for the invasion and occupation of Iraq and Afghanistan has not always been acceptable.²⁵⁵ Indeed, 'the legal justification for military action ... was self-defence in anticipation of a future attack.'²⁵⁶ This received 'the unprecedented unity'²⁵⁷ of support²⁵⁸ for invasion of Afghanistan, received little criticism or opposition. However, this perpetuated the perceived 'misgivings' by the Muslim communities, who demanded 'transparency, fairness and justice in providing evidence, and absolute compliance with human rights standards in the case of trials and convictions.'²⁵⁹

In addition, justifications for invading Iraq were discredited, further fuelling the debate that Muslims were being targeted unnecessarily, thereby proliferating the Islamophobia hypothesis. The data analysis from the fieldwork reflected the fact 'They [the UK} should not have gone there; it's worse in there because of them . . . Iraq had no weapons of mass destruction, they can't

²⁵⁵ Rehman J. (2005) op cit at 228 see also: Croft S. & Moore C. (2010) op cit at 822 and Roberts A. (2004) "Righting Wrongs or Wronging Rights? The United States & Human Rights Post- September 11" *EJIL* 2004. 15 (721), and Office of the Inspector General, US Dept. of Justice, "The September 11 Detainees: A review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of September 11 Attacks", June 2003.

²⁵⁶ Duffy H. (2005) *The 'War on Terror' and the Framework of International Law* Cambridge University Press: Cambridge at 186.

²⁵⁷ see also: Gray C. (2002) 'The US National Security Strategy and the New Bush Doctrine' on Pre-emptive Self Defence', 2 (2002) *Chinese Journal of International Law* 440; House of Commons Research Paper 01/72, (2001) 'September 11: The Response', available at <http://www.parliament.uk/commons/lib/research/rp2001/rp01-072.pdf>.

²⁵⁸ Duffy H. (2005) op cit at 187.

²⁵⁹ Rehman J. (2005) op cit at 228.

find anything. Western forces should be out of Iraq and Afghanistan, they can sort out their own problems.' Int.18. United Kingdom's 'interventionist'²⁶⁰ foreign policy specifically in relation to the events in Iraq and Afghanistan, perhaps more so than Kashmir, caused concern for the participants, 'It affects me because it's wrong, their treatment of those in Iraqi prison, and then those in Guantanamo. Taking innocent lives, what they are doing is wrong.' Int. 5. One participant stated, 'it affects me because our people, Muslims at the end of the day, killing people for oil.' Int. 6. Although some accepted the justifications for the present foreign policy, they relayed their anxiety, 'I think the British Army now that they are there, should be supported. They are not representative of the best people in our society; they commit acts, dealing with fighters, not always well behaved. But it doesn't directly affect me, I'm not particularly happy with it. I can't afford to worry about all the injustices in the world. It bothers me more when young Asians take matters into their own hands.' Int. 7.

Furthermore, serious concerns were expressed of the Guantanamo Bay detentions.²⁶¹ It was seen as some, as further evidence of 'pursuing the Islamaphobia agenda'.²⁶² The blatant disregard for law in denying the Guantanamo detainees their rights as dictated by the international humanitarian law (IHL) prompted global concerns. Nonetheless States were not 'able to stand up to United States'²⁶³. This was evidenced further by the lack of 'willingness of states to intervene beyond the protection of their own nationals.'²⁶⁴ Thus, prompted the Court of Appeal to take 'the unusual step of commenting on what is viewed as 'objectionable' lack of oversight by another country's courts. Breaking with convention Lord Steyn condemned publicly the 'monstrous failure of justice' describing the military commissions as 'kangaroo courts' which 'convey the

²⁶⁰ Moran J. (2008) 'Politics, Security, Intelligence and Liberty after 9/11' in Moran J. & Phythian M. (editors) *Intelligence, Security and Policing Post - 9/11.* Hampshire. Palgrave MacMillan at p.15.

²⁶¹ *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation*, February 2004, available at:

www.globalsecurity.org/military/library/report/2004/icre_report_iraq_feb2004.htm.

²⁶² Rehman (2005) op cit at 228; Islamic HRC (2003) *Failure to Repatriate Britons Masks Islamaphobia Policy*: London. 11 August 2003.

²⁶³ Duffy H. (2005) op cit at 438.

²⁶⁴ Duffy H. (2005) op cit at 436.

idea of a pre-ordained arbitrary rush to judgement by an irregular tribunal which makes a mockery of justice'.²⁶⁵

Blatant disregard of international law in the Guantanamo cases served to advance and promote the notion of Islamophobia. It is the concept of 'selectivity' that was alarmingly disturbing. It is when 'selectivity arises in the 'pick and choose' approach to which particular areas of law, or particular rules therein, are acknowledged as applicable ... a perception emerges of international law that protects 'us' but not 'them', and constrains 'them' but not 'us'.... Areas of legal controversy appear at times to be manipulated to obscure the law that does not govern and has, sometimes quite straight forwardly, been violated.'²⁶⁶ Thus, the 'sense of 'otherness''²⁶⁷ of the Muslim community in the legal arena can lead to a slippery slope of disastrous consequences. If the fieldwork data is to be accepted that, 'nothing could motivate me to terrorism - they are brutes.' Int. 19., or that 'I can understand their [terrorism] cause.' Int.6, it has to be accepted that the divergent interpretations of Islam combined with proactive foreign policy that wishes to combat global terrorism may and can lead to sympathy for the terrorist cause even amongst the British Muslims.

5.11 Conclusions

British Muslims are now at the centre stage of discussions about terrorism – as are all Muslims worldwide.²⁶⁸ Islam is depicted as the religion of terror. It has been highlighted that Islam is a complex religion and when misinterpreted a dangerous tool used to advance the terrorist agenda. However when understood correctly it can be used to combat terrorism.²⁶⁹ In line with this it is argued that the 'biggest ally in tracking down the perpetrators and our only chance of defeating Islamist terrorism is the Muslim community itself.'²⁷⁰ In order to succeed in obtaining their co-operation, Islam and how it can be used as a recruitment aid has to be understood,

²⁶⁵ Lord Steyn (2003) 'Guantanamo Bay: The Legal Black Hole'. 27th F.A. Mann Lecture, 25 November 2003, cited in Duffy H. (2005) op cit at 434-435.

²⁶⁶ Duffy H. (2005) op cit at 448-449.

²⁶⁷ Williams R. (2008) 'Civil and religious law in England: a religious perspective', *Ecc L.J.2008*, 10(3), 262-282 at 277.

²⁶⁸ Moran J. (2008) op cit at 11-30.

²⁶⁹ Kurzman C. (2011) 'Where are All the Islamic Terrorists?' *The Chronicle of Higher Education*. July 31, 2011.

Accessed: <http://chronicle.com/article/Where-Are-All-Islamic/128443/> last visited: 18 June, 2012.

²⁷⁰ Bunting, ibid at p.15.

which, in the words of Jon Moran, can only be achieved through 'a detailed and dispassionate analysis' of Islam.²⁷¹

It is further submitted that, given the complexity and the lack of consensus on jihad,²⁷² it is 'erroneously labeled as synonymous with aggressive war and terrorist acts. In its essence, Jihad is an expression of endeavour and exertion in the cause of Allah – the principle form of *Jihad*, according to the *Sunna* of the Prophet, being acts of persuasion as opposed to aggression or violence'.²⁷³ Moreover the interpretation of jihad has to be considered within the historical context.²⁷⁴

Irrespective of whether they are practising Muslims or not, the data analysis from the fieldwork has yielded the general perception that British born Muslims of Kashmiri origin, seek social and cultural solace in trying to learn more about Islam, and in turn coupled with social isolation they are vulnerable to radicalization. This is not to suggest that learning about Islam will automatically generate terrorism, but it is about learning the true meaning of Islam. The fact that the Islamic law can be misinterpreted²⁷⁵ is the 'slippery slope'. Int.27.

Perhaps there is some credit to the assertion that 'each time there is an atrocity or outrage, Muslims are expected to apologise as if each and everyone is somehow complicit'.²⁷⁶ However, it is submitted that it is imperative that the community – the Muslim community – especially those leaders in the mosques and other teaching institutions, enforce and reinforce firmly the simple fact that Islam condemns such violations of terrorism;²⁷⁷ Condemnation does not equate to complicity, it is a duty. As Bux observes, effective counter-terrorism involves being able 'to manage or limit the 'lure' or pull of recruitment'.²⁷⁸ Indeed, 'legal controls perform only cosmetic functions, or merely treat symptoms, unless structural grievances are also addressed'.²⁷⁹

²⁷¹ Moran J. (2008) op cit at 30.

²⁷² Bakircioglu O. (2010) op cit at 413.

²⁷³ Rehman J. (2005), op cit at 222.

²⁷⁴ Bakircioglu O. (2010) op cit at 439.

²⁷⁵ Rehman J. (2007) op cit at 847.

²⁷⁶ Manzoor S. (2005) 'What if all Muslims weren't terrorists?' *Guardian Newspaper*: London, 2nd March, 2005 at 5.

²⁷⁷ Croft S. & Moore C. (2010) op cit at 821-835, see also Hegghammer T. (2010/11) op cit at 53-94.

²⁷⁸ Bux S. (2007), op cit at 267.

²⁷⁹ Saul B. (2006) *Defining Terrorism in International Law* Oxford University Press: Oxford at 315.

Thus, it has been challenged and submitted both by the fieldwork data and academic commentary that Islamic law does not condone terrorism; indiscriminate killings and suicide are violations of Islam. Nonetheless it is perpetually misinterpreted and distorted to suit individual agendas. It has been further demonstrated that if understood 'rationally' Islamic law is compatible with Western values of democracy and human rights and must be applied in conjunction with international human rights. Importantly it is further submitted that those fighting 'terror' are also under an obligation to preserve the rule of law. One of the major consequences of 11th September 2001, is Islamophobia and the blatant disregard and disrespect for law as evidenced by the treatment of the Guantanamo detainees. There presently exists 'the myth that certain persons lie entirely outside the protection of the law, propagated in the context of Guantanamo Bay [and elsewhere] – stem at least in large part from a fragmented approach to the legal framework and a failure to appreciate or recognise the diverse sources of legal protection applicable in any one situation.'²⁸⁰ Hence, the imperative necessity, of ensuring that the rule of law is perpetually preserved in order to succeed in suppressing terrorists and their atrocious acts. In the words of one participant, 'the only way we will achieve long lasting results against terrorism is to relay to the Muslim people that our laws protect everyone including Muslims.' Int. 7. Thus, the subsequent chapters will consider the counter terrorism policies and legislation.

²⁸⁰ Duffy H. (2005) op cit at 447.

CHAPTER SIX

Terrorism Policing Laws and the British Kashmiri Muslim Community

6.1 Introduction

The previous two chapters focused on concepts around terrorism, and the research findings on these issues. The purpose of this chapter is to consider the participants' views in relation to counter terrorism policing. In considering policing powers and their perceived impact, insight into the selected community's relationship with the police is assessed. Their broader perceptions of the police will invariably affect their views on counter terrorism policies and legislation, as police are the 'gatekeepers' of the criminal justice system and indeed the front line agency for the administration of the anti terrorism legislation.

The unprecedented nature of contemporary terrorism has focused the limelight firmly on Muslim majority communities. It is the aim of this thesis and this chapter to contribute, to the ongoing 'understanding of terrorism'.¹ Indeed, it is via this aim of understanding contemporary terrorism that the government's policies and legislation can become effective and legitimate. Understanding is therefore interlinked to views and perceptions. This chapter will examine the effectiveness of anti-terrorism policing in general, and specifically in relation to the selected sample of British Kashmiri Muslims.

The chapter will commence by outlining and analyzing the foundation of the executive's policies, namely CONTEST and especially its strands of *Pursue* and *Prevent*. Subsequent discussion will focus on policing of the counter terrorism legislation, preceded by discussion on counter terrorism and its role in neighbourhood policing. The discussion on neighbourhood policing will highlight its pivotal role in implementing the *Prevent* policies and agenda. The consequences of anti terrorism policing will be examined in light of the fieldwork data.

There is no doubt that 7 July 2005 shifted the focus of counter terrorism from 'foreign bogeymen' to 'home - grown jihadis'.² Thus, it accentuated the need to identify and respond to 'neighbour

¹ Forst B. (2009) *Terrorism, Crime and Public Policy*. Cambridge University Press: Cambridge at 22.

² Walker C. & Rehman J. (2011) 'Prevent Responses to Jihadi Extremism' in Ramraj V. et al., (editors) *Global Anti-Terrorism Law and Policy*. Second edition. Cambridge: Cambridge University Press.

terrorists.³ Indeed it was reported by Dame Eliza Manningham-Buller, the then head of the MI5, that in November 2006, there were sixteen hundred individuals that are potential threat to national security from the 'enemy within'.⁴ The 'enemy within' was elaborated by the then Home Secretary, John Reid; he cautioned Muslim parents that children were in danger of being indoctrinated by 'radicals'.⁵ Irrespective of how it is viewed, 'the presence of jihadis in neighbourhoods . . . inevitably impels the state to refocus on the communities.'⁶ It is the aim of this chapter to assess the effectiveness of this policing 'focus' and consider any consequences for policing of this 'focus' on the Muslim community interviewed.

6.2 CONTEST

In response to the international and national terrorist atrocities such as the London bombings in July 2005, the government implemented in addition to the legislation, a policy 'to win over the hearts and minds'⁷ of young, Muslims in Britain away from the 'extremist narrative'.⁸ This 'soft', non-legislative strategy was part of CONTEST, composed of well defined tactics, referred to as *Pursue, Prevent, Protect and Prepare*.

The rationale for CONTEST's 'elevated importance' is perpetuated by the illusive and 'secretive' nature of the terrorism threat.⁹ The CONTEST agenda focuses on international terrorism, but under the National Policing Plan 2005-08, and section 79 of the Police Reform and Social Responsibility Act 2011, domestic terrorism is also 'an overarching imperative.'¹⁰ The

³ Walker C. (2009b) 'Neighbour terrorism and the all risks policing of terrorism.' *Journal of National Security Law and Policy* 2009, 3: 121. See also: Walker C. (2008) 'Know thine enemy as thyself: Discerning friend from foe under anti - terrorism laws.' *Melbourne Law Review* 275.

⁴ *The Times*, November 10, 2006 at p.1; see also Walker C. & Rehman J. (2011) op cit.

⁵ *The Times* September 21, 2006 at p.6. John Reid is quoted: ' . . . watch for signs of brainwashing in their children by radicals grooming them to kill themselves to murder others . . . Look for tell - tale signs now and talk to them before their hatred grows and you risk losing them for ever.'

⁶ Walker C. & Rehman J. (2011) op cit.

⁷ This dates back to Malaya conflict, where General Templar stated in 1952: 'The answer lies not in pouring more troops into the jungle, but in the hearts or minds of the Malayan people.' see: Dixon P. (2009) 'Hearts and minds? British counter - insurgency from Malaya to Iraq.' *Journal of Strategic Studies*, 32:353; Stubbs R. (1989) *Hearts and Minds in Guerilla Warfare*. Singapore: Oxford University Press; Sunderland R. (1964) *Winning the Hearts and Minds of the People: Malaya 1948 - 1960*. Santa Monica: RAND.

⁸ Kundnani A. (2009) *Spooked. How not to prevent violent extremism*. London: Institute of Race Relations, at p.10.

⁹ Walker C. (2011) *Terrorism and the Law*. Oxford: Oxford University Press at p.7-9; Walker C. (2008b) 'The Pursuit of Terrorism with Intelligence', in Moran J. & Phythian M. (2008) (editors) *Intelligence, Security and Policing Post - 9/11. The UK's response to the 'War on Terror'*. Hampshire: Palgrave Macmillan at 54.

¹⁰ Home Office (2004), London. Para: 1.3; Walker C. (2011) op cit at 9.

goal of CONTEST is 'to reduce the risk from international terrorism, so that people can go about their daily lives freely and with confidence.'¹¹ The European Union has implemented policies that mirror the goals of CONTEST,¹² and the Council of European Union, albeit under the British Presidency in 2005, implemented the European Union Counter Terrorism Strategy, namely, 'To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice.'¹³ In its third edition of CONTEST, the government reiterated its initial aims of 'reducing the risk' of terrorism.¹⁴ Of the four 'P's discussed in CONTEST, the purpose of this chapter is to consider the traditional *Pursue* and the contemporary *Prevent*, as understood by the participants interviewed. The community's views are core to the chapter. However, prior to that discussion, it is important to distinguish between the strands of policing *Pursue* and policing *Prevent*.

6.3 Counter Terrorism Legislation and *PURSUE*

Pursue emphasises 'the importance of intelligence gathering,'¹⁵ and encompasses the arrest and prosecution of terrorism under the counter terrorism legislation. *Pursue* is not a new policing for the United Kingdom state. Nevertheless, irrespective of its solid foundation in counter terrorism law, 'new terrorism' has launched an opulence of legislation to address this threat, especially Anti Terrorism, Crime and Security Act 2001; the Prevention of Terrorism Act 2005; the Terrorism Act 2006; and the Counter Terrorism Act 2008.¹⁶ Whether these are wise pre-emptive measures,¹⁷ or unnecessary incursions into civil liberties are acute questions.¹⁸ Qualitative

¹¹ Home Office (2009) '*Pursue, Prevent, Prepare: The UK's Strategy for Countering International Terrorism.*' Cm. 7547, London, at para 0.17.

¹² Plan of Action on Combating Terrorism, 21 September 2001, updated in 2004, 2005, 2007: SN 140/01, 7906/04, 10586/04, 16090/04, 9809/1/05, 7233/07; Action Plan on Radicalisation and Recruitment 2005 (COM (2005) 0313 final, 14781/05, 14782/05.

¹³ 14469/05, Strasbourg, 2005 at p.2. Subsequent 6 monthly reports of the Counter Terrorism Coordinator on the Implementation of the Strategy and Action Plan to Combat Terrorism. (9809/1/05, 14734/1/05, 15704/05, 9589/06, 15266/06, 9666/07, 15411/07, 9416/08, 14862/08, 15912/08, 9715/09, 15538/09) and the EU Counter – Terrorism Strategy – discussion paper (15359/09). See also: Walker C. (2011) op cit at 10.

¹⁴ HM Government (2011b) CONTEST. The UK's Strategy for Countering Terrorism. July 2011. Cm 8123.

¹⁵ Walker C. (2011) *Terrorism and the Law*. Oxford: OUP at 8; see also Walker C. (2006) 'Intelligence and Anti terrorism legislation in the UK.' *Crime, Law & Social Change*, 44: 387; Gill P. (2009) 'Security Intelligence and Human rights.' *Intelligence and National Security*. 24, 78.

¹⁶ Mythen G., Walklate S., & Khan F. (2009) 'I'm a Muslim, but I'm not Terrorist: Victimization, Risky Identities and the Performance of Safety.' *Brit. J. Criminol.* 2009, 49, 736-754.

¹⁷ Walker C. (2008c) "Keeping Control of Terrorists without Losing Control of Constitutionalism." *Stanford Law Review*, 2008, 59: 1395-8.

¹⁸ Vaughan B. & Kilcommins S. (2007) *Terrorism, Rights and the Rule of law*. Devon: Willan.

research about persons that this legislation may impact on the most, such as the British Muslims, remains deficient.¹⁹ To overcome this deficiency, the views of the British Kashmiri Muslims will be utilised in this chapter to identify their opinions on *Pursue* as based in the said legislation. It is beyond the scope of this thesis to consider every aspect of the anti terrorism legislation, and the focus will be narrowed to areas of policing under counter terrorism legislation identified by the participants in the fieldwork.

Some aspects of the *Pursue* element of CONTEST and the legislation accompanying it are rife with contention. This discord is reflected by the belief outlined by some of the fieldwork participants that the legislation surrounding the counter terrorism policing has been 'rushed through, It's directed towards the latest form of terrorism, yet [terrorism] existed hundred plus years.' Int. 2. The crucial basis of discontent is addressed to the legislature's front line: the police, 'Law - police is taking advantage of it. They stop and search under suspicion, they given extended powers to arrest. It's wrong and then imprison for two to three weeks. People are in American jails - that Guantanamo Bay - they have no trial – it's wrong. They use the same laws against Kashmiris in Britain – it's wrong.' Int. 12. The research data revealed that the British Kashmiri Muslim community interviewed had significant apprehensions related to certain *Pursue* - orientated aspects of counter terrorism policing legislation, and these will be addressed, namely: police discretion, stop and search powers, arrest and detention, and airport policing.

6.3.1 Police Discretion and Stop and Search

There is no doubt that contemporary policing is faced with 'contradictory and problematic aspects'²⁰ that not only threaten the image of policing but also the national security agenda, via its overuse of counter terrorism powers. In the analysis of counter-terrorism policing, David Anderson observed that some aspects of policing have perpetuated 'resentment' amongst the Muslim communities.²¹ Abuse or overuse of their dual role of engaging with the community and enforcing counter terrorism legislation by the police will inevitably result in 'smashing some of

¹⁹ Home Office (2010) 'What perceptions do the UK public have concerning the impact of counter terrorism legislation implemented since 2000?' March 2010, Occasional Paper 88. London: Crown copyright. DSTI, and Mythen G., Walklate S. & Khan F. (2009) op cit at 736-754.

²⁰ Anderson D. (QC) (2012) *The Terrorism Acts in 2011 Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*. June 2012, London: HMSO.

²¹ Anderson D. (QC) (2012) *The Terrorism Acts in 2011 Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*. June 2012, London: HMSO, para 8.28 at p.96.

the good work done to improve police - community relations.²² In assessing the relationship between counter terrorism strategies and British Muslims in Greater London, other scholarly research has found that increased or perceived unnecessary police interventions led to less co-operation with the police.²³ Moreover the same research found that when a community as a whole was targeted by the police, the reaction differed to that of individuals being targeted by the police. The perceived targeting or 'harassment' of the community had a negative impact on their relationship with the police. It undermined co-operation with the police.²⁴ Indeed, history has established that police's use of (non - terrorism) stop and search powers have led to deterioration in community relationships. This form of contentious policing practice led to several official investigations including the Scarman Inquiry²⁵ and the Macpherson Inquiry.²⁶ It would appear that irrespective of lengthy arguments aiming to curtail police powers, the stop and search powers are extended, most recently by the Terrorism Act 2000, section 44. Section 47A under the Protection of Freedoms Act 2012 has now replaced section 44 of the Terrorism Act 2000, and has curtailed the powers in law and practice. However, it is noteworthy that at the time of the research, section 44 was valid, and the participants talked of the policing powers that were of use at that time.

The police are in unique position where the 'freedom or authority to make judgments and to act as one sees fit'²⁷ is accorded to the highest degree at the bottom rank of policing. This has prompted Lustgarten²⁸ to assert that 'in taking the sort of decision that is the quintessence of their work, the police are guided by virtually no legal standards at all.' However, others argue that police discretion is necessary as the nature of the law and their role requires 'flexibility and highly personal subjective judgments.'²⁹ Thus, legislation, namely the Police and Criminal

²² Thiel D. (2009) "Good cop, bad cop?" *Public Service Review: Home Affairs* 20; see also: McDonald B. & Mir Y. (2011) "Al-Qaida influences violent extremism. UK government prevention policy and community engagement." *Journal of Aggression, Conflict and Peace Research* Jan. 2011, 3(1) 32-44.

²³ Huq A.Z. Tyler T.R. & Schulhofer S. J. (2011) "Mechanisms for Eliciting Co-operation in Counterterrorism Policing: Evidence From the UK." *Journal of Empirical Legal Studies* 8:4; 728-761, December 2011 at 750.

²⁴ *ibid* at 742 and 748.

²⁵ Scarman, Lord (1981) *The Brixton Disorders April 10-12 1981: Report of an Enquiry*. London: HMSO.

²⁶ Macpherson, W. (1999) *The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William Macpherson of Cluny*. London: Home Office Publications.

²⁷ The definition of DISCRETION in Collins Dictionary (1992) Third edition. Aylesbury: Harper Collins Publishers.

²⁸ Lustgarten (1986) cited in Fielding N.G. (1991) *The Police and Social Conflict: Rhetoric and Reality*. London:

The Athlone Press. p.120-130.

²⁹ Fielding N.G. (1991) *ibid*.

Evidence Act 1984³⁰ was implemented to provide boundaries or 'safeguards' both for the police and the public it serves. However, the 'elasticity' of discretion under the notion of reasonable suspicion is elevated by PACE's reluctance to define discretion. The basis of this framework, was on the recommendation of the Philips Commission³¹ which 'acknowledge the risk that the criterion could be loosely interpreted . . .' It concluded that discretion is necessary for effective policing and stated: 'Like others before us we have concluded that the variety of circumstances that would have to be covered makes this [defining discretion] impracticable.'³²

In line with the above discussion, the broadness of stop and search powers, and the police's discretion may have a counter-productive effect on their implementation of the *Prevent* strategy. Hence, police discretion allows for extraneous factors to become operative such as race or religion. Despite the safeguards of PACE, street policing is difficult to control and oversee; the even wider discretion allowed by the counter terrorism legislation alongside *Pursue* cause the potentially acute dangers of discrimination. The implications for policing will be elaborated via discussion on the counter terrorism powers and policing.

6.3.2 Stop and Search under the Terrorism Act 2000

The Terrorism Act 2000 was implemented to avoid the 'ill considered, ill-defined panic legislation.'³³ Its primary purpose was to enshrine a permanent anti-terrorism code which is consistent with respect for human rights without the need for derogation. In the Government's 'Inquiry into legislation against Terrorism,'³⁴ Lord Lloyd identified the imperative need for equilibrium between liberty and security. Lord Lloyd recommended that

'i. Legislation against terrorism should approximate as closely as possible to the ordinary criminal law and procedure; ii. Additional statutory offences and powers may be justified, but only if they are necessary to meet the anticipated threat. They must then strike the right balance between the needs of security and the rights and liberties of the individual; iii. The

³⁰ Hereafter referred to as PACE.

³¹ The Philips Commission (1981) *Royal Commission on Criminal Procedure Report*. (Cmnd 8092) HMSO: London.

³² *Ibid* at Para. 3.25.

³³ Walker C. (2006b) "Clamping Down on Terrorism in the UK." *Journal of International Criminal Justice* 4 (2006), 1137-1151 at 1142.

³⁴ (1996) Command Paper 3420: London.

need for additional safeguards should be considered alongside any additional powers; iv. The law should comply with the UK's obligations in international law.³⁵

Nevertheless, based on the premise that 'public safety demands earlier intervention,'³⁶ the Terrorism Act 2000, sections 44 - 47 give police the power to a 'random or blanket search.'³⁷ Despite the fact that this legislation has now been repealed, the subsequent discussion on section 44 is relevant as the interviewees talked of the policing law at the time. Section 44 also reveals the consequences it has had on their perception of the counter terrorism police and their relationship with the police.³⁸

Section 45(1)(b) stated the broadness of the power, which 'may be exercised whether or not the constable has grounds for suspecting . . .' Since there is no application of 'reasonable suspicion' when utilising this power, Walker has 'doubts' as to whether the guidelines issued for reasonable suspicion in PACE will apply.³⁹

Section 44 of the Terrorism Act 2000 could only be authorised by a senior police officer because it is considered to be 'expedient for the prevention of acts of terrorism.'⁴⁰ Its authorisations can be in force for up to twenty eight days,⁴¹ but the Home Secretary had to confirm the authorisation within forty eight hours of its implementation.⁴² This power of blanket stop and search was utilised throughout the UK, especially in the Metropolitan Police area where there were continuous authorizations from 2001 to 2009. It accumulated 8,550 searches in 2001-02, a rate which increased to 44543 stop and searches in the year 2005-06.⁴³ Search was not limited to vehicles, and pedestrians stopped under Terrorism Act rose from 946 in 2001-2 to 19064 in

³⁵ Ibid at 3.1: Lord Lloyd.

³⁶ House of Commons Affairs Committee, 4th Report of Session 2005-06: Terrorism Detention Powers; HC 910 - I, 54.

³⁷ Walker C. (2009) *Blackstone's Guide to the Anti-Terrorism Legislation*. Second edition. Oxford: Oxford University Press at 168.

³⁸ Anderson D. (2011) "The independent review of terrorism legislation" *E. H. R. L. R* 2011, 5, 544-551.

³⁹ Walker C. (2009) op cit at 169.

⁴⁰ s.44(3) Terrorism Act 2000.

⁴¹ s.46(2) *ibid*.

⁴² s.46(4), *ibid*.

⁴³ Ministry of Justice (2007) *Statistics on Race and the Criminal Justice System 2006*. London: HMSO.

2005-6.⁴⁴ Alarming, 'there is a fear of the transposition of terrorism powers more widely than is proper.'⁴⁵ Walker illustrates this with examples of the 82 year old Walter Wolfgang, who was stopped under section 44 because he tried to re-enter the Labour Party's 2005 conference; and of Nicholas Gawbert undergoing a diabetic 'attack' was 'tasered' on a bus because he appeared to be acting 'strangely',⁴⁶ (and he was white).

The flexibility of these powers was re-affirmed by the judiciary. In *R (on the application of Gillan) v Metropolitan Police Commissioner*,⁴⁷ the courts received the opportunity to evaluate section 44 of the Terrorism Act 2000. This case involved two applicants, who were heading towards an arms fair in London. They were stopped and searched under section 44; since nothing unlawful or incriminating was found, approximately half an hour later they were released. Their application for judicial review was rejected by the District Court and the Court of Appeal. Their appeals were also dismissed by the House of Lords. The significance of this case is that the powers under section 44 were held to be lawful by the national courts. In addition it was held that such powers did not contravene the right to liberty under Article 5 of the European Convention of Human Rights.⁴⁸ Lord Bingham referred to the stop and search as no more than being 'kept from proceeding or kept waiting'.⁴⁹

Equally significant is that this case acknowledged the limitations of section 44 safeguards, and Lord Brown observed that it is 'clearly open to abuse'.⁵⁰ Although neither of the applicants belonged to an ethnic minority, the issue of 'discrimination' and racial profiling was considered, 'What then if it is found that the police are using the section 44 power more frequently to stop Asians than other racial groups in the community?'⁵¹ The fact that three out of the five Lordships felt it pertinent to address the issue of discrimination highlights the problem of prejudice in policing. It was stressed that '[e]thnic origin . . . can and properly should be taken into account in deciding whether and whom to stop and search provided always that . . . the selection is made for

⁴⁴ Ibid.

⁴⁵ Walker C. (2009) op cit at 170.

⁴⁶ Ibid.

⁴⁷ [2006] 2 AC 307, thereafter referred to as the *Gillan case*.

⁴⁸ ECHR.

⁴⁹ *R (on the application of Gillan) v Metropolitan Police Commissioner* [2006] 2 AC 307, at 25.

⁵⁰ Ibid at 74.

⁵¹ Per Lord Hope ibid at 43.

reasons connected with the perceived terrorist threat and not on grounds of racial discrimination.⁵² Commentary on racial selection was further elaborated to incorporate 'other further reasons for doing so.'⁵³ In coming to this decision, Lord Hope referred to the *Roma Rights case*⁵⁴ which held that it was discriminatory when 'all Roma were being treated in the same way simply because they were Roma.'⁵⁵

It has been submitted⁵⁶ that the 'further factors test' justifies police discrimination. Thus under its premise the police could 'stop and search say, all Asian males,' using gender as the 'further factor'.⁵⁷ However, *Gillan* contributes to the ongoing debate that it is 'inevitable . . . that so long as the principal terrorist risk against which use of the section 44 power has been authorised is that from al Qaeda, a disproportionate number of those stopped and searched will be of Asian appearance.'⁵⁸ Aside from the argument that not all Asians are Muslims, and not all Muslims are terrorists,⁵⁹ 'there is not a consistent profile to help identify who may be vulnerable to radicalisation.'⁶⁰ The use of stop and search powers under section 44 had 'increased the level of distrust of our police; it has created the deeper racial and ethnic tensions against the police . . . it has cut off valuable sources of community information and intelligence.'⁶¹ The research data compiled for this thesis elaborated and continuously reiterated these concerns, 'I don't think that there should be too much law. Security agencies should deal with it. Now filmiest evidence police involved, even when with no evidence.' Int. 8.

The *Gillan* case clearly highlighted the domestic judiciary's support for section 44, however its view was not endorsed by the European Court of Human Rights. In *Gillan & Quinton v UK*,⁶² it was held that not only do the section 44 powers contravene Article 8, but they were also deemed

⁵² Per Lord Brown, *ibid* at 81.

⁵³ Per Lord Hope, *ibid* at 45.

⁵⁴ *R (European Roma Rights Centre) v Immigration Officer at Prague Airport (United Nations High Commissioner for Refugees Intervening)* [2005] 2 WLR 1, 46.

⁵⁵ Per Lord Hope in the *Gillan case* *op cit* at 45.

⁵⁶ Moeckli D. (2007) "Stop and Search under the Terrorism Act 2000: A comment on *R (Gillan) v Commissioner of Police for the Metropolis*." *M.L.R.* 2007, 70(4), 654-679.

⁵⁷ *Ibid* at 665.

⁵⁸ *Gillan op cit* at 42 & 88.

⁵⁹ Walker C. (2009) *op cit*; Moeckli D. (2007) *op cit*.

⁶⁰ *Report of the Official Account of the Bombings in London on 7 July 2005*, HC 1087 at 31.

⁶¹ House of Commons Home Affairs Committee (2004) *Written Evidence: Memorandum submitted by the Metropolitan Police Authority*. 8 July 2004, HC 866 - i.

⁶² (2010) 50 EHRR 45.

'neither sufficiently circumscribed, nor subject to adequate legal safeguards against abuse.'⁶³ Nevertheless there are limits to this judgment. Stop and search without reasonable suspicion has not been ruled out, as confirmed by *Austin v United Kingdom*.⁶⁴ In this case it was held that it is necessary to stop and search without reasonable suspicion, especially where the police authorities consider it crucial to prevent 'serious injury or damage.'⁶⁵ Similarly *Colon v The Netherlands*⁶⁶ it was held that stop and search is justified without reasonable suspicion on the basis that the officer has sufficient grounds to search. Accordingly the domestic courts in *R (on the application of Roberts) v Commissioner of the Police of the Metropolis*,⁶⁷ held that a search was valid without reasonable suspicion. Although this case involved section 60 of the Criminal Justice and Public Order Act 1994, the facts of the case could be applied under the counter terrorism policing. R boarded a bus without the means to pay the fare. She offered a false name and address to the bus Inspector, and subsequently to a police officer. She further falsely stated that she had no identification. The constable conducted a search, despite R's resistance, of her handbag. R contended that such a stop and search violated articles 5 and 8 of the European Convention on Human Rights. It was held that the search was justified despite the lack of reasonable suspicion, a 'good reason for search' was sufficient.⁶⁸

Thus the police still have to address the 'Herculean'⁶⁹ task of balancing due process and ensuring the safety of the nation.⁷⁰ Indeed the Lords' in their decision in *Gillan* have openly disturbed the fragile balance of due process and national security to uphold the police's powers. In *Gillan*, they have send an alarming signal that domestic courts will tolerate and overlook human rights, such as liberty in preference for national security.⁷¹

⁶³ Dennis I. (2011) "Editorial - Counter Terrorism" *Crim. L.R.* 2011, 3, 175-176; see also Cm. 8003. TSO. 2011. (39692/09); (2012) 55 E. H. R. R. 14; [2012] Crim L.R. 544; Times, March 26, 2012.

⁶⁴ Judgement of Tulkens J. See also: "Positive or Neutral Judicial Treatment. *Austin v UK* (39692/09) European Court of Human Rights. 15 March 2012. Case Analysis."

⁶⁵ App No. 49458/06 (2012) 55 E.H.R.R SE5.

⁶⁶ (QBD) (Administrative Court) 2012; [2012] EWHC 1977.

⁶⁷ *Ibid* at para. 21.

⁶⁸ Dworkin R. (1986) *Law's Empire*, at 239, cited in MacAmhlaigh C (2010) *op cit*.

⁶⁹ Longstaff A. & Graham J. (2008) "Anti-terrorism and police powers: should we be concerned?" *Criminal Justice Matters*, 73(1), 15-16.

⁷⁰ MacAmhlaigh C. (2010) 'Case Comment. Revisiting the rule of law under the ECHR: *Gillan and Quinton v United Kingdom*.' *Edin L.R.* 2010, 14(3), 477-482 at 482.

The academic commentary following the European Court's decision amplifies the debate that the British courts' priority of national security supersedes the need for justice in terrorism policing. Andrew Ashworth comments on the dismissive nature of the English courts, and that it took Strasbourg to concur with Walker⁷² that twenty to thirty minutes detention by the police under section 44, is indeed 'deprivation of liberty.'⁷³

However, others have argued that in coming to its decision, the European Court failed to address crucial, imperative issues that are encountered exclusively in counter terrorism.⁷⁴ Buxton's paper submits that the European Court declined to consider the underlying reasons for the anti terrorism legislation. There was the lack of balance of consequences of the pre-emptive policing and the crime itself, namely terrorism. In Buxton's opinion, terrorism differs from crime in general, and thus the balance addressed by Lord Brown in the House of Lords decision was erroneously overlooked by the European Court. In addition, the inference under Article 8 was not balanced by the underlying reason for section 44.⁷⁵ In turn, Buxton, suggests, 'that a court administering a living instrument, whose jurisprudence in other areas professes significant respect for the policy and political decisions of Member States, should at least debate what is at stake before dismantling a major part of a state's terrorism legislation.'⁷⁶ Nevertheless it is noteworthy that Buxton's stance was not endorsed by the Government, who on reflecting on *Gillan* then abolished section 44.

While the *Gillan & Quinton's* judgment⁷⁷ is embraced by some, however on closer scrutiny it has alarmed others. Just as academics and senior judges ponder over policing powers under the Terrorism Act 2000, so do the participants of the British Kashmiri Muslim community. Whilst some believe that the law is excessive, others state: 'We have a responsible government. I try not to get involved with groups that come close to limits of the law. But as one of the young males that could be a threat to this country, I have not experienced any adverse affects from government, police or British society. I am proud of this country and its press for not reacting too

⁷² 2006, *Crim. L.R.* 751.

⁷³ Ashworth A. (2010) "Case Comment. *Gillan & Quinton v UK: human rights - Article 5 - stop and search as deprivation of liberty.*" *Crim. L.R.* 2010, 415-419.

⁷⁴ Buxton R. (2010) "Case Comment. Terrorism and the European Convention." *Crim. L. R.* 2010, 7, 533-542.

⁷⁵ *Ibid.*

⁷⁶ *Ibid* at 536.

⁷⁷ Buxton R. (2010) *op cit* at 533-542.

strongly to the heinous crimes committed by the London bombings.' Int. 7. In the light of that forgiving attitude, there might be some hope that the implementation of section 47A, which followed the fieldwork for this thesis, will allay some community concerns.

Section 47A offers a higher threshold for its use, than its predecessor section 44. The Code of Practice issued for Section 47A identifies 'reasonable suspicion' in broad terms.⁷⁸ It states that the grounds used for reasonable suspicion should be based on objectivity and each case should be considered on its individual merits, namely on 'intelligence' and 'information'. It is emphasised that 'generalisations' and 'stereotypical images' are to be avoided,⁷⁹ and paragraph 4.9.3 of the Code elaborates on possible justifications for the use of section 47A, it identifies the conditions for arrest: physical demography, the individual's mannerisms, 'clothing' and 'carried items'. Thus, as indicated further on in the Code, this is 'to promote public confidence' and, if necessary, community members should be able to examine the documentation for the use of individual section 47A powers.⁸⁰ This Code attempts to create safeguards and creates a higher threshold for the use of section 47A, but individual officer's discretion prevails.⁸¹ It has been recommended that the Code needs to elaborate to incorporate a comprehensive guideline on the individual officer's discretion.⁸²

The authorisation for section 47A stop and search can only be undertaken by the authority of a senior police officer who 'reasonably suspects that an act of terrorism will take place', and that such an action 'is necessary to prevent such an act.' In addition the senior authorizing police officer stipulates the timing and the geographical area which the powers under section 47A cover. The order must still be confirmed by the Secretary of State within forty eight hours. The duration of the powers cannot now exceed the maximum of fourteen days; renewals must be on the basis of further evidence or intelligence.⁸³ It is hoped that such a 'correction' in 'favour of

⁷⁸ Home Office (2012) *Code of Practice (England, Wales and Scotland) for the Exercise of Stop and Search Powers under Section 43 and 43A of the Terrorism Act 2000 and The Authorisation and Exercise of Stop and Search Powers relating to Section 47A of, and Schedule 6B to, the Terrorism Act 2000*. London: HMSO. May 2012, at para. 3.4.1.

⁷⁹ Ibid.

⁸⁰ Ibid at para, 5.5.3.

⁸¹ Anderson D. (QC) (2011) *Report on the Operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*. London: HMSO. July 2011, at p.7.

⁸² Ibid at p.74.

⁸³ Anderson D. (2011) op cit at pp.65-66.

liberty' will appease the tensions created by section 44.⁸⁴ However, the lasting impact of section 44 may require time to subsidy and ultimately restore the Muslim community's confidence in the police.

Despite the replacement of section 44 by section 47A, it remains important to consider the decade-long effects of section 44 and how they may have 'had a lasting impact on individuals.'⁸⁵ Parmar's qualitative research reveals that those arrested under section 44, were of the opinion that they were selected because of their 'Muslim' appearance, and their Asian heritage.⁸⁶ The consistent belief held by Parmar's participants that they are unfairly targeted led to 'social and political disenfranchisement.'⁸⁷ Parmar asserted that section 44 powers did indeed change the individual's perceptions of the criminal justice system and in particular policing, thereby undermining community relationships, and alienating the very individuals whose co-operation is crucial for effective counter terrorism operations.⁸⁸ As Parmar acknowledges such permanent and lasting memories of section 44 will not be easily amended or healed by section 47A's slightly milder approach.⁸⁹

In assessing perceptions of the UK public 'concerning the impact of counter terrorism legislation implemented since 2000', the Defence Science and Technology Laboratory for the Office of Security and Counter Terrorism, in its quantitative study found 'negative perceptions to be most prevalent in Muslim communities who articulate feelings of being viewed as 'guilty until proven innocent'.⁹⁰ Of all the groups, they found that 'Muslims in particular reported concern that the proposal to increase pre-charge detention periods to 42 days might be used to harass innocent

⁸⁴ Anderson D. (2011) op cit at p.71.

⁸⁵ Parmar A. (2011) "Stop and Search in London: counter-terrorist or counter-productive." *Policing and Society* 21:4, December 2011, 369-382 at 371.

⁸⁶ Ibid at 375-376.

⁸⁷ Ibid at 377.

⁸⁸ It has been argued that racial prejudice exists within the police community: see: The Philips Commission (1981) op cit at 954; Bowling B. & Philips C. (2002) *Racism, Crime and Justice*. London: Longman; House of Commons Home Affairs Committee (2007) *Young Black People and the Criminal Justice System*. Second Report of Session: 2006-07. Vol. 1. London: TSO; Dowds L. & Young J. (1996) *British Social Attitudes Survey*. London: Dartmouth at 47; Hall S., Lewis G., & McLoughlin E. (1998) *The Report on Racial Stereotyping*. Milton Keynes: Open University; Bowling B. (1999) *Violent Racism* Oxford: Oxford University Press; Her Majesty's Inspectorate of Constabulary (1997) *Winning the Race: Policing Plural Communities*. HMC Thematic Inspection Report on Police Community and Race Relations. London: Home Office.

⁸⁹ Ibid at 379-380.

⁹⁰ Home Office (2010) 'What perceptions do the UK public have concerning the impact of counter terrorism legislation implemented since 2000?' March 2010, Occasional Paper 88. London: Crown copyright. DSTI at p.19

Muslims.⁹¹ In addition 'a populous poll carried out in June 2006 using a sample of 1,131 Muslims', found that 47 per cent of Muslims believed that counter terrorism legislation was being used 'unfairly' on Muslim communities, in comparison to 34 per cent who believed that they were applied fairly towards Muslims.⁹²

In addition, it has been found that '[i]n the police service there is a distinct tendency for officers to stereotype people. That creates problems in a number of area, . . . Discrimination and unfairness are the result.'⁹³ BBC journalist Mark Daly, in his covert recordings, highlighted that racism was prevalent even four years after the Macpherson findings, and that the attitude of the police is reflected in their practice.⁹⁴ The Ministry of Justice in 2009⁹⁵ confirmed the disproportionately high number of stop and search powers applied to persons of black and Asian ethnicity, with the former eight times more likely, the latter more than twice likely than white people to be impacted.⁹⁶

In light of this data it has been argued that,

'[t]he blunt reality, more than a decade after Macpherson and several years after the reforms were implemented, is that aggregate - measured levels of disproportionality for grounds based searches have not improved. Moreover, compared to the late 1990s, the situation has become worse for black and Asian people. The relative chances of people in these groups being searched, compared to whites, have apparently increased.'⁹⁷

Miller's research does not sustain that schemes such as Neighbourhood Policing may have assisted in reducing some of the disproportionality. This would suggest that mutual understanding created by community engagement has the potential to decrease the police's

⁹¹ Ibid at 19.

⁹² Ibid at 29.

⁹³ Macpherson W. (1999) op cit at 32. It was concluded that the police is "collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people." at 6.34.

⁹⁴ BBC documentary (2003) *The Secret Policeman*. One officer is reported to have said, "Like around here if there's a car full of black people or a car full of Asians you pull it because we have got no, we have got no really ethnic minorities round here, you can guarantee it will be full of shit coming across to rob or do something."

⁹⁵ *Statistics on Race and the Criminal Justice System 2007/8*: A Ministry of Justice Publication under section 95 of the Criminal Justice Act 1991. London: Ministry of Justice.

⁹⁶ Miller J. (2010) "Stop and Search in England: a reformed tactic or business as usual." *Brit. J. Criminol.* 2010, 50(5), 954-974.

⁹⁷ Ibid at 968.

prejudice that results in disproportionate use of stop and search, and increase the awareness that over-usage of such powers will lead to disengagement of the community.

6.3.3 The Pre-Crime Justification

Lord Carlile of Berriew⁹⁸ endorsed the enhancement of the stop and search powers bestowed on the police by the Terrorism Act 2000. Their extension is advocated on anticipatory grounds, namely that the police must be able to proceed or 'intervene' prior to the actual crime - 'before a terrorist act is committed.'⁹⁹ Lord Lloyd of Berwick advised that counter terrorism required 'pre-crime' legislation.¹⁰⁰ The government has also asserted the need for such pre-emptive steps: 'to avoid is the situation where at a later point, people turn around and say: If you'd only been vigilant as you should have been, we could have averted a terrorist attack.'¹⁰¹ This justification was endorsed and advocated by the Metropolitan Police Anti terrorist Branch following the July 2005 bombings.¹⁰²

However, these necessary new ways of policing have caused concern not only for the members of the British Kashmiri Muslim community, but also for academic commentators. It is argued that the anti terrorism legislation has implemented the 'politics of pre-emption [that] go beyond the established language and techniques of risk.'¹⁰³ This dilution of due process is perpetuated by the additional duty of safeguarding national security for the police. Criminal justice had its roots in processing impartiality and separation from politics, whereas national security is administered by the elected executives, namely the government. The creation of the 'hybrid' system has

⁹⁸ *Report on the Operation in 2004 of the Terrorism Act 2000*, at <http://www.statewatch.org/news/2005/may/terrorism-act-2004-rep.pdf>. last visited on 10 March 2011.

⁹⁹ *Ibid* at 20; see also Lord Lloyd of Berwick *Inquiry into Legislation against Terrorism*. Cm 3420, London.

¹⁰⁰ Mythen G. & Walklate S. (2006) "Criminology and terrorism: which thesis? Risk society or governmentality?" *Brit. J. Criminol.* 2006, 46(3), 379-398 and McCulloch J. & Pickering S. (2009) "Pre-crime and counter terrorism: imagining future crime in the 'war on terror'." *Brit. J. Criminol.* 2009, 49(5), 628-645.

¹⁰¹ Tony Blair quoted in Desroches F. (2005) "Policing in the Post 9/11 Era," *Research and Evaluation Branch, Royal Canadian Mounted Police*.

¹⁰² "The threat from international terrorism is so completely different that it has been necessary to adopt new ways of working. . . . The advent of terrorist attacks designed to cause mass casualties, with no warning, sometimes involving the use of suicide, and with the threat of chemical, biological, radiological or nuclear weapons means that we can no longer wait until the point of attack before intervening. The threat to public is simply too great to run the risk . . . the result of this is that there are occasions when suspected terrorists are arrested at an earlier stage in their planning and preparation than would have been the case in the past." London Anti Terrorist Branch (SO13) (2005) "Submission in Support of Three Month Pre-Charge Detention." 5 Oct 2005.

¹⁰³ Amoores L. & De Goede M. (2008) "Introduction: Governing by Risk in the War on Terror", in Amoores L. & De Goede M. (editors) *Risk and the War on Terror*. 5-19. Oxon: Routledge.

completely blurred the boundaries of where policing or national security commence.¹⁰⁴ Since 'the norms of prosecution no longer apply,¹⁰⁵ there is the creation of 'laws against law,'¹⁰⁶ which 'erode or eliminate traditional principles, standards and procedures of criminal law that get in the way of pre-empting imagined sources of harm.'¹⁰⁷ It is submitted that police prejudice may distort the boundaries of 'evidence' and 'intelligence'. It is argued that '[w]hile race, ethnicity and religion are used as proxies for risk, counter measures are used as proxies for crime and specifically terrorism.'¹⁰⁸

The disproportionate use of police powers will be overshadowed by the executive's drive to prevent terrorism, and simultaneously increasing the 'threat' by alienating the source, the community whose cooperation is vital. Evidence that negative impacts have occurred was confirmed by the fieldwork: 'Any law that creates friction is not good, for example stop and search, and asking not good questions. Not these problems thirty years back. We want to keep the peace.' Int.18. They view that they are simply being 'targeted' because of their religious affiliation was expressed: 'The police, because if Muslim they think we are guilty of terrorism. We have to prove innocence, those innocent threaten by it.' [Since we are Muslims, the police think we are guilty of terrorism. We have to prove our innocence and as innocent people we feel threatened by the police]. Int.19. They reiterated that the policing was unjustifiable because of the label Muslim. 'They think we are guilty yet they cannot prove that we (the Muslims) have committed a crime at all - do you understand? They have us all labeled.' Int.22. However, the concept of 'protection' by the law was highlighted also: 'But the law protects us too.' Int. 27, is a statement that is continuously tested in the implementation of the counter terrorism legislation.

¹⁰⁴ McCulloch J. and Pickering S. (2009) op cit.

¹⁰⁵ Former British Home Secretary, David Blunkett, quoted in Wolfendale J. (2007) " Terrorism, Security and the Threat of Counter-Terrorism," in *Conflict & Terrorism*, 2007, 30: 75-92.

¹⁰⁶ McCulloch J. & Pickering S. (2009) op cit at 632.

¹⁰⁷ Ericson R. (2008) "The State of Pre-emption Managing Terrorism through Counter Law," in Amoore L. & De

Goede M. (editors) *Risk and the War on Terror*. 57-76. Oxon: Routledge, at 57.

¹⁰⁸ McCulloch J. & Pickering S. (2009) op cit at 635.

6.3.4 The Arrest Power under Anti Terrorism Legislation

Following Strasbourg's decision in *Gillan*, the government has been willing to limit section 44,¹⁰⁹ but it sustains the facility of other legislation that grants additional powers to the police in their fight against terrorism. The underlying principles of the hybrid policing and national security measures dominate, and this is evident in section 41 of the Terrorism Act 2000. It provides that 'A constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist.' Based on section 40, the person can be arrested even where no offence has been committed.¹¹⁰

Terrorism has always profited from 'special' treatment. In *R v DPP, exp. Kebilene*,¹¹¹ Lord Cooke graciously expressed 'that one might treat terrorism as a special subject apparently indicating it might not be disproportionate to put burdens on the defendant in times of terrorism.'¹¹² Similarly in *McVeigh and others v UK*,¹¹³ the Commission declared that the law can reflect the threat of deviance, namely, terrorism, 'in order to secure the fulfillment of an obligation,'¹¹⁴ for the sake of article 5(1)(f). Thus, the anti terrorism legislation has followed suit; the higher the perceived threat, the stricter the legislation, and the wider, discretionary powers for the police. From the onset, section 41 attracted disquiet especially in relation to human rights. Lord Lloyd of Berwick advised that as no offence had occurred, there was the conceivable violation of Article 5 of the European Commission on Human Rights.¹¹⁵ However, *Brogan v UK*¹¹⁶ was used to justify the Government's stance on section 41, which had held that arrest did not have to be linked to a specified offence.¹¹⁷

¹⁰⁹ Dennis I. (2011) "Terrorism Prevention and Investigation Measures Bill." *Crim. L. R.* 2011, 10, 741-742; see also: Middleton B. (2011) "Rebalancing, reviewing or rebranding the treatment of terrorist suspects: the counter terrorism review 2011" *J. Crim L.* 2011, 75(3), 225-248.

¹¹⁰ Walker C. (2009) op cit.

¹¹¹ [1999] 3 W.L.R. 972.

¹¹² Rowe J.J. (2001) "The Terrorism Act 2000" *Crim. L. R.* 2001, July, 527-542 at 529.

¹¹³ (1981) 5 EHRR 71.

¹¹⁴ in Rowe J. J. (2001) op cit at 529.

¹¹⁵ H.L. Debates, vol 613, col.676.

Article 5(1): "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: . . . c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence."

¹¹⁶ (1989) 11 EHRR 117.

¹¹⁷ Rowe J. (2001) op cit at 529.

Section 41(1) allows the 'precautionary' and also 'multiple arrests'.¹¹⁸ This is epitomized in *Commissioner of Police of the Metropolis v Raissi*.¹¹⁹ Lofti Raissi's arrest under section 41 was based on information received from the FBI and his alleged involvement with a 11 September hijacker. It was held to be within the 'reasonable suspicion' to arrest the wife for alleged complicity but not the brother.¹²⁰

Next, to conceal police interrogation methods and indeed their source of information, section 41 is in the unique position of enabling the police to withhold information as to why the arrest is taking place.¹²¹ In doing so, the police retain the luxury of utilising information from their anonymous informers. This practice received the seal of approval from Lord Chief Justice Lowry in *Ex parte Lynch*¹²², when it was held that a precise verbal report from the police would not be necessary.¹²³ It was held that it was sufficient for the arresting officer to state: 'I was arresting him under [the particular statutory power] as I suspected him of being involved in terrorist activities . . .'.¹²⁴

6.3.5 Section 41 and Detention

It is the extraordinary detention subsequent to section 41 arrest that caused more concern than arrest powers to the participants in the research. Unlike PACE, these capacious powers under section 41(3) allow the police to detain up to forty eight hours on police authority. In order to avoid any challenges under Article 5(3) as in *Brogan and others v UK*,¹²⁵ judicial review is required at forty eight hours of detention. Then the judiciary can grant extension up to fourteen days from the time of initial arrest.¹²⁶ Judicial involvement was not deemed appropriate by some in the House of Commons,¹²⁷ nevertheless the importance of judicial review was a legal

¹¹⁸ Walker C. (2009) op cit at 135.

¹¹⁹ [2008] EWCA Civ. 1237.

¹²⁰ The Courts upholding *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, held that 'reasonable suspicion' had to be objective, and the arresting officer in arresting the brother could not rely on the knowledge or order of a senior officer.

¹²¹ Walker C. (2009) op cit at 136.

¹²² (1984) 28 June QBD.

¹²³ Walker C. (2009) op cit. at 136.

¹²⁴ [1980] NI 126 at 128.

¹²⁵ App nos. 11209, 11234, 11266/84, 11386/85, Ser A 145 - B (1988).

¹²⁶ Walker C. (2009) op cit. at 138.

¹²⁷ " . . . unconvinced that it is legitimately a judicial function, rather than an Executive one. The decision to extend detention under existing legislation is usually based on intelligence material in the hands of the Executive that

necessity that prevailed.¹²⁸ It is notable that the controversial twenty eight day extension granted by the Terrorism Act 2006 has now been limited to fourteen days by the Protection of Freedoms Act 2012. This is a decision that the Government initiated with the recognition that the pre charge detention of fourteen days was held to be 'exceptional' and the Government conceded that the 'twenty eight day detention is so exceptional that I continue to believe that Parliament should have the opportunity to debate the issue first.'¹²⁹

In granting the extension after 48 hours, the judicial authority has to satisfy itself that further detention is necessary to obtain complex evidence including by further interrogation - questioning, or awaiting results of an analysis or an examination.¹³⁰ This request must be based on reasonable grounds, and on the judicial satisfaction that the detainee is 'a terrorist' within section 40.¹³¹ The judicial authority must also ensure that investigation is being undertaken in a diligent and expedient manner.¹³² The safeguard for the detainee¹³³ is highlighted in paragraph 33, whereby a written or oral statement can be submitted to the judiciary, and the detainee can seek legal representation for the hearing. However this safeguard is compromised by paragraphs 33(3) and 34, wherein the judge can exclude the detainee and his or her advocate from the hearing and withhold information from them. The lack of disclosure places restrictions on due process, but is considered necessary because of the nature of terrorism investigations.¹³⁴ The use of paragraph 33 was tested in *Ward v Police Service for Northern Ireland*,¹³⁵ where it was held by the House of Lords that paragraph 33 was necessary for counter terrorism policing. However,

cannot be considered appropriate for judicial consideration. The information is often of such sensitive nature that it cannot be disclosed to a detainee or his legal adviser without compromising the source of the intelligence, thus endangering lives or impeding an investigation. By giving that power to a judicial authority, the judiciary would inevitably be seen as part of the investigation and prosecution process, which could bring its independence into question." Ann Widdecombe, Hansard HC vol. 341, col. 172, 14 Dec. 1999.

¹²⁸ Walker C. (2009) op cit. at 138.

¹²⁹ Teresa May (MP) in Home Office (2011) *The Government Response to Report from the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills. Session 2010-12 HL Paper 161, HC Paper 893. Draft Detention of Terrorist Suspects (Temporary Extension) Bills.* November 2011. London: HMSO. Cm.8220.

¹³⁰ Walker C. (2011) *Terrorism and the Law* Oxford: Oxford University Press at p.156-157.

¹³¹ *Ibid* at 156. The Colville Report (1987) *Colville Report* para 5.16 is often used as a guide to justify further detention. (See Walker C (2011) op cit at p.157 for further information).

¹³² Walker C. (2009) op cit at 138.

¹³³ The treatment of terrorist detainees is a crucial area that could taint the police's reputation and compromise community engagement. Thus Part 1 of Schedule 8 of the Terrorism Act 2000 dictated the principles for treatment as well as the guidance from PACE, which apply to legal representation.

¹³⁴ Walker C. (2009) op cit at 138.

¹³⁵ [2007] UKHL 50. Nevertheless, the fundamental right to legal advice applies also to terrorist suspects, as in *Cullen v Chief Constable of the Royal Ulster* [2003] UKHL 39 at Para. 67 per Lord Millett.

the Lords cautioned that in excluding representation, the judges have to be extra diligent and seek clarification of the police's requests. Walker contends that there is the risk that such practice lacks impartiality since the judge does not have the 'independent means' to analyse the police's documents.¹³⁶ For extensions beyond seven days, the powers under the Terrorism Act 2000 are now governed by section 23 of the Terrorism Act 2006, and can be renewed for a further seven days, up to fourteen days.¹³⁷

Section 41 arrest promotes and aids the government's *Pursue* strategies. The *Inquiry into Legislation against Terrorism*,¹³⁸ stressed the need for 'special arrest powers' in counter terrorism legislation, and this received the police's overwhelming affirmation for such 'critical' means.¹³⁹ However such endorsement 'affords excessive and oppressive powers.'¹⁴⁰ This is demonstrated by the embarrassing and damaging examples within the criminal justice system, such as the Birmingham Six and the Guildford Four. Indeed, '[i]f all the safeguards of PACE are necessary to avoid miscarriages of justice then it must be recognised that in terrorist cases greater risks of injustice are accepted than in the ordinary course of criminal cases.'¹⁴¹ Aside from the crucial drawback of miscarriages of justice, there is the risk that such broad policing powers may compromise the police's relationship with communities and hinder the counter terrorism work.¹⁴² In addition it has been recommended by Anderson that section 41 should not be used in circumstances where the individuals are going to be charged under ordinary criminal legislation. Further Anderson argues that individuals arrested under section 41 should have a legal recourse to make an application for bail.¹⁴³ It is accepted that transparency may impede the work necessary in policing terrorism. However accountability to the executive and judiciary is of paramount importance to sustain police credibility.

¹³⁶ Walker C. (2009) op cit at 138.

¹³⁷ Ibid. The 28 day detention is presently being reviewed by the present Government.

¹³⁸ (1996) Cm. 3420. London.

¹³⁹ Walker C. (2009) op cit., at 156.

¹⁴⁰ Ibid at 157.

¹⁴¹ The May Inquiry, Sir John May (1993-94) *Report of the Inquiry into the circumstances surrounding the convictions arising out of the bomb attacks in Guildford and Woolwich in 1974, Final Report*. HC 449, Para. 21.8.

¹⁴² Walker C. (2009) op cit at 157.

¹⁴³ Anderson D. (QC) (2012) *The Terrorism Acts in 2011 Report of the Independent Reviewer on the Operation of the Terrorist Act 2000 and Part 1 of the Terrorism Act 2006*. London: HMSO. June 2012 at p.67.

The necessity for section 41 is claimed to be based around the complexity of evidence in terrorism policing.¹⁴⁴ Charles Clarke¹⁴⁵ outlined an example of 21 July 2005 when thirty eight thousand exhibits; one hundred and sixty crime scenes; fourteen hundred fingerprints and eighty thousand CCTV videos,¹⁴⁶ and the police had the task of compiling and analysing the evidence. Walker argues that powers under PACE, allowing those arrested for serious arrestable offences to be detained up to ninety six hours could also apply to terrorism cases,¹⁴⁷ however, the complexity and the nature of terrorism offence, as previously discussed, does indeed warrant 'special' extensive powers as advocated by the executive.

Anderson's reservations on section 41 are also voiced by the participants in the research. One participant expressed this opinion, echoed also by other participants, "I feel - I know I am innocent but sometimes I feel threatened. If stopped and searched, they put me in lock-up, if they put charges on me for example that I am attached to a group, I may not be able to prove that I 'm not. It scares me. It scares me that they can keep me in lock-up for long time." Int. 16.

The concern voiced by the academics and participants is perpetuated by the knowledge that despite detentions of duration of one to seven days under section 41, forty nine percent of arrestees are released without being charged.¹⁴⁸ Perhaps there is substance to the assertion that section 41 detention 'has enabled suspects to be charged who may otherwise have had to be released.'¹⁴⁹ In addition, just as preventive policing cannot be quantified, there is the difficulty of quantifying such 'intelligence gathering' section 41 arrests and subsequent detentions.¹⁵⁰ It is only with 'more safeguards' such as a complete adversarial judicial reviews¹⁵¹ that policing can retain its integrity and comply with respect for liberty and due process.

¹⁴⁴ Walker C. (2009) op cit at 157.

¹⁴⁵ Hansard HC vol. 438, col. 341, 26 October 2005.

¹⁴⁶ Walker C. (2009) op cit., at 161.

¹⁴⁷ Ibid.

¹⁴⁸ Metropolitan Police Service (2008) Counter terrorism Command cited in Walker C. (2009) op cit., at 159.

¹⁴⁹ Home Office (2007) *Options for Pre-Charge Detention in Terrorist Cases*. London: HMSO at 5.

¹⁵⁰ Walker C. (2009) op cit., at 161.

¹⁵¹ Ibid.

6.3.6 Summary of the participants views on Sections 44 and 41.

It is noteworthy that section 41 powers caused concern for some participants but not at the rate that section 44 had an impact on those interviewed. None of the participants identified the individual sections, but they had awareness and knowledge of the counter terrorism powers available to the police. Their awareness of section 41 powers stemmed from high profile counter terrorism events, such as 'Operation Pathway', when twelve students were arrested in 2009, majority of Pakistani origin. However, the section 44 powers clearly generated a more emotive impact across generations, and such stop and search powers that in their opinion depict 'all Muslims as terrorists.' Int. 16. Thus, section 44 appeared to create a stronger response and hostile feelings towards the police.

6.3.7 Airport Policing¹⁵²

The law surrounding airport policing is perceived to be excessive and unreasonable by some of the surveyed British Kashmiri Muslims: 'I say enough to terrorism, yet they accuse people incorrectly especially at airports. My son went away to Dubai, and his friend was stopped and interviewed. They were innocent.' Int. 9.

Airport policing is not a new concept and has the endorsement of international conventions.¹⁵³ Part Five and Schedule 7 of the Terrorism Act 2000 supplement the existing policing. Airport policing reflects the 'all - risks'¹⁵⁴ policy that is deemed necessary to prevent terrorism by treating everyone boarding an aircraft as a potential risk. Attacks on 11 September 2001 itself and at the Moscow airport¹⁵⁵ demonstrate the gravity of the situation. There is no dispute that pre-emptive policing especially at airports is necessary to combat terrorism. The additional legislative powers (accompanied by code issued in 2007, and a revised code in 2009¹⁵⁶) enable the officer to question a person even when they have no suspicion.¹⁵⁷ In addition to questioning the officers

¹⁵² The formal title is 'Ports' Policing but for the purpose of this thesis it is referred to as 'airport policing'. Because the interviewees referred only to airport policing, none of them mentioned seaport.

¹⁵³ E.g., (Hague) Convention for the Suppression of Unlawful Seizure of Aircraft (101LM 133, 1970); (Montreal) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (101LM 1151, 1971). Walker C. (2009) op cit., at 174.

¹⁵⁴ Walker C. (2009) op cit., at 174.

¹⁵⁵ 24 January 2011, at Domodedovo.

¹⁵⁶ Home Office (2009) *Examining Officers under the Terrorism Act 2000 Code of Practice*. London:TSO.

¹⁵⁷ SI2001/427; <http://www.homeoffice.gov.uk/documents/cons-2007-tact-cop-exam-officers/cons-2007-code-of-practice?view=Binary>.

have the right to search.¹⁵⁸ These powers are based on the officer's discretion and do not require 'any grounds for suspicion against any individual prior to the exercise of the powers.'¹⁵⁹ Research conducted elsewhere on Schedule 7 found that Muslims stopped under these powers believed that they were unfairly targeted simply because of their religion. This affected their outlook on policing, and they held the view 'that they were being targeted as Muslims, and that the questions were being used to build up profiles of them and to gather information in general about Muslim communities.'¹⁶⁰ There was concern that the power enabled detention of up to nine hours without additional authorisation.¹⁶¹

Of particular concern to the participants interviewed for this thesis is that of body scanners: 'security is intense - they take naked photos of us at airports by the machines. It's an invasion of my privacy, it's wrong especially for our women,' Int. 3. Scanners are not required by Schedule 7, however, Schedule 7 facilitates their use. Body scanners used at Manchester Airport, (for example), are reported to cause very little health risk, but, they have caused concern about privacy, and the European Commission have refused to allow Manchester Airport 'to extend [their] three year 'experiment' beyond 31 October 2012,'¹⁶² and these are to be replaced by 'privacy friendly security scanners.'¹⁶³

Schedule 7's compatibility with *Gillan* has been questioned by those analysing the counter terrorism policing, whether the powers used are 'sufficiently circumscribed', and 'subject to adequate legal safeguards against abuse.'¹⁶⁴ Nevertheless, Schedule 7 has been commended for its usefulness in counter terrorism operations. Examples include Aabid Khan who was stopped at Manchester Airport with, material promoting violent jihad in the Western societies; Yassim

¹⁵⁸ Lord Woolf held in *R v Hundal*; *R v Dhaliwal* [2004] EWCA Crim. 389, that there is a "clear distinction between requiring someone to answer questions and requiring a person to produce either documents or other information to the prosecution and a case where what the person concerned is compelled to do is to allow the relevant authority to conduct a search." Para. 18.

¹⁵⁹ Home Office (2009) *Examining Officers under the Terrorism Act 2000 Code of Practice*. London:TSO, para:9-10 at p.7.

¹⁶⁰ Chaudhury T. & Fenwick H. (2011) *The impact of counter terrorism measures on Muslim communities*. EHRC Research report. June 2011, pp.22-29; see also Anderson D. (2012) op cit at 107.

¹⁶¹ Anderson D. (QC) (2012) op cit at p.5.

¹⁶² Retrieved from:

<http://www.manchesterairport.co.uk/manweb.nsf/content/ManchesterAirporttotestnewgenerationofprivacyfriendlysecurityscanners>.

¹⁶³ Ibid.

¹⁶⁴ *Gillan & Quinton v UK* op cit at [87].

Nassari at Luton Airport and Sohail Anjum Qureshi possessed material on how to implement terrorist activities.¹⁶⁵ Hauria Chentouf, when stopped at Liverpool airport had concealed in her possession a USB pen drive. This contained extensive material on constructing explosive devices, and photos of a known terrorist. An additional example is that of Ishaq Kanmi and his two companions, when stopped at Manchester Airport, all had in their possession material relating to jihad, including a video promoting and demonstrating attacks on airline staff.¹⁶⁶

It is these sorts of benefits of Schedule 7 that have received recognition by the judiciary, who held that Schedule 7 examinations at the airports are 'an essential tool in the protection of the inhabitants of this country from terrorism.'¹⁶⁷ In *CC v The Commissioner of Police of the Metropolis and Secretary of State for the Home Department*,¹⁶⁸ it was held that Schedule 7 powers could not be utilised to obtain information to justify the security services and the police's application for a control order. However, Collins J. despite finding for the claimant elaborated and clarified on the importance of Schedule 7 powers. It was reiterated that to protect 'the inhabitants of this country from acts of terrorism', the officers may utilise Schedule 7 powers to determine if a suspect is actually a terrorist,¹⁶⁹ and to use the powers even when they have knowledge on the individual stopped, and there are no limits to the 'questions'.¹⁷⁰ The judgment elaborated that the 'proper recipients' of the information obtained under Schedule 7 are naturally the police, the security services and the Secretary of State.¹⁷¹ Moreover, the role of the solicitor was defined 'as an observer to ensure proper procedure, but beyond that he would have nothing to do,' since there 'is an obligation to answer questions.'¹⁷² Thus, the ruling was described as 'overall to be favourable' for the Government.¹⁷³

As with other powers bestowed by anti terrorism legislation, airport policing increases risk of impropriety. It is true that 'compared to the number of passengers passing', there are 'very few

¹⁶⁵ Anderson D. (QC) (2012) op cit at p.81.

¹⁶⁶ Home Office (2012) 'Review of the Operation of Schedule 7 A Public Consultation.' (Office for Security and Counter-Terrorism). Crown Copyright. p.16-19: Annex B.

¹⁶⁷ Mr Justice Collins in *R (K) v Secretary of State for the Home Department* CO 10027/2011.

¹⁶⁸ [2011] EWHC 3316 (Admin).

¹⁶⁹ Ibid at [para 16].

¹⁷⁰ Ibid at [para 18].

¹⁷¹ Ibid at [para 21].

¹⁷² Ibid at [para 39].

¹⁷³ Anderson D. (QC) (2012) op cit at para. 9.42 or p.111.

examinations',¹⁷⁴ but airport policing is more 'visible' to, and unavoidable by, the public in its application than most other special powers.¹⁷⁵ Overuse of policing powers will undermine its integrity, and Goldsmith submits that even police forces can receive condemnation for the actions of a few.¹⁷⁶ Granted that the British policing has not provoked public outrage, there is still the opinion of some, as noted earlier, that airport policing is improperly administered, and thus the officers need to give due consideration to policing propriety.¹⁷⁷

To summarize, the foregoing examples have established that the role of *Pursue*, whilst imperative in counter terrorism work, has to be implemented with due diligence and accountability that has received some recognition with the implementation of Section 47A. The participants interviewed had reservations and anxiety about the stop and search powers and airport policing, as well as the detention, albeit to a lesser degree for the latter. Despite their limited experiences of section 41 powers, they were aware of its existence via the high profile cases highlighted by the media. These further perpetuated their concern that counter terrorism policing powers are extensive and aimed incorrectly, in their opinion, at Muslim communities. Thus according to their submissions in their interviews, they felt threatened rather than protected by the aforementioned counter terrorism policing. Moreover, *Pursue* can become counterproductive when seeking also to achieve *Prevent*. Hence detailed consideration needs to be given next to the requirements of *Prevent*.

6.4.1 *Prevent*

It is the *Prevent* strategy within CONTEST that has the aim of 'understanding what leads people to become radicalised, so we can stop them becoming terrorists or supporting terrorism or violent

¹⁷⁴ Walker C. (2011) op cit at 104.

¹⁷⁵ Goldsmith A.J. (2010) "Policing's new visibility." *Brit. J. Criminol.* 2010, 50(5) 914-934.

¹⁷⁶ This is related to the overuse of police powers by Royal Canadian Mounted Police officers at Vancouver airport. The police officers used taser to subdue a Polish national, who later died, the incident was recorded by a bystander and relayed to the media. *Ibid.*

¹⁷⁷ The Lloyd Report (1996) recommends: "Examining officers should therefore make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to a person who has no terrorist connections. The powers to stop and question a person should not be exercised in a way which unfairly discriminates against a person on the grounds of race, colour, religion, creed, gender or sexual orientation. When deciding whether to question a person the examining officer should bear in mind that the primary reason for doing so is to maximise disruption of terrorist movements into and out of the UK." *Inquiry into Legislation against Terrorism*. London: Cm 3420 at Para 10.57.

extremism in the first place.¹⁷⁸ The aim of *Prevent* is to target those that are not covered by the counter terrorism legislation because they have not committed an unlawful act, but, as the name states, to prevent them from reaching such a state and simultaneously deterring others.¹⁷⁹

The *Prevent* approach aims to address the 'ideology' and underlying issues that may enable the recruitment of individuals into 'violent extremism'; to further eliminate such extremism, the strategy would be utilised to offer alternatives, and offer support in identified areas. The aim extends to simultaneously increasing community 'resilience' to extremism and addressing 'grievances'. It is acknowledged that such a strategy requires 'developing intelligence, analysis and information, and improving our strategic communications.'¹⁸⁰ It is further conceded that 'the greatest terrorist threat we currently face is from terrorists who claim to act in the name of Islam. . . ' and thus '[a]t this stage much *Prevent* activity takes place with Muslim communities.'¹⁸¹ The policy is a notable innovation since there was never any similar policy for the Irish Republican communities. In the revised *Prevent* strategy,¹⁸² the Government acknowledged that *Prevent* must not be used as exclusively a 'police programme', and that only via this approach can the *Prevent* agenda succeed in community co-operation with the police and security services.¹⁸³

By way of implementation in 2007, the Department for Communities and Local Government aspired to a 'community - led approach to tackling violent extremism',¹⁸⁴ and thereby allocated six million pounds for *Preventing Violent Extremism Pathfinder Funds*. This was to target the seventy local authorities that the government perceived to be in need of *Prevent* interventions. The fund was further increased in 2008, leading to the conclusion that 'the total money spend on *Prevent* . . . from April 2007 - 11 is likely to be eighty million pounds. It is expected that, by April 2011, over 61.7 million pounds will have been provided to local authorities for *Prevent* work. . . . In March 2009, it was anticipated that by 2011 the total *Prevent* budget would have

¹⁷⁸ H.M.Government (March 2009) *Pursue Prevent Protect Prepare The UK's Strategy for Countering International Terrorism*. London: Crown copyright. Cm. 7541; p.4.

¹⁷⁹ H. C. (2010) *Preventing Violent Extremism*. 6th Report of Session 2009-10. HC 65. London: HC Published. 30 March 2010.

¹⁸⁰ *Pursue Prevent Protect Prepare op cit* at 82-83.

¹⁸¹ *Ibid* at 84-85.

¹⁸² Home Office (2011) *Prevent Strategy* June 2011. London: HMSO. Cm 8092.

¹⁸³ *Ibid* at para 3.42-3.43 or p.9.

¹⁸⁴ HMSO (2007) *Preventing Violent Extremisms: Department for Communities and Local Government*. London: HMSO. April 2007.

increased by a further one hundred million pounds.¹⁸⁵ However, in 2011, funding was curtailed, and the community cohesion projects were removed from the *Prevent* budget.¹⁸⁶

The initial allocation of the funding to the local authorities corresponded with the density of Muslim residents.¹⁸⁷ Since the aim of *Prevent* is to eliminate the terrorist threat, it is perhaps prudent and pragmatic that the funding be distributed accordingly. Indeed, Charles Farr, from the Office for Security and Counter Terrorism identifies the 'targeted population' in the following terms:-

'There is a group of people that have been radicalised and are committed to violent extremism and the only solution to that group of people in this country is criminal investigation and prosecution. There is a much larger group of people who feel a degree of negativity, if not hostility, towards the state, the country, the community, and who are, as it were, the pool in which terrorists will swim, and to a degree they will be complicit with and certainly not report on activity which they detect on their doorstep. We have to reach that group because unless we reach that group they may themselves move into a very sharp end, but even if they do not they will create an environment in which terrorists can generate with a degree of impunity that we do not want That is to degree what *Prevent* is all about.'¹⁸⁸

It has to be accepted that such a blanket approach opened the door to criticism but the government's justification was that it could not be seen to ignore the disastrous risks that derive from the distortion of Islam. However, after its review in 2011, funding now was not based on Muslim population but on assessment of the risk of radicalisation, and thus allocated to only twenty five local authorities.¹⁸⁹ Irrespective of the reviews of funding, the work of *Prevent* is considered to be an integral part of counter terrorism, thus the subsequent discussion will consider the justification of *Prevent* and the criticism of this strategy.

¹⁸⁵ Kundnani A. (2009) op cit at 11-12; see also *Pursue Prevent Protect Prepare* (2009) op cit at p.16.

¹⁸⁶ Home Office (2011) *Prevent Strategy* June 2011. London: HMSO. Cm 8092, at p.101 - 103.

¹⁸⁷ Kundnani (2009) op cit at p.12.

¹⁸⁸ quoted in Kundnani A. (2009) op cit at p.13.

¹⁸⁹ Home Office (2011) *Prevent Strategy* June 2011. London: HMSO. Cm 8092, at p.34.

6.4.2 How effective is the *Prevent* strategy?

Although no direct question was posed to the research participants about *Prevent*, the question was asked whether government policies against terrorism (in general), are helpful or unhelpful. The participants, interestingly, talked about *Prevent* notwithstanding the researcher's silence. (The participants views were ascertained prior to the 2011 review). Prior to proceeding to the participants' views, it is worthwhile to consider the available research on this topic.

In analysing *Prevent*, Kundnani utilised qualitative research based on thirty two interviews. He found *Prevent* to be 'counter productive'.¹⁹⁰ Kundnani's thesis is based on the theory that the function of *Prevent* is to target the 'entire population of Muslims'.¹⁹¹ His interviewees highlighted that community needs were overlooked by the goals of central government:- 'the chief executives of the local authority drove it through - which means that the usual processes of consultation and accountability were bypassed. It was presented as a *fait accompli*', and that '[a]n underdeveloped and vulnerable voluntary sector is easily pressured into uncritically accepting government programmes'.¹⁹² Kundnani's research argues that the government's needs took precedent over the perceived local issues, 'we have no information from the police as to whether there is actually a problem of extremism in this area'.¹⁹³ Some workers assigned to *Prevent* projects, lacked transparency, and thus were evasive about how they obtained the funding. As one youth project manager told the research team, 'A lot of people are having to hide the *Prevent* name because of perceptions of young people - we kept it hidden for some time'.¹⁹⁴ Nevertheless, the money distributed by the government is utilized, and the government in 2009, responded to criticisms that *Prevent* funding was ineffective in confronting and dismantling the 'extremist' ideology. The then Communities Minister, Hazel Blears¹⁹⁵ took the bold step of defining extremism, 'as a belief in the supremacy of the Muslim people, in a divine duty to bring the world under the control of hegemonic Islam, . . . ideology [based] in a twisted reading of Islam'.¹⁹⁶

¹⁹⁰ Kundnani (2009) op cit at 7 & 9.

¹⁹¹ Ibid at p.13.

¹⁹² Ibid at p.15.

¹⁹³ Local Authority Manager in the Midlands, quoted in Kundnani A. (2009), ibid at p.17.

¹⁹⁴ Ibid at p.17.

¹⁹⁵ Blears H. (2009) "Many voices: understanding the debate about preventing violent extremism." Lecture at the LSE, 25 Feb. 2009. [http://www.communities.gov.uk/speeches/corporate/many voices](http://www.communities.gov.uk/speeches/corporate/many%20voices).

¹⁹⁶ Kundnani A. (2009), op cit at 21.

The outstanding criticism of *Prevent* is of 'its sole focus on Muslims' which leads to its ineffectiveness, as Muslims themselves reject being singled out¹⁹⁷ and targeted.¹⁹⁸ An additional criticism is apportioned to the government's aim via *Prevent*, to provide a 'moderate' interpretation of Islam. This is seen to allude to state intervention in faith, and thereby eliminating the concept of 'separation of power',¹⁹⁹ submitted contrary view is that, 'the contents of a religion or belief should be defined by the worshippers themselves', and not the government.²⁰⁰ In light of such criticism, the review of *Prevent* acknowledged that funding for local community projects had to be regularly reviewed and monitored via research that will assess the effectiveness of *Prevent*.²⁰¹ In addition the 2011 review provides *Prevent* the 'flexibility' to expand its sole focus on Al Qaida related terrorism, and address all forms of terrorism.²⁰²

In their analysis of the *Prevent* scheme, two leading commentators on the field of terrorism concluded that 'while the strategic thrust is correct, policy delivery can be criticized.'²⁰³ Their criticism is based on the 'slow and uncertain rate of achievement' that does little to engage the actual 'extremism.' Further, the authorities have little 'direction' and mosques are ineffective,²⁰⁴ since, 'evidence suggests that extremists are increasingly moving away from mosques to conduct their activities in sports centres, paintball centres or activity camps, private homes or other premises to avoid detection.'²⁰⁵ Their third criticism is based on the view that radicalization has links to 'social and political conditions and generational changes in identities.' As emphasized by the author's fieldwork findings, Walker and Rehman also acknowledge that *Prevent*'s image of 'policing' has created distrust. Their solution to this 'might be an organizational division in *Prevent* activities with those concentrating on community cohesion falling within the remit of

¹⁹⁷ 'Young people have responded to these projects with a large degree of animosity. There is actually a stigma that is now attached to those that accept *Prevent* funding, that it is dirty money.' and that 'The *Prevent* strategy takes the Islamic faith as problematic. How can you accept money that tarnishes your religion? We can smell the stench of Islamophobia.' quoted in *ibid* at 27.

¹⁹⁸ Walker C. & Rehman J. (2011) *op cit*.

¹⁹⁹ Kundnani (2009) *op cit* at 36-38.

²⁰⁰ Jahangir A. (2008) *Report of the Special Rapporteur on Freedom of Religion or Belief: Mission to the UK*. (United Nations, 7 February 2008), at p.21.

²⁰¹ Home Office (2011) *Prevent Strategy* June 2011. London: HMSO. Cm 8092, at p.9 or para 3.44-3.45.

²⁰² *Ibid* at p.24-25.

²⁰³ Walker C. & Rehman J. (2011) *op cit*.

²⁰⁴ *Ibid*.

²⁰⁵ 'Report of the Official Account of the Bombings in London on 7 July 2005.' (2005-06 HC 1087), Annex B, para 2.

local authorities and those dealing with individuals or organizations at risk assigned to the police.²⁰⁶ Their final criticism is based on the *Pursue* element of CONTEST, as discussed earlier, Walker and Rehman also argue that excessive policing perpetuates social tensions and prevents cooperation from the communities. Indeed the House of Commons Affairs Committee provide, 'a clear perception among all our Muslim witnesses that Muslims are being stigmatized by the operation of the 'Terrorism Act:' this is extremely harmful to community relations.'²⁰⁷

Interestingly, many such concerns were addressed by the Government²⁰⁸ initially in 2010, and then in its review in 2011, when it was recognised that *Prevent* as it existed was counterproductive, and not able fully to achieve its aims.²⁰⁹ It concurred with the criticism that *Prevent's* single focus on Muslims ignores the fundamental factor that Muslims live in a 'cross-community' environment. The Government was further criticised in this report that interference in theology in advocating 'moderate' Islam was not within the government's scope of powers. *Prevent's* role as *Pursue* in 'sheep's clothing' was another factor that made it counterproductive, as its focus had shifted from recognising the signs of radicalisation to pursuing radicalisation. It is recommended that under the supervision of the Home Office funds will be allocated to the 'appropriate' sources, and towards 'democratic debates', which would address the crucial misconceptions that may lead to 'radicalisation'.²¹⁰ Significantly, the 'justification' of the *Prevent* approach was accepted, namely that since al-Qaeda targeted within Muslim communities, thus it is inevitable that *Prevent* will focus on Muslim communities. The ultimate solution to improved relations with Muslim communities and to minimise the conception that Muslim communities are a target can only be achieved through 'communication'.²¹¹ This communication could perhaps address if not alleviate the allegations of spying on the community. These allegations were also expressed commonly in the fieldwork, 'The government is being unhelpful with its policies of

²⁰⁶ Walker C. & Rehman J. (2011) op cit.

²⁰⁷ Home Affairs Committee (2005-06) 'Terrorism and Community Relations' HC 165 -1 para. 153. See Mythen G. et al., (2009) 'I'm a Muslim but I'm not a terrorist.' *Brit. J. Criminol.* 49, 736 at 744; Defence Science and Technology Laboratory (2010) 'What Perceptions do the UK Public have Concerning the Impact of Counter – terrorism Legislation Implemented since 2000?' London: Home Office Occasional Paper 88.

²⁰⁸ House of Commons (2010) Report to House of Commons Communities and Local Government Committee. *Preventing Violent Extremism*. 6th Report of Session 2009-10. HC 65. London: House of Commons. 30 March 2010.

²⁰⁹ *Ibid* at 3.

²¹⁰ *Ibid* at 62-64.

²¹¹ *Ibid* at 10-11.

gathering intelligence and creating spies within the community. With its schemes such as Prevent, it is creating more suspicion, even if people wanted to talk they are too afraid.' Int. 27.

The British Prime Minister, acknowledged the limitations of the *Prevent* strategy. Addressing the Munich Security Conference, David Cameron stated, 'some organisations that seek to present themselves as a gateway to the Muslim community are showered with public money while doing little to combat extremism. This is like turning to a rightwing fascist party to fight a violent white supremacist movement.'²¹² Elsewhere the government stressed that 'the continued existence of [the] preventative strand of CONTEST.'²¹³ The government continues to value the importance of *Prevent*²¹⁴. *Prevent* is still considered to be the government's imperative tool in counter terrorism, 'The heart of *Prevent* - targeted, local work to support people who are most vulnerable to radicalisation and to disrupt propagandists for terrorism - will also remain.'²¹⁵

There is the revised aim that the focus of *Prevent* funding will be concentrated only on counter terrorism. 'Like CONTEST as a whole *Prevent* will now address radicalisation to all forms of terrorism. We will prioritise according to the risks we face . . .'²¹⁶ Indeed it is envisaged that with the accountability for the funds, the *Prevent* strategy will no longer be considered the 'cash cow which any enterprising Muslim group could tap into.'²¹⁷ Commentators welcome this need for 'clarity', in the *Prevent* issues, as embraced by the government.²¹⁸ There has been too much ambiguity, which was voiced also by the British Kashmiri Muslims, 'Not sure what the government has achieved so far, they have programmes in place. At the local mosque, a couple of guys tried to get the grant from the government terrorism money, but others - backward people - refused.' Int. 8.²¹⁹

²¹² Quoted in Wintour P. (2011) "David Cameron tells Muslim Britain: stop tolerating extremists." *The Guardian* 5 Feb 2011.

²¹³ Home Office (2011) at <http://www.homeoffice.gov.uk/counter-terrorism/review-of-prevent-strategy/> last visited 28 Feb 2011.

²¹⁴ Moore C. (2011) "The days of doing deals with Muslim Extremists are over." *The Telegraph* 4 Feb. 2011.

²¹⁵ Home Office (2011), op cit.

²¹⁶ Home Office (2011b) op cit at para: 1.27.

²¹⁷ Murray D. (2011) "The Prevent strategy: a textbook example of how to alienate just about everybody." *The Telegraph* <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/7540456/The-Prevent-strategy-a-textbook-example-of-how-to-alienate-just-about-everybody.html>. last visited 28 Feb. 2011.

²¹⁸ Casciani D. (2010) "Prevent extremism strategy 'stigmatising' warn MPS".

http://news.bbc.co.uk/2/hi/uk_news/8593862.stm. 30 March 2010. last visited 28 Feb 2011.

²¹⁹ Italics added.

Thus, the government recognized in CONTEST 3, that 'the relationship between *Prevent* and *Pursue* . . . must be carefully managed.'²²⁰ Indeed in their 'empirical evidence' Innes et al., argue that 'Prevent policing is not causing detectable harm in police relations with Muslim communities.'²²¹ However such criticism is now addressed by the revisions to *Prevent* which specifies and decreases ambiguity by incorporating a central method, with its control in the Home Office²²², and vigilance by an independently appointed 'oversight'.²²³ Significantly, the important inter-dependent relationship of *Prevent* and *Pursue* is clarified, namely that '*Prevent* depends on *Pursue* to facilitate the disruption and conviction of people engaged in radicalisation activities which are clearly illegal; *Pursue* depends on *Prevent* to restrict the number of people engaging in terrorism - related activity.' It is emphasised that the allegations of *Prevent* being used to gather personal information were unmerited by the government's research. Nevertheless guidance is issued to prevent 'spying'.²²⁴

Irrespective of the criticisms and allegations, the necessity for *Prevent* intervention is highlighted by those in favour of it. Sir Norman Bettison of ACPO presented the dilemma of not intervening earlier when speaking about the London bombers,²²⁵ and that appropriate intervention under *Prevent* could (with hindsight) have prevented the attacks.²²⁶ The risk factor of *Prevent* is that the Muslim community may be alienated and may lead to increased radicalisation²²⁷, as

²²⁰ Home Office (2011b) op cit at para. 5.27.

²²¹ Innes M., Roberts C., & Innes H. (2011) 'Assessing the Effects of Prevent Policing. A Report to the Association of Chief Police Officers.' Cardiff: Cardiff University (Universities' Police Science Institute) at 86.

²²² Home Office (2011) *Prevent Strategy* June 2011. London: HMSO. Cm 8092, at p32.

²²³ Ibid at p.96.

²²⁴ Ibid at p.31.

²²⁵ "Hasib Hussain was a young man, a third generation Leeds - born individual. He was a model student at Matthew Murray School in East Leeds. He went on at the age of eighteen to strap a rucksack to his back and blew up the number thirty bus that we have all seen in the scenes that followed 7 July bombings. We started to unpick what was known about Hasib Hussain. He had never come to the notice of the police at any stage in his young life and therefore in terms of opportunities for the police to intervene to prevent what went on to occur, there were just no books there. However, what we did discover is that as a model student whilst at Matthew Murray School his exercise books were littered with references to al-Qaeda, and the comments could not have been taken as other than supportive documents about al-Qaeda. To write in one's book is not criminal and would not come on the radar of the police, but the whole ethos, the heart of *Prevent* is the question for me of whether someone in society might have thought it appropriate to intervene. What do I mean by intervention? I do not mean kicking his door down at 6 o'clock in the morning and hauling him before the Magistrates. I mean should someone have challenged that?" Sir Norman Bettison quoted in HC (2010) op cit. at 17.

²²⁶ HC (2010), op cit at 17.

²²⁷ Ibid at 26-27.

recognised by the British Kashmiri Muslims, 'I think they could do more to educate people and tell people why it is doing what it's doing. Because it seems as though the Government is against the community. Therefore [it has] increase[d] segregation, if people are segregated they are more likely to commit terrorism.' Int. 1. To overcome this common perception from the fieldwork data, perhaps there is credibility to having 'a proportionate and risk - based approach to delivering *Prevent*, along with greater clarity as to what the programme aims to achieve, are needed before any useful performance measures can be agreed at national and local level.'²²⁸

It has to be recognised that: '[t]he *Prevent* strand will continue to require some very brave decisions in the future.' In order to target 'underground' radicalisation, *Prevent*, it is argued has to continue to function. Thus, the risk that the funding is 'misused' is minimal in comparison to the benefits of the *Prevent* scheme.²²⁹ The effectiveness of *Prevent* to date is also outlined in the following exceptional view obtained from the research data, 'What do I know about politics or government? Let me see, these are good schemes going, they make young Muslim men aware of certain things and work with Muslim communities to make them aware, and stop extremism and create awareness of terrorism.' Int. 26.

The goals of *Prevent* were shared by the participants interviewed in this thesis, for instance, just as the government perceived the need to isolate the extremists, so did some of the British Kashmiri Muslim participants in their views:

'Preventage end [The *Prevent* policy] in England is about intelligence, gaining informants but not dealing with extremists. They have to deal with people that are a threat, as I said earlier, Malaysia is effective because it banned Salafi - Wahabbi books, as long as there is literature here, we cannot defeat terrorism. We have to engage with them and offer solutions. Muslims are turning to religion, we have to offer alternatives to these religious means, the Salafi branch, otherwise we will lose.' Int. 17.

²²⁸ Ibid at 66.

²²⁹ Carlile, Lord (2010) "Terrorism: Pragmatism, Populism and Libertarianism - The Inaugural John Creaney Memorial Lecture." 3 March 2010, at http://www.policyexchange.org.uk/assets/Carlile_Transcript.pdf. last visited 28/2/2011.

The concern that British Muslims are rightly perceived as 'potential recruits'²³⁰ to terrorism, was also shared by some of the British Kashmiris interviewed by the author:

'It is damaging society as a whole. For example, policies such as Prevent, we are going to do this, risk alienating people, making them grassers. Historically what Muslims are going through what the Irish went through. I find it offensive that they will pump things into helping us. But we will protect our community not because I am going to get money, but because like any other citizen, it's my civil duty to protect this country. Pumping money equals in cahoots with government and that could be harmful for the community. . . . Government is trying to be helpful, but the way it's going about it is not working. It's going to play into the hands of extremism. If take government's money, they are seen as sold, and no-one will respect it. We are not learning from Northern Ireland.' Int. 13.

The fact that such counter terrorism work is an 'uphill' struggle for the government was recognised by some of the British Kashmir Muslim participants, 'It's hard, the government, they are trying but not achieving. Achievement does not match what they are trying to do. Only recently trying to understand the minds of individuals trying to cause these problems. There is the clash of cultures; Iraq thing; religion that does not sit well with Western society.' Int. 7. The 'Iraq thing' was elaborated by another participant's response to the same question:

'Government very unhelpful because of foreign policy, shouldn't have gone to war in Iraq. Not pushing peace in Kashmir and other regions around the world and voice for people of Kashmir. Our foreign policy is quite aggressive - leads to a lot of new terrorist activity within Britain and outside against the British people.' Int. 20.

This view outlines the limitations of *Prevent*, namely that it does not address the external government policies that appear to create sympathy for the extremist ideology. Interestingly, quantitative research conducted elsewhere in the United Kingdom, confirms that co-operation with the police and security services is related to the individual's perception of the 'state authority' or government institution.²³¹ 'Belief in the legitimacy of the state' was found to be crucial in attaining co-operation in the counter terrorism policing.²³²

²³⁰ Kundnani A. (2009), op cit at 40.

²³¹ Huq A.Z. Tyler T.R. & Schulfer S.J. (2011) op cit at p.747.

²³² Ibid at 748.

6.4.3 Prevent and Neighbourhood Policing

It has been ascertained during the foregoing discussion that *Prevent* has been linked to intelligence gathering for the police's counter terrorism purposes.²³³ This purpose is said to be interlinked with 'local neighbourhood policing'.²³⁴ For an complete discussion on *Prevent*, the work of neighbourhood policing requires analysis and discussion.

The government's counter terrorism strategy has further extended the role of the police. The *Prevent* strand dictates that local policing units avert the facilitation of terrorism and simultaneously engage the community with acuity that negates prejudice and fosters co-operation.²³⁵ The commanding instructions are to 'help communities protect themselves and counter the efforts of extremist radicalizers'.²³⁶ This additional responsibility is burdened with a 'terrorist threat' that is both immediate and present.²³⁷

Intrinsically, the police institutions in general are the local gatekeepers and the primary protectors of national security, and the role of the neighbourhood policing has been further elevated by the *Prevent* strand of CONTEST. Thus 'the need to extend the policing reach into communities to inhibit extremism at source' is a need at its highest level.²³⁸

Community liaison and engagement of the public is not a new phenomenon to the British police. It dates back to 1829 when Commissioners Rowan and Richard Mayne acknowledged that effective policing required the community's participation:

'To recognise always that the power of the police to fulfill their duties is dependent on public approval of their existence, actions and behaviour and on the ability to secure and maintain public respect. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.'²³⁹

²³³ Kundnani A. (2009) op cit.

²³⁴ Innes M. (2006) "Policing Uncertainty, Countering Terror through Community Intelligence and Democratic Policing." *The Annals of the American Academy of Political and Social Science*. 2006, 605; 222.

²³⁵ Hindle G. (2007) "Policing Terrorism in the UK" *Policing* (2007) 1(1): 38-42.

²³⁶ HM Government (2006) *Countering International Terrorism: The UK's strategy*. July 2006. London: HMSO.

²³⁷ Hindle G. (2007) op cit at 42.

²³⁸ Hindle G. (2007) op cit at 38-42.

²³⁹ Rowan C. & Mayne R. (1829) *The Nine Principles of Policing*. <http://www.civitas.org.uk/pubs/policeNine.php>.

Contemporary society revived these principles by recognising that public approval was equally important to achieving reduced crime. The Crime and Disorder Act 1998, section 1 was a significant landmark in acknowledging the importance of community partnership. Thus the National Neighbourhood Policing Programme was introduced in the Government's 'Building Communities, Beating Crime', White Paper.²⁴⁰ The then Home Secretary, Charles Clarke²⁴¹ emphasised the need for a 'new' approach that adapted the community.²⁴² This reinforced the need for policing in partnership with the public, and thereby sharing responsibility. It served a dual function whereby it 'empowered' the communities to make joint decisions with the police, and simultaneously offered the police information and indeed community co-operation.²⁴³

This sharing of power signaled the commitment that the police bestowed on the partnership of civilians. The Police and Justice Act 2006 reinforces the need for police authorities 'to consult communities'.²⁴⁴ Barnes and Eagle argue that consulting with the wider community requires long term commitment, and this has to be considered by the policing institution.²⁴⁵ It is noteworthy that section 79 of the Police Reform and Social Responsibility Act 2011, ensures that policing institutions prioritise national policies. In essence, the Secretary of State, utilising this power, can and has instructed Police and Crime Commissioners to change the 'policing protocol' according to the national rather than the local agenda. This is of particular significance in areas of the country where terrorism may otherwise not be considered as high a priority as the regional issues.

In this way, the *Prevent* agenda is only as effective as the local, neighbourhood policing programme. Its central role is emphasised by Sir Norman Bettison, who advocates that 'the foundations of neighbourhood Policing must be in place. It is at the neighbourhood level that

²⁴⁰ Home Office (2004) *Building Communities, Beating Crime: A Better Service for the Twenty-First Century*. Norwich: The Stationary Office.

²⁴¹ Home Office (2005) *Neighbourhood Policing: Your Police, Your Community; Our Commitment*. London: Home Office Communication Directorate.

²⁴² "Neighbourhood policing today is about having dedicated resources for local areas, with mixed teams of officers, special constables, community support officers, wardens and others using intelligence and real time data to catch more criminals. And it is about developing a new relationship between the police and public - one based on active co-operation." Charles Clarke, *ibid* at p.1.

²⁴³ Mayhill A. (2006) *Community Engagement in Policing: Lessons from the Literature*. London: Home Office at iv.

²⁴⁴ Barnes I. and Eagle T. (2007) "The Role of Community Engagement in Neighbourhood Policing." *Policing* 2007, 1(2) 161-172 at 170.

²⁴⁵ *Ibid* at 171.

work needs to begin in the 'upstream' activity of preventing individuals, particularly young people from drifting into violent extremism'.²⁴⁶ He elaborates by identifying two prerequisites crucial for an effective foundation: the need for increased involvement 'within the communities', and the crucial aspect of generating, sharing and developing 'community intelligence. It is only via these two points of local policing that the national security 'jigsaw' can be completed.²⁴⁷ This method of police work is described by Bettison as the 'softer . . . non law enforcement intervention'.²⁴⁸ Hence, the neighbourhood policing is pivotal to the counter terrorism measures. Equally the security services are no longer able to solely prevent extremism.²⁴⁹

The police's softer role demands that they work with local authorities and the counter terrorism units. This will ensure that the neighbourhood policing's role is not compromised whilst others enforce the counter terrorism legislation.²⁵⁰ According to Bettison, it is the sharing of information that is crucial to the success of the neighbourhood police. The 'principles' in the 'Practice Advice document' for the neighbourhood policing support those outlined in the *Prevent* strategy.²⁵¹ Thus Bettison identifies that through Neighbourhood Policing the 'Channel scheme' in *Prevent*²⁵², has one hundred and twenty cases of 'individuals' requiring 'some kind of intervention'.²⁵³ This 'Project Channel scheme' is an initiative based on partnership and information sharing. In brief, it has been described as 'a police coordinated multi – agency partnership that evaluates referrals of individuals at risk of being drawn into terrorism.' In essence it is multi-disciplinary team that works together involving educators, voluntary workers and Local Authority child protection, domestic violence and management of high risk offenders.²⁵⁴

²⁴⁶ Bettison N. Sir (2009) "preventing Violent Extremism - A Police Response." *Policing* 2009, 3(2): 129-138. (1 May 2009) at 133.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Clarke R.V. & Newman G.R. (2007) "Police and the Prevention of Terrorism." *Policing* 2007, 1(1) 9-20.

²⁵⁰ Bettison N. Sir (2009) op cit at 133-134.

²⁵¹ Namely that "every community should have access to, and become familiar with, a dedicated policing team; The team should seek to influence partners and key networks; The Neighbourhood Policing Team should develop successful intervention plans in order to address local priorities and achieve impact." quoted in Bettison, ibid at 134-35.

²⁵² Which "has the dual aims of linking community engagement with the generation of community intelligence with a view to intervening with partners and the community themselves, where risk is identified." ibid at 135.

²⁵³ Ibid.

²⁵⁴ Home Office (2011) 'Prevent Strategy.' Cm 8092. London , p.57.

Neighbourhood policing has changed the face of *Prevent*,²⁵⁵ via community engagement.²⁵⁶ Consequently, the local police do not appear as formidable as the counter terrorist police despite the fact that one works under the umbrella of *Prevent* and the other under *Pursue*. It is this crucial difference that was identified by some of the British Kashmiri Muslims interviewed. They had clear reservations about the counter terrorism legislation and policing, but immense respect for their local police, as summarised by one participant: 'within this area, the local police have been brilliant, They are hand in hand with local community, to support and work with us to benefit us all. The phone call that I got earlier it was them to tell me that they would be doing car checks today, and I told them about the funereal taking place, so they said that they will not check those cars today - see how they are good to us, so I respect them and tell others to do the same - we are lucky. When Glasgow [terrorist plot] happened, the police asked us for advice as to how to tackle it, and we assisted the police.' Int. 13. This common view of local policing was continuously reiterated: 'Please write this, the police in . . . is okay so far.' Int. 19.

The importance and the effectiveness of good community - local - neighbourhood policing especially in counter terrorism work, is demonstrated by other researchers. Martin Innes's research involved twenty six semi-structured interviews with police officers and others working on counter terrorism at national and local levels. Innes found that understanding of cultures or sub cultures was crucial to neighbourhood policing. He concluded that the practice of Islam varied within communities, and without such understanding it is extremely difficult to do effective counter terrorism work.²⁵⁷

Later publications also found that police personnel view *Prevent* as an integral addition to the existing 'policing practices' in Neighbourhood Policing. It was asserted that *Prevent's* 'efficacy' is dependent on the existing policing practices. In brief, *Prevent* policing mirrors the neighbourhood policing of engaging community and generating intelligence. The 'tensions

²⁵⁵ Neyroud P. (2007) "Community Policing" *Policing* 2007, 1(2) at 127-129.

²⁵⁶ Waddington P.A.J. (2007) "Editorial" *Policing* 2007, 1(2), 129-131; see also Crawford A (2007) "Reassurance policing: feeling is believing" in Henry A. & Smith D.J. (editors) *Transformations of Policing*. Aldershot: Ashgate. pp.143-168.

²⁵⁷ Innes M. (2006) op cit at 225 and 230-31.

between the *Prevent* and *Pursue* are evident on occasions.' They found that *Prevent* thus had to undertake the role of 'consequence management for 'Pursue'.²⁵⁸

Next, based on his work in Bradford, where over eighty percent of Bradford Pakistani Muslims 'come from rural Kashmir itself,²⁵⁹ Baines identifies as linked and important the effectiveness of local policing and its counter terrorism work. In this area comprising the fourth largest Muslim community in the UK, 'community engagement' was achieved. This enabled the police and indeed the national security services to act prior to, rather than following, events. Subsequent to the Bradford riots in 2001, Baines' analysis demonstrates that Bradford developed a firm 'conflict - prevention strategy.' This foundation was utilised following the terrorist attack in London on 7 July 2005.²⁶⁰ 'The police adopted a broad approach of building trust and confidence with all communities and a comprehensive, non institutional, open, transparent approach was undertaken.'²⁶¹ This led to expansion to the police's perceptions of the local communities, 'particularly with the Muslim communities.'²⁶² Thus 'low levels of tension' followed the days and months after July 2005, for example, they effectively contained the rumours circulating about Muslims being attacked in the city. Baines attributes all the work in Bradford to the 'introduction of Neighbourhood Policing Teams, . . . [which] has provided an excellent opportunity for localised community engagement through neighbourhood teams.'²⁶³ Baines continuously reiterates that only long term commitment can sustain trust and confidence required to have a working relationship with the communities, and thus undertake productive counter terrorism work.

Another example of a predominately British Kashmiri Muslim community is that of High Wycombe, where 'the largest single Muslim community is from Mirpur district of Pakistan,²⁶⁴ also known as Pakistani administered Kashmir. The undertaking of 'Operation Overt' led to arrests and counter terrorism investigations in the High Wycombe area in August 2006. High

²⁵⁸ Innes M, Roberts C. & Innes H. (2011) op cit at 3-4.

²⁵⁹ Baines M. (2007) "Winning Hearts and Minds: Managing Community Tensions." *Policing* 2007, 1(3) 316-326.

²⁶⁰ Baines M. (2007) "Winning Hearts and Minds: Managing Community Tensions." *Policing* 2007, 1(3) 316-326.

²⁶¹ Ibid at 321.

²⁶² Ibid.

²⁶³ Ibid at 325.

²⁶⁴ Thornton S. & Mason L. (2007) "Community Cohesion in High Wycombe: A case study of Operation Overt." *Policing* 2007, 1(1), 57-60 at 58.

profile media coverage featured 'the news of an intended terrorist plot by Islamic extremists to blow up airplanes in flight from the UK to the US.'²⁶⁵ The local police assignment following these events was to ensure that the local communities addressed the 'reality of the situation', and to alleviate the pressures the communities may be facing. Half way in its implementation of Neighbourhood Policing, Thames Valley police appointed a 'Muslim Community and Diversity Officer'. Together with neighbourhood policing, they worked with the principles endorsed in *Prevent*. Via this approach they not only found balance in a potentially confrontational situation, but developed mutual understanding, and the community addressed the need to confront the extremist ideology that existed amongst them.²⁶⁶

The 'pressing demand for more and better secret intelligence at the local level in UK',²⁶⁷ requires work on the *Prevent* strategy. As the former Director General of the MI5 states, 'secret intelligence needs to be fused with information derived from overt engagement with the community, where once again the police role is key.'²⁶⁸ This pragmatism reflects the importance of Neighbourhood Policing and that, without it, the national security agenda will be compromised.²⁶⁹ Thus, although detailed discussion on police accountability is beyond the remit of this thesis, it is worth noting that with 'effective accountability'²⁷⁰ Neighbourhood Policing will continue to thrive in its counter terrorism role. Raine and Dunstan argue that police accountability is crucial 'where the delicate and difficult issues of public trust and confidence are at stake.'²⁷¹ They formulated their analysis on the basis of six pilot studies undertaking 'accountability in local [English] policing,' and found that such practice enhanced the public trust and respect for the individual local services. In addition, it aided co-operation by perpetuating the

²⁶⁵ Ibid at 57.

²⁶⁶ "This was the first time that the community acknowledged that there were radicalized extremist elements in their midst, began to take ownership of the issue, and engage with the police and other agencies to understand and address the problems. For the police, it was an opportunity to really understand the community we police, . . . and who were the people of real influence in the community." ibid at 60.

²⁶⁷ Manningham-Buller, E. Dame (2007) "Partnership and Continuous Improvement in Countering Twenty First Century Terrorism." *Policing* 2007, 1(1) at 43-45.

²⁶⁸ Ibid at 44.

²⁶⁹ Ibid.

²⁷⁰ Raine J.W. & Dunstan E. (2007) "Enhancing Accountability in Local Policing." *Policing* 2007, 1(3) at 327-341.

²⁷¹ Ibid at 339.

'sharing and exchange of experiences and perspectives', simultaneously addressing local grievances.²⁷²

Hence, it is submitted that by addressing such grievances, the government's counter terrorism policies and legislation will be more effective. The grievances highlighted to the writer by some of the participants were not being addressed by their local police. For example, one participant stated a common view that, 'It is damaging to the community by focusing on one element of law: terrorism, and not illegal drugs - heroin, which is what is the real problem in the community.' Int. 4. In conducting her research in Bradford following the Bradford riots, Bolognani also found from her interviewees that drugs were considered to be a major social problem and concern for the community.²⁷³ Listening to local concerns also enables the police to overcome the inevitable tension linked with underlying national security work, and indeed the contradictory dual nature of *Prevent* leading to *Pursue*. Hanniman²⁷⁴ utilising Murphy's²⁷⁵ thesis, discusses such a dilemma facing the local, neighbourhood policing. He writes: 'The national security based version of community policing can view the community simply as a source of security information and criminal intelligence rather than as strategic source.'²⁷⁶ His argument is based on the theory that in manipulating the individuals to 'spy' on their neighbours and the general community to reinforce their patriotism can and will 'quickly alienate a community.'²⁷⁷

The interview data suggests that to overcome such a predicament, a good option may appear to be the 'need [for] education.' Int. 1. As highlighted by the High Wycombe policing, mutual knowledge can foster and sustain engagement and indeed prevent alienation that can undermine the foundations of the community. Others have elaborated on this concept and advocate that the blurred and intertwined role of police and security services, requires replicas of 'Muslim Contact Unit' situated in London. Its introduction following the events of 11 September 2001, has led to

²⁷² Ibid.

²⁷³ Bolognani M. (2009) *Crime and Muslim Britain: Race, Culture and the Politics of Criminology amongst British Pakistanis*. London: IB Tauris..

²⁷⁴ Hanniman W. (2008) "Canadian Muslims, Islamophobia and National Security Royal Canadian Mounted Police." *International Journal of Law, Crime and Justice* 2008, 36(4) at 280.

²⁷⁵ Murphy C. (2005) "Securitizing Community Policing: towards a Canadian public policing model." *The Canadian Review of Policing Research*. Vol.1.

²⁷⁶ Hanniman W. (2008) op cit at 280.

²⁷⁷ Ibid.

'successes'.²⁷⁸ They argue that the Muslim Contact Unit accomplished in instilling measures that adhere to and enhance the missions issued by the *Prevent* strategy. Interestingly the Muslim Contact Unit was initiated prior to the government's CONTEST scheme. They re-affirm that the most appropriate model for community involvement and cooperation is that of neighbourhood policing.²⁷⁹ Its 'mutual benefit' policy enables 'a process that can be harnessed to establish the presence of any suspicions about potential terrorist activities.'²⁸⁰

However, rather than an institutional development with some representatives, Spalek et al.'s research reveals that the imperative approach in counter terrorism policing is open engagement with the whole community.²⁸¹ This viewpoint is shared by the participants from the British Kashmiri Muslim community, who commonly stated, 'Education is vital and should educate our children to stop extremism, every religion teaches peace. So religious education should be increased - irrespective of which one - they all say peace. I just wish people you know would talk to us and then we can all understand, so I can understand and they can understand me and my religion.' Int. 11. Perceived lack of mutual understanding revealed limited confidence in the police and the law as voiced by one participant, 'They don't understand us - so the community is suffering. They should be fair and trust so at the moment communities do not trust police or law. It's all part of big picture - not just UK - whole world in this situation.' Int.16.

The foregoing discussion highlights the crucial role that neighbourhood policing plays in counter terrorism work, and that it can be only fulfilled with what is perceived to be genuine local policing. Understanding of the complexities of the interpretation of Islam (as discussed in the previous chapter), and the social issues, for example illicit drugs, affecting the community is a crucial step towards the right direction. 'Major drug problem in the area - crime problem - people

²⁷⁸ Spalek B., El Awa S., & McDonald L.Z. (2009) *Police - Muslim Engagement and Partnerships for the Purposes of Counter Terrorism: An Examination. Project Report: 2009.* University of Birmingham at 24.

²⁷⁹ Ibid at 26.

²⁸⁰ Innes M. (2006) op cit at 14.

²⁸¹ "In attempting to understand the issue of terrorism from the perspectives of Muslim community members, it might be argued that the Muslim Contact Unit has succeeded by attempting to draw upon and understand the standpoints of community members in relation to wide-ranging questions. This includes sensitive issues such as political views on the war in Iraq, viewpoints about arrest, deportation or investigation under counter-terror laws, and gender issues. It is important to highlight that this has not been a matter of questioning community members in the form of interrogation or intimidation but rather through dialogue instigated through social interaction, valuable to mutual understanding and trust." Spalek et al., (2009) op cit at 37.

abusing system, surprised not collapsed yet - not same as fifteen years ago, more respect for police. Now contempt for police - real criminals appear to be getting away with it.' Int. 8. It is beyond the remits of this thesis to discuss the 'drug issue' in detail, it nevertheless has to be acknowledged as a 'social disorder' or a 'social problem.' Research undertaken by others has encountered similar concerns raised by the participants of this thesis.²⁸²

It has been proposed that the work of counter terrorism via Neighbourhood Police provides the important foundations for the existence of a democratic policing mode. Just as the current terrorist threat does not fit the traditional crimes, perhaps the appropriate response to such a danger requires community led policing.²⁸³ In line with this argument, some of the potentially wider consequences of counter terrorism policing will now be considered. These were specifically identified by the participants interviewed. Despite their subjectivity as to the 'community' that the participants are inhabitants of, they require consideration as they may determine the perception of terrorism and indeed counter terrorism policing.

6.5 Wider Consequences of Terrorism Policing on the British Kashmiri Muslim Community.

6.5.1 Suspect Community?

The common view shared by the participants' interviewed within the selected British Kashmiri Muslim community is that they are the 'new' suspect community in the United Kingdom. Legal and political commentators have observed the change in landscape especially after 11 September 2001 and July 2005 in Britain. Bold statements have expressed that 'our new suspect community, people of Muslim faith, against whom a vicious, sectarian, and most unreported war is well under way.'²⁸⁴ This sphere of discourse is perpetuated by the 'tide of pessimism'²⁸⁵ linked to international counter terrorism and its association with Muslims. It has been recognised that scrutiny and spotlight is firmly fixed on the followers of Islam and that these communities have

²⁸² Innes M. et al., (2011) op cit at 55; Bolognani M. (2009) op cit; Chaudhury T. & Fenwick H. (2011) 'The impact of counter terrorism measures on Muslim communities.' Durham University. Equality and Human Rights Commission 2011 at vi.

²⁸³ Innes M. (2006) op cit at 29.

²⁸⁴ Pilger J. (2008) "Hone that Ignorance, Fabricate that Fear." *New Statesman*. Vol. 137: 4903, June 30 2008 at 26.

²⁸⁵ Birmingham Post (2008) "Muslim Women's Voice will be Heard in Debate." 26 March 2008, at 10.

'increasingly become suspect communities in the US and parts of Europe just as the Irish are in UK.'²⁸⁶

A suspect community is defined as 'a group in the population becomes a suspect community when government officials or the rest of the population fears that any member is involved in terrorist actions and needs to be watched carefully.'²⁸⁷ This concept seems to fit succinctly to the Muslim community in Britain. However, the subsequent discussion will also highlight the discourse surrounding the doubts about the concept of 'suspect community', and whether it is a valid term that can be applied to the British Muslim communities. This will be interlinked with findings from the research data.

The term 'suspect community' was advocated by Hillyard,²⁸⁸ who used it to demonstrate the effects of British counter terrorism legislation, namely the Prevention of Terrorism (Temporary Provisions) Act 1974, on the 'Irish community'. These 'special laws' created solely for the Irish promoted Hillyard's argument that such terrorism policing had ' . . . constructed a suspect community in Britain. The wide powers of examination, arrest and detention, the executive powers to proscribe selected organisations, the range of specific offences under the Acts, the power to issue exclusion orders and a whole range of provisions covering seizure and investigation, have all played their part in making the Irish living in Britain, or Irish people travelling between Ireland and Britain, a suspect community.'²⁸⁹ Hillyard's thesis identifies the police as undertaking a crucial role in the creation of the Irish suspect community. He argued that the police disproportionately targeted the Irish population in Britain.²⁹⁰ It was the blanket approach adapted by the police, irrespective of religious or political affiliation, anyone 'Irish' would be a person of interest, this further contributed to the ideology of 'suspect community'.²⁹¹

²⁸⁶ Lutz J.M. & Lutz B.J. (2004) *Global Terrorism* Routledge: London.

²⁸⁷ Lutz & Lutz (2004), op cit., at 264.

²⁸⁸ Hillyard P. (1993) *Suspect Community: People's Experiences of the Prevention of Terrorism Acts in Britain*. London: Pluto Press.

²⁸⁹ Ibid at 257-8

²⁹⁰ Pantazis C. & Pemberton S. (2009) "From the old to the new suspect community: examining the impacts of recent UK counter terrorist legislation." *Brit. J. Criminol.* 2009, 49(5), 646-666.

²⁹¹ Ibid. However, there is disagreement on this aspect, namely that most Irish whether at ports or in Britain were not ever subject to terrorism policing, and that Hillyard's sample was very small and non-random; this is highlighted further in the subsequent discussion on Greer's work.

Moving on, it is now contended that the present counter terrorism law and policies, specifically in relation to policing, have transferred the term 'suspect community' to Muslims. It is conceded that there are differences within the Muslim population, but they are branded as one by their 'ummic identity and shared experiences.'²⁹² Hence, Pantazis and Pemberton elaborate Hillyard's theory and submit that the Muslims in Britain are the suspect community, which is, ' . . . a sub-group of the population that is singled out for state attention as being 'problematic'. Specifically in terms of policing, individuals may be targeted, not necessarily as a result of suspected wrong doing, but simply because of their presumed membership to that sub-group. Race, ethnicity, religion, class, gender, language, accent, dress, political ideology or any combination of these factors may serve to delineate the sub-group.'²⁹³ They argue that the legal 'suspicion' applies to all that are perceived to be members of the suspect community as being terrorists. They present the example of all Asians being targeted by the police, yet they are not all Muslims, it is because they share the 'skin colour'.

The suspect community theory is corroborated by those advocating it by the further concept of the 'war on terror' and how it targets Muslims. Hence, the police powers are utilised to fight this war on the Muslim 'enemy within'.²⁹⁴ But the basis for the 'war', according to Pantazis and Pemberton is commenced by carefully worded rhetoric of the executive,²⁹⁵ and elaborated by official documents using language such as 'Islamist terrorists'.²⁹⁶ Thus, it is argued that despite the qualification that Muslims are 'law abiding' and 'peaceful' - these words convey very little as the overall message relays guilt of all Muslims, and the continuous increase in police anti terrorism powers further confirm the need to seek protection from the Muslims.²⁹⁷ In addition, it is submitted that the powers that Hillyard had referred to in his original 'suspect community' are now transferred to the Terrorism Act 2000;²⁹⁸ the assertion that '[I]aw is thus an integral part of

²⁹² Ibid at 649.

²⁹³ Ibid at 649.

²⁹⁴ Fekete L. (2004) "Anti-Muslim Racism and the European Security State." *Race and Class*, 46, 3-29.

²⁹⁵ "We do not yet know the exact origin of this evil. But, if, as appears likely, it is so-called Islamic fundamentalists, we know that they do not speak or act for the vast majority of law abiding Muslims throughout the world." Tony Blair, then Prime Minister, Hansard (2001), "International Terrorism and Attacks in the USA", Col.

603. <http://www.publications.parliament.uk/pa/cm200102/cmhansard/vol0914/debtext/10914-01.htm>.

²⁹⁶ HM Government (2006) *Countering International Terrorism: The UK's Strategy*. London: HMSO at 1.

²⁹⁷ Pantazis & Pemberton (2009) op cit., at 651.

²⁹⁸ Ibid.

the repression and organisation of state violence, whether it takes place in a person's home or in police custody.²⁹⁹

It is the police that are seen to perpetuate the concept of this 'new' suspect community. However, Pantazis and Pemberton concede that 'it is . . . impossible to tell how many Muslims have been stopped and searched under the Terrorism Act.'³⁰⁰ They observe that the 'soft' policing is contradicted by the 'hard' policing, which mirrors that of the 'Irish' policing. This in turn creates a fear of Muslims amongst the overall British society, and thus creating 'social divisions', and indeed antagonism.³⁰¹

A prominent critic of the Hillyard's thesis accordingly rejects Pantazis and Pemberton's assertion, as their work is based on Hillyard's 'flawed' theory of suspect community.³⁰² Greer accepts the evidence that some Muslims in Britain have been 'negatively stereotyped'. However he disagrees with the view that the counter terrorism laws have created or contributed towards this negative stereotype, or indeed the notion of a Muslim suspect community. Greer adapts a pragmatic approach in his assessment of the present situation, and thus recognises the inevitable link of the terrorist threat to Islam. He elaborates his contention to emphasise that the legislation is there to protect and safeguard. In Greer's analysis of Pemberton and Pantazis' definition of suspect community, he submits that it is misleading and inconclusive. Thus, Greer defines suspect community as follows: 'A 'community' can be considered to be under official suspicion if, and only if, a substantial majority of those who share its identity are under official suspicion, and or if this identity is, in and of itself, sufficient to arouse systematic official suspicion.'³⁰³

Greer proceeds to prove that the British Muslims do not fit this category of a suspect community. He questions the existence of a Muslim 'community', especially since there are increasing variables within the Muslim populations but concedes that they 'are united by a common faith.' He argues that it is justified that 'some at least should be under official suspicion', and thus areas

²⁹⁹ Hillyard P. (1993) *op cit.*, at 262.

³⁰⁰ Home Affairs Committee (2005) "Terrorism and Community Relations", Sixth Report. London: House of Commons, cited in Pantazis and Pemberton (2009) *op cit.*, at 656.

³⁰¹ Pantazis & Pemberton (2009) *op cit.* at 656.

³⁰² Greer S. (2010) "Anti - terrorist laws and the UK's 'suspect Muslim community': a reply to Pantazis and Pemberton." *Brit. J. Criminol.* 2010, 50(6), 1171-1190.

³⁰³ *Ibid* at 1178.

such as Birmingham, High Wycombe and Reading are correctly identified, as credible evidence has demonstrated the potential threat. In addition, there are Muslims who are supportive of the anti-terrorism legislation and recognise its necessity.³⁰⁴

It is acknowledged that 'the root of the problem is ideological.'³⁰⁵ Greer thus asserts that it is a 'fact' that since the ideology arises from Muslims, they will be 'disproportionately' besieged. But he contends that the police are to be commended for demonstrating caution; engaging with communities and not targeting all Muslims, while accepting that 'some' have to be addressed. The 'reality' is indeed very 'complicated', and the government's policies and legislation reflect the conflicts. On the one hand Muslims are given the shared responsibility of policing terrorism under *Prevent*, and this, according to Greer, demonstrates the Muslims' shared trust by their co-operation in the schemes.³⁰⁶ Accordingly, the profile of suspect community is not shared by all Muslims. Moreover, the Racial and Religious Hatred Act 2006, which serves to protect Muslims, contradicts Pantazis and Pemberton's theory that Muslims are state targets. Crucially, it is submitted that Pantazis and Pemberton overlook the 'material discrimination' that Muslims encounter, namely their lower socio-economic status and limited education,³⁰⁷ and incorrectly correlate that with their thesis of the Muslim suspect community.³⁰⁸

Hence, Greer concludes that there is 'simply no evidence' to support the theory of the Muslim suspect community. He urges others to 'dismiss' Pantazis and Pemberton's thesis because in his opinion there is not sufficient evidence to state that a 'substantial majority' of Muslims in Britain

³⁰⁴ Ibid.

³⁰⁵ Head of MI5, Jonathan Evans, *The Guardian*, 6 Nov. 2007., cited in Greer S. (2010) op cit 1171-1190.

³⁰⁶ Greer S. (2010) op cit., at 1183.

³⁰⁷ Some aspects are discussed in Chapter 2 in relation to the British Kashmiri Muslims.

³⁰⁸ Greer S. (2010) op cit at 1183. Greer argues that for Pemberton and Pantazis' theory to receive credibility it must consider twelve issues: that the threat from Islamist terrorism is real; 'war on terror' is a term that has little official support; the fight against terrorism will remain for the 'foreseeable future'; the consequences of terrorism act are drastic; thus the challenge for the officials running the country is to find the balance in protecting citizens and promoting due process in its counter terrorism legislation; the threat from Muslims is by 'nature and not by official designation'; thus because of its nature Muslims will be affected the most; therefore counter terrorism has to consider some Muslim areas and communities as suspicious; but not all; there is no right 'to be free from official suspicion'; to manage terrorism, it is important to target those suspected by credible policing and intelligence, there is no alternative to such counter terrorism policies; consider the balance between 'inference' and 'illegitimate violation'.

are under suspicion.³⁰⁹ In rejecting Pantazis and Pemberton's work, Greer advocates that attention should focus on the priority of addressing all 'extremists'.³¹⁰

6.5.2 British Kashmiri Muslim community's views on 'suspect community'.

Solely on the basis of the research data, it is submitted that it is unwise to completely ignore or reject the suspect community thesis. There may well be limitations to both Hillyard, and Pantazis and Pemberton's ideology, just as there are equally salient arguments in Greer's criticism of them. Nevertheless, the thesis is supported by the views of the community interviewed. Pantazis and Pemberton highlight the potential pitfalls of the anti terrorism policing that have to be addressed for legislation and policies to achieve the purpose they are implemented for.

The common opinion that 'of course we are the suspect community,' (Int.12), cannot be ignored. The interviewee elaborates to state, 'wherever we go, they think we are terrorists. We are being spied on by our own. There was a member in the mosque, he was recording information for the police. All our meetings, pray times, it's all wrong. September 11 proved which countries were involved, most were Middle East, yet Pakistanis are under more suspicions. We, they don't think of us as Kashmiris, we are seen as Pakistanis. Britain and USA aware of whose involved, yet why are we target? Wahabees or Salafist do not even exist amongst us. Pakistanis have suffered the most since 9/11 - no respect for us - affected us the most.' Int. 12. Some simply stated, 'We are a suspect community. Muslim community singled as terrorism. Terrorist is a Muslim, that's what they all think.' Int. 6. Interestingly in conducting their research on Muslim communities, Chaudhry and Fenwick concluded that 'among Muslims who participated in this study, [there was the view] of being treated as 'suspect community.'³¹¹ It is noteworthy, however, that the participants in this study conducted by the writer, did not mention Islamophobia,³¹² or indeed refer to it as a catalyst for terrorism, they continuously referred to themselves as the 'suspect community'.

³⁰⁹ On the Hillyard critique, see also: Nickels et al. (2010) 'A comparative study of the representations of 'suspect' communities in multi-ethnic Britain and of their impact on Irish communities and Muslim communities.' Institute for the Study of European Transformations. London; Liberty (2004) 'The impact of anti terrorism powers on the British Muslim population.' London: Liberty; Garland J. Spalek B. & Chakraborti N. (2006) 'Hearing lost voices: issues in researching 'hidden' minority ethnic communities.' 46 *Brit. J. Criminol.* 423.

³¹⁰ Greer S. (2010) op cit.

³¹¹ Chaudhry & Fenwick (2011) op cit at 86-87.

³¹² Referred to in Chapter 5.

Nevertheless, it would appear that circumstances changed distinctly after 11 September 2001, 'before 9/11 I had great white - Anglo friends. Now I am wary of socialising with the farmers I had a good relationship because they see us all as terrorists. We are all seen in the same light; we build this country, are loyal to it, worked hard, but now viewed as suspect community.' Int. 11. It was recognised that terrorism was now interlinked with being a Muslim: 'We're singled out as a suspect community. The fear of terrorism from Muslims, the threat of terrorism comes from Muslims. Bombs from Ireland, not scared of Catholics or Protestants, naturally afraid of what they don't know. It's our community that they see and single out. Not proud of things fellow Muslims have done, but not ashamed to be a Muslim.' Int. 15. 'We're a suspect community - definite, highlight on us Muslims,' Int. 5, was re-emphasised. Their link with Pakistan was perceived to worsen their image in the wider society, 'Muslims are seen as suspect community, especially Pakistani Muslims because we are not Kashmiris because we have Pakistani passports, even with our British ones it tells them we are born in Pakistan, yet it's Kashmir. So scanning only Muslims at airport, especially in USA, only Saudi Arabia spoke against it, but Pakistanis are given a bad name.' Int. 9.

There was the feeling of being doubly victimized, because they are Muslims and of Kashmiri origin, and thus a minority within a minority. 'We are suspect in the British eyes because terrorists are Muslims, so we have to accept that I suppose. They still treat us far better than if we were in Pakistan. The rest of Pakistanis they treat us as the lowest of the low. They see uneducated, backward, farmers, how have they got here. Some done something for themselves - how can they succeed. They treat Kashmiris like dirt. They give us no respect, rest of Pakistanis here call us 'Mirpuris', it's like being called a Paki or n****r by the whites, who have more respect for us than the Pakistanis do.' Int. 8.

Commentators have acknowledged that the 'self-esteem' of the individuals is interlinked with their 'social status of their cultural identity.'³¹³ This cultural identity thus becomes vulnerable when the majority view it as 'less equal'. Hence, just as they perceive themselves as 'less equal' as

³¹³ Pinto M. (2010) "What are Offences to Feelings Really About? A new regulative principle for the Multicultural Era." *Oxford Journal of Legal Studies*, (OJLS) 2010, 30(4),695-723 at 705.

they are being equated to being suspects by the wider British society, and more so by their origins, (and if one discusses the isolated role of Sufism in mainstream Islam, as in Chapter Two), their vulnerability is perpetuated. It is certainly beyond the remit of this thesis to consider the aspect of cultural identity in depth,³¹⁴ however it warrants some attention. Indeed the question on 'identity' was never posed to the participants, the question asked was in relation to whether as a community, they are seen as suspect or worthy of respect. The responses were spontaneous, and these issues strongly affect the individuals who voiced the foregoing opinions, though this view was not articulated by any members of the first generation. In recognising the British Kashmiris' role in the environment they live in, the legislature, policy makers and the police can accordingly address their vulnerabilities that could be exploited by those aiming to radicalise, and simultaneously prevent their alienation.

Although the participants were interviewed prior to the review on *Prevent* in 2011, this review recognizes that a sense of 'belonging' prevents radicalization.³¹⁵ It was further acknowledged that 'radicalisation occurs as people search for identity, meaning and community.'³¹⁶ The view that they are a suspect community was intertwined with how they are perceived by other communities, 'We are the lowest of the low. The Pakistanis think that we are a joke - they mock us, and the British, they treat us better, but find some of our faith and culture different. And that scares them, so they see us a threat - I like that phrase suspect community, I think it fits us.' Int. 22.

Others were perhaps more inclined towards the views expressed by Steven Greer's work, 'The Pakistanis are worse, hundred times worse than the British will be or have been with us. They class us as 'Mirpuris' - that is insulting - give us no identity - they laugh at us, at our faces. I am

³¹⁴ For further reading on cultural identity, see Clark K.B. & Clark M. P. (1947) "Racial Identification and Preference in Negro Children", in Newcomb T.M. & Hartley E.L. (editors) *Readings in Social Psychology* New York: Henry Holt, 169-78; Erikson E.H. (1956) "The Problem of Ego-Identity." 4 *J American Psychoanalytic Association* 56-121; Phinney J.S. (1990) "Ethnic Identity in Adolescents and Adults: Review of Research" 108 *Psychol Bull* 499-514; Porter J.R. & Washington R.E. (1993) "Minority Identity and Self Esteem" 19 *Annu Rev Sociol* 139-61; Phinney J.S. et al., (2002) "Ethnic Identity, Immigration, and Well-Being: An Interactional Perspective" 57 *J Social Issues* 493-510; Kostakopoulou D. (2006) "Thick, Thin and Thinner Patriotisms: Is This All There Is?" 26 *OJLS* 73-106, 85-6; Wiles E. (2007) "Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban For Interpretations of Equality." 41 *LSR* 699-736; Spinner-Haley J. & Theiss-Morse E. (2003) "National Identity and Self-Esteem" 1 *Perspectives on Politics* 515-32.

³¹⁵ Home Office (2011) op cit at p.28.

³¹⁶ Ibid at p.17.

British Muslim first, and I have no loyalty for Pakistan, Kashmir, you are talking about, it doesn't really exist. I have a Pakistani friend and you know what she said, 'You're ok because you are educated you're different.' It's something that a white fascist would say. Just think if British treated us the same, we certainly would not have anywhere to turn to. You have to understand this British terrorism stuff - it really does all scare me. But I think it's all to protect everyone that includes me and my family, so maybe we are a suspect community, but that is the reality - the bombers - they were Muslims. They don't treat us badly because we're Mirpuri, it's because Muslims did it. I don't want to be a suspect community, but after 9/11 they think all Muslims are bad.' Int. 24.

The assertion offered by Greer that Muslim suspect community does not exist in Britain, is shared by some participants who state that they are, 'Not a suspect community; my middle class community is respected.' Int. 1; 'We're not a suspect community, only target minority, leave the rest of us alone,' Int. 3; 'it views as good, perhaps not with respect,' Int. 10; 'the majority view us with respect, but minority view as bad such as the BNP.' Int. 19. In addition, there was the recognition of inevitability: 'inevitable that treat as suspect community, majority have been from our background, but respect is given to our achievement. People recognise achievements of individuals and communities that do well. We are on the up, most people within this country can see and accept that.' Int. 7. This tone was reiterated, 'although it is a suspect community, we have a lot to be proud of - the law protects us too. We have the freedom of movement and rights equivalent to all British citizens, so we are part of society, and we should do our utmost to uphold our responsibilities too.' Int. 27.

Their view of being a suspect community was not solely because of terrorism policing or counter terrorism legislation. Some firmly believe that the media had labeled them accordingly, 'We're a suspect community, especially because of the media, but it doesn't affect me personally.' Int. 2; 'Suspect community, evidenced by immigration statistics and media representation is bias. As I said before it's a bit vague, they label group, and they may not be that, that's when things go wrong,' Int. 16. The notion of suspect community was seen to be the factor of media, and the government were seen to preserve and protect the community as one participant observed, 'Suspect community by the media and non-British Muslims. Also given respect by the

government, given freedom to carry out religion, which it could easily have banned, admiration for the government in that sense.' Int. 20; 'Definitely a suspect community . . . people believe the media, it's powerful how they portray. There should be restrictions on what the media can and cannot say because it leads to consequences, people killed,' Int. 23. Interestingly, in their research of newspaper content, Nickels et al., found that the Irish and Muslim communities 'are represented as suspect' and that 'a more direct association is made between Muslim communities and suspicion.'³¹⁷ Similarly Mythen et al.'s research involving four focus group discussions and subsequent interviews, with thirty two British Muslims in North West of England, found that media contributed to 'all Muslims . . . [being] depicted as similarly risky.'³¹⁸

It is not possible to formulate general conclusions from the findings of the British Kashmiri Muslims interviewed. However, they do highlight the fact that overwhelmingly the belief that they are 'suspect community' prevails. Whether the contributing factor is policing, the anti terrorism legislation, or the media is a disputed topic. However, when undertaking counter terrorism work, to ignore or reject this view would be unmerited, undeserved, and unproductive.

6.5.3 Fear

The ultimate goal of CONTEST, as emphasised in earlier discussion, is to ensure 'people go about their daily lives freely and with confidence.'³¹⁹ The principles underlying are to decrease fear, but its use or perhaps misuse has led to the increase in fear in the British Kashmiri Muslim community interviewed. The prevalent feelings of fear (also identified in Chapter Three), were directly linked to their perception of being a suspect community. Irrational as this may sound, the fear witnessed by the researcher is genuine and on a high scale. In turn, they demonstrated fear for the researcher, "I really don't want you to be locked up because you didn't give them my name." Int. 5.

³¹⁷ Nickels H.C., Thomas L., Hickman M.J. & Silvestri S. (2010) *Working Paper 13. A Comparative Study of the Representations of 'Suspect' Communities in Multi-Ethnic Britain and of their Impact on Irish Communities and Muslim Communities - Mapping Newspaper Content*. London Met. University at 27.

³¹⁸ Mythen G., Walklate S., Khan F. (2009) "I'm a Muslim but I'm not a terrorist: victimization, risky identities and the performance of safety." *Brit J. Criminol.* 2009, 49(6), 736-754.

³¹⁹ Home Office (2009) *'Pursue, Prevent, Protect, Prepare: The UK's Strategy for Countering International Terrorism.'* London: Cm 7547. para: 0.17. See also HO (2011b) op cit at para 1.2.

This subject was discussed in a serious manner, and the researcher had to observe the principles of objectivity. The fear stemmed from the policing of terrorism and its links to national security; since they perceived themselves as 'suspect', thus they feared the consequences of being 'locked-up'; 'taken away'; 'house raids'; and simply because they are Muslims. The fear for the researcher was mainly demonstrated by the women and the younger generation of males. The discussion of the word 'terrorism' was seen to be a taboo. One participant withdrew consent when the subject matter was discussed and stated, 'Why didn't you choose a safer subject, this is too dangerous. You're one of us not one of them, and being a Muslim they will put you away and shut you up.' It is difficult to articulate in words the level of fear, however, what it does demonstrate is that for terrorism policing and legislation to be effective, this fear must be addressed. Simply not wishing to talk about terrorism relays the message that there is the danger of forcing radicalisation underground, and thereby subjecting terrorism policing to a near impossible task of confronting extremism ideology. The analysis that 'fear is a socially pervasive human emotion'³²⁰ is evident in the research participants.

Academic commentary recognises that 'emotions shape our beliefs,'³²¹ and such beliefs influence the outlook of surroundings including policing. Just as the participants of the British Kashmiri Muslim community in this thesis expressed fear, others have found similar responses from their research with Muslim communities: 'our participants described themselves as situated in a paradoxical position of fearing and being feared.'³²² The participants' of this thesis openly expressed reluctance in talking about terrorism, 'because what's the point of drawing attention to yourself. Why do you do this, it's too dangerous.'³²³ Their need to appear inconspicuous was deemed to be part of their safety network. The 'irony' is that the police, who represent a symbol of safety and comfort for some, also provoke fear in others.³²⁴ This is described as a form of police 'repression' that 'takes place in a person's home.'³²⁵ The fear is fuelled by the high profile

³²⁰ Spigelman J. (2010) "The forgotten freedom: freedom from fear." *I.C.L.Q.* 2010, 59(3), 543-570.

³²¹ Gray E., Jackson J. & Farrall S. (2011) "Feelings and functions in the fear of crime: applying a new approach to victimisation insecurity." *Brit. J. Criminol.* 2011, 51(1), 75-94 at 89.

³²² Mythen et al., (2009) op cit., at 750.

³²³ Anon., refused to be interviewed; withdrew consent when terrorism subject matter commenced.

³²⁴ Pantazis C. & Pemberton S. (2009) op cit.

³²⁵ Hillyard P. (1993) op cit., at 262.

focus of the anti terrorism policing on Muslims. It has been recognised that 'police methods' escalate the Muslim community's 'insecurity' and therefore increased fear is a logical outcome.³²⁶

In recognising this fear, it has to also be acknowledged that fear about the counter terrorism policing does not necessarily reflect the facts.³²⁷ The subjectivity of fear has to be balanced for there to be an effective outcome. Hence, it is submitted that subjective and illogical some of the fear of these participants may be, but it is imperative that it is addressed, and via this 'modification', achievement and progress can be made on the *Prevent* scheme and counter terrorism policing.

6.6 Conclusions

The discussion in this chapter has highlighted the dilemma encountered by those implementing counter terrorism policing. If society is seen to appear to act 'too passively and [thus] unable to protect life and property, then the government loses its legitimacy and may be voted from office. If however, the government reacts too harshly, then it also sacrifices popular support and may even increase popular support for the terrorists.³²⁸ Indeed the executive's predicament is reflected in the police's implementation of counter terrorism policies and legislation. However as one commentator in the field of terrorism law observes, 'preconceptions and skewed application'³²⁹ are not the answers to counter terrorism policing.

The data analysis from the fieldwork highlights the softening of the participants' attitudes towards *Prevent* and the local, neighbourhood policing, but there exists an aversion and fear of the pro-active, ardent national security policing attached to *Pursue*. This paradox is mirrored in the views expressed by the participants, and their perceptions of themselves.

³²⁶ Goldman R.K. (2006) "Under the counter terrorism." *Euro. Law*, 2006 , 61, 70-71.

³²⁷ Spigelman J. (2010), op cit at 543-70. see also: Ashworth A. (2007) "Security, Terrorism and the Value of Human Rights", in Goold B. & Lazarus L. (eds) *Security and Human Rights*. Hart Publishing: Oxford at 208.

Waldron J. (2003) "Security and Liberty: The Imagery Of Balance." *Journal of Political Philosophy* 2003, 11, 191.

³²⁸ Enders W. & Sandler T. (2006) *The Political Economy of Terrorism*. Cambridge: Cambridge University Press at 27.

³²⁹ Walker C. (2011) *Terrorism and the Law*. Oxford: Oxford University Press at p.87. See also Anderson D. (QC) (2011) op cit at pp.96-97

The necessity of anti-terrorism policing is reflective of a responsible society that not only promotes the protection of its citizens but simultaneously prevents the horrific consequences of a terrorist attack. However, it is intrinsically imperative to acknowledge that these justified means may have some adverse effects, such as the creation of suspect communities in various 'targeted' areas of Britain. To completely deny or ignore the existence of the perception of this concept would be detrimental to the policing and national security agenda. Simply put, counter terrorism policies will only succeed with police and community engagement.

The research undertaken for this thesis shows that the police need to demonstrate responsiveness to the community's needs and grievances, and via such interactions engage in understanding the cultural elements that are the foundations of the community. The executive has issued policing powers to anticipate all possible risks, be they via section 47A, section 41 or Schedule 7, but, it is for the local and national police to use those powers proportionately and with due care. The police's image is 'tarnished' with allegations and realities of discrimination,³³⁰ and to overcome this problem, the police have to work assiduously to re-establish the trust and confidence of the communities they serve. Intrinsically to confront extremism and radicalisation, they must avoid temporary solutions via the over use of the counter terrorism legislation. Police are the inescapable forefront of the counter terrorism agenda, and their hybrid role demands they preserve due process. Similarly in administering the capacious powers given to the police, the executive is duty bound to implement simultaneous safeguards to preserve and uphold the rule of law.³³¹ It is only then that their aims outlined in counter terrorism legislation can be achieved.

³³⁰ Sharp D. & Atherton S. (2007) "To serve and protect? The experiences of policing in the community of young people from black and other ethnic minority groups." *Brit. J. Criminol.* 2007, 47(5), 746-763.

³³¹ See: Moran J. & Phythian M. (2008) "Introduction" in Moran J. & Phythian M. (editors) *Intelligence, Security and Policing Post - 9/11. The UK's response to the 'War on Terror'*. Hampshire: Palgrave MacMillan at p.12.

Chapter Seven: Terrorism Activity Laws and the British Kashmiri Muslim Community.

7.1 Introduction

The previous chapter focused on police and their powers under the counter terrorism legislation. The purpose of this chapter is to discuss terrorist activity laws in relation to the participants' views. The Anti terrorism legislation targets various terrorist activities. In Chapter Six, pre-emptive policing was discussed in combination with the government's CONTEST strategy, this chapter will also address and examine some of the government's legislation that aims to contribute to and sustain the CONTEST agenda. The relevant measures includes 'membership' of proscribed group in order to aid global anti terrorism policies; the second part of the chapter will consider proscription powers that have been extended from organisational membership to expressions, referred to in short as 'glorification', aswell as the offence of withholding information. The third aspect of discussion relates to the anti terrorism legislation on finances, and its impact if any on the Muslim participants interviewed.

The counter terrorism legislation reflects the Government's determination to be pre-emptive and reduce risk. Therefore they declare certain people or groups as enemies and suspects. The core issue is that of the underlying fear of everyone, but due to limitations of personnel and capabilities, pragmatism dictates that only certain groups are more 'at risk' such as certain Muslim communities. For its effectiveness, the government needs the approval and support of its citizens; an example of encouraging this is the offence of 'withholding of information,' in the Terrorism Act 2000, section 38B.¹

7.2 Proscription powers: Membership of an Organisation

7.2.1 Overview

Organisational proscription was inaugurated into the British legislation in the current era by the Prevention of Terrorism Act 1974, albeit that it was applicable then only to organisations linked to Northern Ireland. However as the executive's threat from other organisations increased, coupled with international concerns, the proscribed organisations were further elaborated in the

¹ Walker C. (2009b) 'Neighbour Terrorism and All Risks Policing of Terrorism. 3 *J. Nat'L Security & Pol'y* 2009 (University of the Pacific, McGeorge School of Law).

Terrorism Act 2000 and Terrorism Act 2006.² The Terrorism Act 2000 provides that the Irish organisations already listed remain proscribed under Schedule 2, while section 3 of the Act applies to other organizations, whether Irish or based outside the UK. These latter include groups operating in or behalf of Kashmir, namely: Harkat ul Mujahideen; Harakat ul Mujahideen; Harakat ul - Jihad-ul-Islam; Harkat - ul - Mujahideen / Alami; Jaish e Mohammed; Jamaat ul - Furquan; Khuddam ul-Islam; Lashkar e Toyyaba, these were all proscribed for the first time in 2001. Section 3 of the Terrorism Act 2000, outlines that the applicability of proscription is reserved for those organisations that are 'concerned in terrorism',³ and that concern refers to those who 'commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise concerned in terrorism.'⁴ This criterion, has been elaborated by Part 2, section 21 of the Terrorism Act 2006, and section 22 which ensures that the name change of a group does not escape its proscription.

7.2.2 Factors determining proscription

This applicability of proscription is at the executive's discretion. The test for the proscription of international groups was illustrated by Lord Bassam,

'First we would have to consider carefully the nature and scale of the group's activities; secondly, we would have to look at the specific threat that it posed to the UK and our citizens abroad, which is clearly a very important consideration, as well as the extent of its presence in this country. . . . Thirdly, we would also have to consider our responsibility to support other members of the international community in the global fight against terrorism.'⁵

Although this test was held to appropriate by Anderson in his review of the counter terrorism legislation, he categorically disagreed with Lord Bassam's third element. It was asserted that in proscribing groups, national rather than international interests should take precedence.⁶ The broadness of Lord Bassam's criteria provides a buffer for the political spectrum 'serving the

² Thorne K. (2006) *Proscription of terrorist groups in the UK*. May 2006.

<http://www.hdcentre.org/files/ProscriptionUK.pdf> visited: 14 April 2011; Walker C. (2009) *Blackstone's Guide to The Anti - Terrorism Legislation*. Second edition. Oxford: Oxford University Press.

³ Section 3(4).

⁴ Section 3 (5).

⁵ Hansard HL vol. 613, col. 252. (16 May 2000).

⁶ Anderson D. (QC) (2012) *The Terrorism Acts in 2011 Report of the Independent Reviewer on the Operation of the Terrorist Act 2000 and Part 1 of the Terrorism Act 2006*. London: HMSO. June 2012, para 12.9 at p.136.

interests of healthy trade relations and smooth diplomacy.⁷ This is evident by the groups that are not proscribed, despite fulfilling Lord Bassam's hypothesis. For example, Al-Shabab; Fuerzas Armadas Revolucionarias de Colombia (FARC); Jalshal-Mahdi, which is the Iraq Shia Militia responsible for attacks on British forces in Basra.⁸

The political ambiguity portrayed by the executive was on one occasion clarified by the judiciary in *Lord Alton of Liverpool and others (In the Matter of the People's Mojahadeen Organisation of Iran) v Secretary of State for the Home Department*.⁹ This case held that in considering section 3(4) the Secretary of State is compelled to identify an 'honest belief on reasonable grounds' and secondly where decisions are made on 'policy grounds', 'discretion' has to be considered.¹⁰ National security concerns often prohibit the executive from revealing the evidence obtained about organizations, (but the Proscribed Organisations Appeals Commission, can still inquire).¹¹ It is also thought necessary to maintain discretion concerning information obtained from foreign allies who view these groups as terrorists. The Court of Appeal identified that in coming to its decision the Secretary of State had to provide evidence, that the organisation to be proscribed continued to remain 'concerned in' terrorism,¹² and that legal equity dictates that there be continuous assessment of the organisations,¹³ and 'not put their names in a filing cabinet and forget about them.'¹⁴ Thus it was recommended by Anderson that there should be a time limit for proscription of organisations set at two years, with a review for any renewals.¹⁵ In addition the criteria should substitute 'a balance of probabilities test for the standard of reasonable belief.'¹⁶

It has been argued that the politically fuelled 'discretion' of the Secretary of State has the potential to proscribe organisations that would otherwise be considered lawful and viewed by the international arena as fighting for self determination. Although Britain is compelled to abide by

⁷ Walker C. (2009) op cit at 41.

⁸ Ibid at 41. (but al Shabaab is now proscribed under SI 2010/611).

⁹ PC / 02 / 2006, 30 November 2007, paras 67, 68; also: *Secretary of State for the Home Department v Lord Alton of Liverpool* [2008] EWCA Civ. 443 at para 22.

¹⁰ Walker C. (2009) op cit at 42.

¹¹ Discussed further in the subsequent section: 7.1.5.

¹² Walker C. (2009) ibid.

¹³ PC / 02 / 2006, 30 November 2007 at para 7.3.

¹⁴ HC Standing Committee D, col. 65 (18 January 2000), Charles Clarke.

¹⁵ Anderson D. (QC) (2012) *The Terrorism Acts in 2011 Report of the Independent Reviewer on the Operation of the Terrorist Act 2000 and Part 1 of the Terrorism Act 2006*. London: HMSO. June 2012, para 12.11 at p.137.

¹⁶ Ibid, para 12.12 at p.137.

international law on self determination, the capacious nature of the Terrorism Act 2000 creates the environment for proscription of many organisations. This aspect was recognised in *R v F*,¹⁷ when the Court of Appeal held that the Terrorism Act 2000 does not offer an exemption for those organisations that are resisting 'oppressive regimes'.¹⁸

In the case of *Secretary of State for the Home Department v Rehman*,¹⁹ Rehman, a Pakistani citizen legally living in the UK was refused indefinite leave by the Secretary of State. (Although this case concerned deportation, the justification for the deportation is relevant for the present discussion). Rehman argued that the Secretary of State's decision was unlawful since he was not a threat to 'UK's security', and that his alleged 'links' were against India and therefore not risk to British national interests.²⁰ The House of Lords held that even in cases where there is 'no direct threat' to UK, an individual's 'action against a foreign state may be capable indirectly of affecting the security of the United Kingdom.'²¹ It was accepted that 'it cannot be proved that he has carried out any individual act which would justify the conclusion that he is a danger,²² but

The Secretary of State, in deciding whether it is conducive to the public good that a person should be deported, is entitled to have regard to all the information in his possession about the actual and potential activities and the connections of the person concerned. He is entitled to have regard to the precautionary and preventative principles rather than to wait until directly harmful activities have taken place.²³

Perhaps what is equally alarming is that Lord Hoffman bluntly stated that 'decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive,²⁴ and elaborated that the 'question of whether something is 'in the interests' of national security is not a question of law. It is a matter of judgment and policy.'²⁵

¹⁷ [2007] EWCA Crim 243.

¹⁸ Muller M. (2008) 'Terrorism, Proscription and the Right to Resist in the Age of Conflict.' *Denning Law Journal*, 2008, Vol.20 pp.111-131.

¹⁹ [2001] UKHL 47; [2003] 1 A.C 153.

²⁰ Tomkins A. (2010) 'National security and the role of the court: a changed landscape?' *L.Q.R* 2010, 126 (Oct), 543-567.

²¹ Lord Slynn: *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at [16].

²² *Rehman* [2003] 1 AC 153 at [65] per Lord Hutton.

²³ Per Lord Slynn at [22].

²⁴ At [50].

²⁵ Lord Hoffman at [50].

Indeed Lord Steyn concluded that it is necessary to accord 'great weight to the views of the executive.'²⁶

The *Rehman* case 'reconfirmed'²⁷ the views expressed by Lord Finlay L.C. in *Halliday*²⁸ and those of Viscount Maugham in *Liversidge* that 'suggested rule has no relevance in dealing with an executive measure by way of preventing a public danger when the safety of the state is involved.'²⁹ Although the courts in *Rehman* appear to endorse the government by stating that the national security concerns are 'clearly a matter for executive discretion and nothing else,'³⁰ they differed in their opinion in the *Alton* case. Albeit, *Rehman* is perhaps overshadowed by the 'great weight given' 'to the views of the executive on matters of national security,'³¹ the *Alton* case demonstrates that when considered necessary the contemporary judiciary will disagree with the executive.

The *Bassam* criteria are applied in legislation that (as discussed in Chapter Six) that came into existence well before 11 September 2001. As noted earlier by Walker,³² academic commentators have reinforced and reiterated the argument that proscription of an organisation is primarily governed by political and inter-personal relationships between States rather than just the British national security agenda.³³ Thus international diplomacy takes precedence over the adherence to the rule of law governing counter terrorism. In such ways, the credibility of the law and the British executive is challenged by the discourse on the proscription criteria. Before exploring this matter this chapter discuss the views of the participants in relation to the situation in Kashmir, prior to proceeding on the aspect of proscription.

7.2.3 British Kashmiri Muslim participants' views on Kashmir

The situation in Kashmir and how that political situation may impinge on British Muslims of Kashmiri origin, was considered in Chapter Two. Some of the participants had no interest in, and

²⁶ At [31].

²⁷ Tomkins A. (2010) op cit.

²⁸ *R v Halliday* [1917] A.C. 260 HL.

²⁹ *Liversidge & Anderson* [1942] A.C. 206 at 218-219.

³⁰ *Liversidge & Anderson* [1942] A.C. 206.

³¹ Lord Steyn in *Rehman* op cit; Tomkins (2010) op cit.

³² Walker C. (2009) op cit at 42.

³³ Muller M. (2008) op cit at 125.

limited knowledge about Kashmir, and therefore focused on other sections of the interview. Interestingly however when asked 'Would you describe the Kashmir political situation as terrorism or not?', all had a response. Those that were 'Dismissive' or 'indifferent' Int. 2, to the situation in Kashmir, responded with a brief, 'Not terrorism, freedom fighting, it's all about control of power and land.' Int.2. Others offered elaborate responses, 'conflict in the area – one man's freedom fighter is another's terrorist – depends on which side of the coin. Delhi nightclub is terrorism, not terrorism when Indian policeman shot in Kashmir. The majority of Muslims are merely fighting for their rights. Muslim side feel oppressed and view Indians as terrorists and vice versa. Minority ruling – lines are blurred.' Int. 7.

The overall opinion, with a few exceptions, was that, 'it's not terrorism – not as media showing, the term used last 10-15 years, Kashmir movement is different like 1947 movement started. It was highlighted in the 1990s because international terrorism started 1993, 1998 and 2001, this situation has existed since 1947, it's a freedom movement, they want right of self determination – so they can decide what they want separation or be part of India or Pakistan, can't say it's terrorism.' Int. 16. The empathy or sympathy for Kashmir was articulated by the participants.

They commonly attempted to distinguish between the situation in Kashmir and the terrorism that occurred elsewhere in the world: 'I don't agree with suicide bombers – terrorism is bad. I disagree with it. However, people trying to protect themselves the definition is blurred. Distinction if going to hotel, for example, Mumbai and kill innocents it's wrong, and disagree with it, but in Kashmir, they want independence from India and Pakistan, they want freedom therefore not terrorism. For example, Beslan, it's definite terrorism, I believe that as a practising Muslim. It's political, Muslims gone wrong by killing innocent people – committing suicide – reason Muslim extremists gone wrong – we take over and kill. Our Prophet peace be upon him, forgave people. In terms of Kashmir, people can relate to it and feel helpless.' Int. 17.

This theme that the events of Kashmir are not terrorism, was elaborated further, 'According to me, the UN is a judge, dispute in 1947, I remember it, I was a young lad. India, civilians fought, no Pakistani army they were not involved, when Nehru thought that Kashmir was going to lose it, asked UN for a ceasefire. UN did so on the condition of a referendum, but this was never

granted. India never gave them rights, but terrorism is them, not those fighting freedom. Kashmir are innocent – fighting for a referendum that was never granted. It's all on record. Kashmiris are not terrorists, the Indian army and government are.' Int. 19. Some participants considered violence outside Kashmir as terrorism, 'Not terrorism because both sides fighting to get their land – but suppose if doing in other places, for example, India, it is terrorism.' Int. 26. There were exceptions who stated that they did not know, however, there was only one participant that viewed the events as terrorism:- 'actually yes in parts because it has no official recognition army, considered as terrorism because guerrilla army (Kashmiris) and yes I consider it terrorism too.' Int. 20. Nevertheless, the British Kashmiri Muslim participants commonly observed when asked about proscription of Kashmiri organisations, 'they are freedom fighters in Kashmir. If fighting outside then ban but only when in Kashmir then should not be banned. They are not harming Britain.' Int. 12.

The terrorist groups that were identified in Chapter Two, and proscribed by the Terrorism Act 2000, namely, Jaish E Muhammad, Lashkar E Toiba and Harkat Ul Mujahideen were not known by some of the participants, 'Not heard of these groups.' Some knew only as to what had been relayed to them in the media, 'Yes just heard on the media – it's all media is that.' Int. 14. It is worth noting that some of the first generation men paused and appeared to deliberate over this question, 'Banned in Pakistan – just know them via media. Otherwise no connection, none here.' Int. 19. However, not all the participants were that cautious, 'Heard of the first two – the jihad groups. Seen them on my visit to Azad Kashmir, driving by in their cars. They are viewed as freedom fighters, helping those in Indian administered Kashmir.' Int. 24. The view 'freedom fighters' was endorsed by others, 'Yes heard of them – fighting for their cause of Islam.' Int. 10; 'These Kashmiri groups, now seen as terrorists by these people, they were fighting for their rights.' Int. 11. Others elaborated, 'They are like freedom fighters, they fight against the Indian army and do not target innocent individuals.' Int. 12, and some with ambivalence, 'They like fighting in Kashmir – things mixed up at the moment – can't classify clearly what media present them as terrorists. I'm not sure if they are terrorists, they are a bit strict: believe that should fight against non-Muslim. It depends on where they are fighting really. Wrong when killing in Pakistan. I'm not really clear about this.' Int. 16.³⁴

³⁴ Further views on proscription of these groups will be discussed alongside subsequent academic commentary.

Having presented the views of the participants on the proscription of the Kashmiri groups, it is fitting to provide further analysis on the discussion of proscription.

7.2.4 Analysis

Proscription is a powerful legislative tool that criminalises organisations and those associated with the groups. Its incorrect use has the capacity to fertilize and perpetuate antagonism amongst those affected towards the state. It has been asserted, in line with the fieldwork data, that in proscribing an organisation, it is imperative that due process is observed, hence, upholding international law and recognising that organisations may be compelled to resort to violence for a legally recognised political hypothesis.³⁵

Moreover, it is acknowledged that proscription of groups does indeed 'devolve wide discretions to the government of the day, with few effective checks and balances.'³⁶ The political bias in proscription of groups has raised 'valid concerns', since decisions made in response to the public's fear are not always objective.³⁷ One commentator observes, '[i]t is not being unduly cynical to say that politicians know that if they are *not seen* to be doing all that is possible to discourage and prevent an attack they will be punished politically, especially in the event of a serious terrorist threat occurring.'³⁸ Further, in a climate of fear justification - however irrational, submitted by the ruling executive in proscribing groups are readily accepted by the public.³⁹ Cram elaborates to address the 'inherently political nature' of such decision making – in the present discussion: relating to proscription.⁴⁰

It has been argued that in electing the government, society and communities within it, rely on this executive to preserve their existence.⁴¹ In the case of terrorism, the government's response in

³⁵ Muller M. (2008) op cit at 130.

³⁶ Lynch A., McGarrity N., & Williams G., (2009) 'The Proscription of Terrorist Organisations in Australia.' *Federal Law Review*, Vol. 37 at 3.

³⁷ Ibid at 12-13.

³⁸ Hogg R. (2007) Submission No.6 to PJCIS, Parliament of Australia, Inquiry into the Terrorist Organisation Listing Provisions of the Criminal Code Act 1995, 31 January 2007 at 16.

³⁹ See Castan Centre for Human Rights Law, Monash University, Submission No.2 to PJCIS, Parliament of Australia, Inquiry into the Terrorist Organisation Listing Provisions of the Criminal Code Act 1995, 22 January 2007 at 5-6.

⁴⁰ Cram I. (2010) 'Beyond Lockean Majoritarianism? Emergency, Institutional failure and the UK constitution.' *H.R.L Rev.* 2010, 10(3), 461-485.

⁴¹ Locke J. (1690) in Hampton (1997) *Political Philosophy* Colorado: Westview Press.

its passing of legislation is to preserve public safety, via legislation that considers pre-emptive measures, (as discussed in Chapter Six also). Formal enactment (which may involve proscription of groups) is imperative to protect civil society. In turn the government responsible for the legislation is deemed to be acting appropriately until society 'denounces' its 'prerogative powers'. Hence, applying this theory to the terrorism law discussed in these chapters, in that 'majority' and not unanimous decisions would serve to govern, and would do so with majority backing and perform in accordance 'to the laws of nature.' However, it has been submitted that this theory fails to consider minority rights and their recourse to justice. To balance the power, it is anticipated that the executive is accountable to peer review, but where the governing body has majority representatives in Parliament, as was the case with the last Government in UK, this accountability becomes futile, as 'party loyalties' dominate the passage of the legislation. Thus the scrutiny of the anti-terrorism legislation is dependent on the unelected judiciary to preserve the credibility of the legislation and uphold the rule of law.⁴² This is an uphill struggle effectively demonstrated by *Rehman*, that the domestic judiciary is reluctant (despite the exception of *Alton*) to challenge the decisions of its elected executive.

There is the view shared by the participants that in proscribing the Kashmiri organisations the British government has done so with inadequate research on the group's activities. 'It's going against freedom of speech and basic human rights, especially if no evidence of their acts (please underline the no).' Int. 23. There was ambivalence as to what the Kashmir groups represented, 'If they are true freedom fighters then it's wrong to ban them, surely someone has to stand up to the atrocities of the Indian army, but if proven to be terrorists, which I am not sure they are here, then we have to ban them.' Int. 27. The view that proscription was based on political ideology rather than the 'facts on the ground', and thus one participant expressed, 'It's hypocritical to ban groups like that and then not enforce the law that Israeli foreign minister indicted as war criminal. We don't ban groups of interest to us [Britain]' Int. 17. In addition, they struggled with the offences and 'punishment' related to proscription of the Kashmiri groups and described such issues as existing 'because of Indian pressure' Int. 12; 'it's a superpower so Britain listens to India, no other reason to ban these groups.' Int. 10.

⁴² Cram I. (2010) op cit at 461-485.

In summary it is argued that proscription is imperative for national security and that when the organisation is declared 'criminal' publicly; this deters and prohibits those sympathetic to the group from joining its 'ranks'. In addition, it undermines the group's 'undesirable activities', ceases its support that is necessary for the organisation's long term survival.⁴³ Proscription is also viewed as a preventative measure that is essential for national security and the democratic process.⁴⁴ Walker proclaims that when 'assailed by political violence, then legal systems must both counter 'violence' and address the 'political ends' behind it.'⁴⁵ However, as the fieldwork data demonstrates there were doubts voiced by the participants that in proscribing Kashmiri groups the legal system is being overzealous. It is submitted that any possibility of impropriety is redressed by the Proscribed Organisations Appeals Commission, (POAC).⁴⁶

7.2.5 Proscribed Organisations Appeals Commission (POAC)

The appropriate redress to the misuse of proscription is afforded by the Terrorism Act 2000 in two elements. The first involves the application to the Secretary of State;⁴⁷ should that be refused, the second is a submission to the POAC.⁴⁸ Submission to the Secretary of State has to come from the proscribed organisation or a 'person affected' by the proscription as identified in *R v Broadcasting Standards Commission, ex parte British Broadcasting Corporation*.⁴⁹ However, the only case effective in deproscription is that of *Secretary of State for the Home Department v Lord Alton of Liverpool*,⁵⁰ when Lord Alton, his eighteen peers from the House of Lords and sixteen members of the House of Commons, described themselves as 'persons affected,' even though they were not members of the PMOI.⁵¹ Interestingly their position as 'persons affected' was not disputed by the Courts.⁵²

⁴³ Dickson B. (2005) 'Law versus terrorism: can law win?' *E.H.R.L.R* 2005, 1, 11-28.

⁴⁴ Lynch A., McGarrity N. & Williams G. (2009) 'The Proscription of Terrorist Organisations in Australia.' *Federal Law Review*, Vol. 37 at 3.

⁴⁵ Walker C. (2011) *Terrorism and the Law*. Oxford: OUP at p.341.

⁴⁶ Dickson B. (2005) *op cit*.

⁴⁷ Section 4(1) Terrorism Act 2000.

⁴⁸ Section 5 Terrorism Act 2000.

⁴⁹ [2000] 3 WLR 1327.

⁵⁰ *Op cit*, [2008] EWCA Civ. 443.

⁵¹ People's Mujahedin of Iran.

⁵² Walker C. (2009) *op cit*.

Although POAC 'offers some antidote to executive dominance,⁵³ it remains minimal. The absence of independent reviews⁵⁴ offers little comfort for those seeking protection from hasty, politically bias decisions. The test for whether proscription is lawful is guarded by the cloak of secrecy surrounding the hearings.⁵⁵ The government's alleged evidence surrounding the proscribed organisation cannot be examined and indeed cross examined. Moreover the danger of being perceived to be in the ranks of the proscribed organisations deters any 'person affected' from pursuing a claim. The Terrorism Act 2000 offers some immunity to those challenging proscription via the POAC,⁵⁶ but this is limited to certain offences.⁵⁷

7.2.6 Application and Effectiveness of Proscription

Section 11(1) Terrorism Act 2000, outlines the circumstances in which a person 'belongs', or 'professes to belong' to a proscribed group.⁵⁸ However, this has led to some ambiguity when being analysed by the courts, as identified in *Sheldrake v Director of Public Prosecutions; Attorney General's Reference (No.4 of 2002)*.⁵⁹ It was held that 'it is far from clear, in my opinion, whether it should be understood to denote an open affirmation of belonging to an organisation or an acknowledgement to fall within section 11(1), would have to be true.'⁶⁰ Lord Bingham's views have been concluded to encompass 'both affirmation and acknowledgement' of the said organisation.⁶¹ To preserve 'blameless conduct,' the *Sheldrake case* provided that 'security concerns do not absolve member states from their duty to observe basic standards of fairness.'⁶² Thus section 11(1) and section 11(2) had to be considered in conjunction, however as observed by Walker it is burdensome on the defendant to overcome section 11(2) criteria, and

⁵³ Walker C. (2009) op cit at 45.

⁵⁴ Walker C. (2009) op cit at 47.

⁵⁵ Walker C. (2009) ibid at 45.

⁵⁶ Section 10 Terrorism Act 2000. In discussing this section, Mr. Clarke states: 'The clause does not provide general immunity, and it would be wrong to do so. If, for instance, it emerged during proceedings that an individual had been involved in a bombing attack or had incited an act of terrorism abroad, immunity in respect of criminal proceedings would not apply. That strikes the right balance. Offences involving weapons, articles, information, and so on are omitted from the immunity provided in the clause because they do not relate directly to proscription.'

Hansard HC Standing Committee D, col. 111 (25 January 2000).

⁵⁷ Walker C. (2009) op cit at 45.

⁵⁸ Ibid at 48.

⁵⁹ [2004] UKHL 43.

⁶⁰ Lord Bingham at para 48.

⁶¹ Walker C. (2009) op cit at 49.

⁶² *Sheldrake v Director of Public Prosecutions; Attorney General's Reference (No.4 of 2002)* [2004] UKHL 43, per Lord Bingham at para. 21.

'purely passive membership can suffice for conviction.'⁶³ But, in *R v Ahmed (Rangzieb)*,⁶⁴ the courts considered membership under section 11 of the Terrorism Act 2000 and concurred with the judgment of Jack J. in *Smith Kline Beecham Plc v Greig Avery*⁶⁵ that

'... voluntary and knowing association with others with a view to furthering the aims of the proscribed organisation. We agree with the submission made to us that in some cases it will be necessary to make clear that unilateral sympathy with the aims of an organisation, even coupled with acts designed to promote similar objectives, will, whilst being clear evidence of belonging, not always be sufficient; the jury may need to consider whether there is the necessary element of acceptance or reciprocity which will be involved in belonging.'⁶⁶

In *Hudal and Dhaliwal*,⁶⁷ it was established that prosecution under section 11 was valid for events that occurred outside the UK to prevent what was described as 'a coach and horses to be driven through the objects of the legislation.'⁶⁸

Section 12 of the Terrorism Act 2000 provides offences that do not involve membership but directly or indirectly relate to assisting the proscribed organisations. An example was outlined by Parliamentary debates,

'We accept that there could be a genuinely benign private meeting to be addressed by a member of a proscribed organisation . . . However, we cannot accept the arranging of public meetings to be addressed by members of proscribed organisations, even when the person arranging the meeting does not think that the address will support the organisation.'⁶⁹

⁶³ Walker C. (2009) op cit at 50.

⁶⁴ [2011] EWCA Crim 184 (CA (Crim. Div)), Rangzieb Ahmed argued that he was a member of Harkat ul Mujahideen (Kashmiri group), and not Al Qaeda.

⁶⁵ [2009] EWHC 1488 QB.

⁶⁶ para 89. 'Case Comment *R v Ahmed (Rangzieb)* case in detail.' *Arch. Rev.* 2011, 3, 4-5.

⁶⁷ [2004] EWCA Crim 389; [2004] 2 Cr. App. R. 19.

⁶⁸ [At 12]. The facts of the case: both defendants acknowledged to membership of the international Sikh Youth Federation in Germany, but argued that had lapsed in April 2001, and Dhaliwal's had lapsed in October 2000.

Neither was aware of its proscription in Britain.

⁶⁹ Charles Clarke, Hansard HC vol. 353, col. 655 (10 July 2000).

Section 13(1) considers 'display in public allegiance with, or support for' the proscribed organisation, as identified in *Rankin v Murray*.⁷⁰

7.2.7 Further Analysis

The statistics on prosecutions relating to Kashmir are not available, and most reported cases have related to non-Kashmiri groups. Nevertheless, the participants expressed anxiety in relation to these powers: 'Even though I don't support these groups, I am scared that if I say I understand the cause I am committing an offence. I am not saying I understand either, but I just give you example.' Int.12. The view, '[i]f they are terrorists, then it's good law,' Int. 19, was reinforced by some of the participants.

There is also the common recognition that British security takes precedence, 'can't really say anything - some of their leaders were from Middle East, very generally say kill them - jihad. When something comes in law, disadvantage for many, one person's view, such as the leaders saying about jihad and the whole community affected, have to pay for that, but security of Britain is priority.' Int. 16. The common view ascertained from the participants interviewed was that the Kashmiri organisations proscribed under Terrorism Act 2000, 'should not be banned. If sat down and talked with them, they will probably be less than one percent bad, we can only end things by negotiation not war.' Int. 11. The lack of regular review of the proscription decision caused concern to some who concluded, 'They should ban all groups, not just Kashmiri groups,' Int. 5, and the view, 'fine, but shouldn't just discriminate against Muslims.' Int. 2. Others acknowledged the advantage of proscription of the said Kashmiri organisations in aiding the recognition of Kashmir, 'I'm happy for them to be banned as long as legitimize Kashmiri defence that is recognised by Kashmiri people, rather than India or Pakistan. Recognise the state of Kashmir and defence for that state, then I'm happy with it.' Int. 20.

Proscription powers are regarded necessary in the legislature's fight against national and international terrorism. It has been acknowledged that weakening and diminishing terrorist activities is a step towards the ultimate goal. However, this goal is clouded by the illusion and pragmatism of international diplomacy and the national political agenda over the reality of the

⁷⁰ [2004] SCCR 422. This case involved the accused wearing a ring with initials 'UVF'.

situation, thus blurring the boundaries of self determination, as some argue is the case in Kashmir and other parts of the world. The importance of proscription is emphasised by those responsible for its implementation:

'There are three principal reasons why we think proscription is important. First, it has been, and remains, a powerful deterrent to people to engage in terrorist activity. Secondly, related offences are a way of tackling some of the lower level support for terrorist organisations . . . Thirdly, proscription acts as a powerful signal of the rejection by the Government - and indeed by society as a whole - of organisations' claim to legitimacy . . . The legislation is a powerful symbol of that censure and is important.'⁷¹

It is this confidence in the executive, and the necessity of proscription that evoked comments such as, 'It's a responsible government, would treat right winged organisation in the same way. I trust their judgment, some of these organisations do need to be banned; free speech but can't let anyone do what they like, extreme examples have to be limited.' Int. 17. Thus it is the importance of such legislation that led to its extension to proscribe elements of 'speech' - referred to as 'glorification'.

7.3 Glorifying Terrorism.

7.3.1 Background

The bombings on July 2005 instigated a review of the counter terrorism legislation and the need to instill confidence in state - security policing, to ease the inevitable anxieties related to such terror activities. The government took the initiative of proscribing and criminalising the 'glorification' of terrorism, ensuring that published or distributed material did not contain 'encouragement' or incitement to terrorism.⁷² Three crucial issues were identified⁷³ that further justified the need for such legislation. These were the perceived gap in law that did not include

⁷¹ Hansard HC Standing Committee D col. 56 (18 January 2000), Charles Clarke.

⁷² It was successfully argued that 'the July events indicate that there are people in this country who are susceptible to the preaching . . . of an argument or a message that terrorism is a worthy thing, a thing to be admired, a thing to be celebrated and then act on the basis of that . . . What this Bill is about is trying to make that more difficult that transition from people encouraging, glorifying to then an act being undertaken.' Hansard Commons Draft Terrorism Bill, Written and Oral Evidence, HC 515-1, October 11, 2005, Q.3.

⁷³ Hunt A. (2007) 'Criminal prohibitions on direct and indirect encouragement of terrorism', *Crim. L. R.* 2007, 441-458.

'incitement' to terrorism.⁷⁴ The second issue was precipitated by the Council of Europe Convention on the Prevention of Terrorism,⁷⁵ which requires its member states to legally prohibit 'public provocation to commit terrorist offences', which, 'was defined as all forms of 'incitement' to terrorism.'⁷⁶

The third imperative issue, is that of the United Nations Security Council⁷⁷ adopted Resolution 1624 (2005)⁷⁸, to address 'incitement' to terrorism. This initiative received the whole hearted endorsement of the UK, who had only two months earlier suffered the catastrophic consequences from the London bombings. The Security Council's Preamble,

'Calls upon all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to: a). Prohibit any law incitement to commit a terrorist act or acts; b). Prevent such conduct; c). Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.'⁷⁹

In addition, the Resolution encouraged interstate co-operation to effectively implement the incitement offence, and to inform the Counter Terrorism Committee⁸⁰ about each state's progression on this resolution.⁸¹ It has been described as a 'spontaneous reaction' that required little 'deliberation.'⁸² It is argued that 'modern' terrorism is fuelled by its worldwide communication links, and that the offence of incitement will target the roots of communication that are necessary for its survival. The criminalisation of incitement to terrorism, according to Ronen deters 'the conditioning of the audience', since 'the success of decentralised, anonymous

⁷⁴ Baroness Scotland: Hansard, HL Vol. 676, col. 455 (December 5, 2005). The House of Lords acknowledged: 'It is an offence . . . to incite people to engage in terrorist activities generally, or to incite them obliquely by creating the climate in which they may come to believe that terrorist acts are acceptable. That is the gap that we want to close, both to enable us to fulfil our international obligations and because we believe that it is desirable in its own right.'

⁷⁵ CECPT, Article 5. See also: Hunt A. (2006) 'The council of Europe Convention on the Prevention of Terrorism', *European Public Law* 603.

⁷⁶ Hunt A. (2007) *op cit* at 442.

⁷⁷ Which recalls SC Res 1566 (2004), 8 October 2004.

⁷⁸ September 2005.

⁷⁹ UN Doc. Res. 1624 (2005), preambular paras, 3 & 8.

⁸⁰ CTC established following SC Res. 1373 (2001).

⁸¹ See S.C Res 1624 (2005), operative paras 2, 3, 5. By mid July 2007, 88 states had reported to the CTC. See also UN Doc. S/2008/29 para 5; UN Doc S/2006/737, paras 5-6, both relate to CTC Reports.

⁸² Ronen Y. (2010) 'Incitement to terrorist acts and international law.' *L.J.I.L.* 2010, 23(3), 645-674.

terrorism depends on a strategy of a persistent and invasive indoctrination - ideological, religious or intellectual.⁸³

7.3.2 United Kingdom's response

United Kingdom issued its domestic response with the introduction of the Terrorism Act 2006. In turn, section 21 Terrorism Act 2006 provided the authority to proscribe groups that 'glorify terrorism' and amended the Terrorism Act 2000 to include a revised version of section 3 (5A), which allowed the authority to proscribe groups that 'promote or encourage', as well as the 'unlawful glorification of the commission or preparation (whether in the past, in the future or generally) of acts of terrorism.' Walker observed that '[t]he boundaries between incitement and glorification are difficult to draw.'⁸⁴ However, in advocating the legislation, the debates reflect the recognition of differentiating between history and present events, 'cultural events or those that celebrate a part of our collective memory, such as Guy Fawkes and bonfire night, and people who glorify acts of terror to try to encourage similar acts here and now in existing circumstances.'⁸⁵ These powers were utilised to proscribe Al - Ghuraboa⁸⁶ whose comments after the bombings of July 2005 caused concern: 'What I would say about those who do suicide operations or martyrdom operations is that they're completely praiseworthy. I have no allegiance to the Queen whatsoever or to British society; in fact if I see mujahideen attack the UK I am always standing with the Muslims.'⁸⁷

In addition, the Terrorism Act 2006, implemented 'highly controversial . . . speech offences' in its sections 1 and 2.⁸⁸ Section 1 has produced what Hunt refers to as 'statement offence',⁸⁹ and is defined in the Act as 'a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences.' The 'Convention offences' are specified in Schedule 1 and are subject to change under section

⁸³ Ibid at 657.

⁸⁴ Walker C. (2009) op cit at 55.

⁸⁵ Paul Giggins, Hansard HC vol., 438, col. 994 (3 March 2005).

⁸⁶ 'The Strangers' is an Islamist group. It succeeded Al-Muhajiroun ('The Emigrants'), founded by Omar Bakri Muhammad and others in Saudi Arabia from 1983-2004.

⁸⁷ Quoted in Hansard HC vol. 449, col. 493 (20 July 2006).

⁸⁸ Walker C. (2009) op cit at 57.

⁸⁹ Hunt A. (2007) op cit at 443.

20(9). Section 20(6) provides that the composition of the statement is broad enough to include 'words, sounds, or images'⁹⁰ and publication can occur 'in any manner'⁹¹ including 'electronic service.'⁹² However, section 1(4) stresses the need to consider all factors and 'circumstances' of the statement: 'there is a difference in how an academic thesis on an issue and a radical and inflammatory pamphlet are likely to be understood.'⁹³ Since the publication of the statement is the essential element of the *actus reus*, it must be made to 'members of the public'.⁹⁴ The legislature has created a definition of relevant audiences to incorporate, via section 20(3), 'the public' outside Britain, such as Kashmiris in Pakistani or Indian administered Kashmir.⁹⁵ The offence's requirement is for 'some' members of the public to be subjected to it.⁹⁶ Thus, 'small cohesive congregations'⁹⁷ may be considered to be in the remit of the offence.⁹⁸

The *mens rea* is identified by section 1(2)(b), namely, that the maker of the published material 'intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.' The burden of proof for the defence⁹⁹ is on the accused to satisfy that the 'reckless' act was not supported by the defendant, and in addition that it does not relay the opinion of the accused.¹⁰⁰

It is observed that '[t]he most controversial aspect of the offence is indirect encouragement' and thus attempt was made by the legislative authority to 'clarify' this issue.¹⁰¹ The 'non-legal' definition of 'glorify' endorsed by Baroness Scotland: 'To glorify is to describe or represent as admirable, especially unjustifiable or undeservedly',¹⁰² and the defence for this is to 'preface their

⁹⁰ Walker C. (2009) op cit at 57.

⁹¹ Section 20(4).

⁹² Walker C. (2009) op cit at 57.

⁹³ Home Office Circular 8/2006, *The Terrorism Act 2006*, para 3.

⁹⁴ Baroness Scotland, Hansard HL vol. 676, col. 435 (5 December 2005).

⁹⁵ Walker C. (2009) op cit at 58; see also Jones A., Bowers R., & Lodge H.D. (2006) *The Terrorism Act 2006*.

Oxford: Oxford University Press.

⁹⁶ Walker C. (2009) op cit.

⁹⁷ Jones A. et al., (2006) op cit at para 2.35.

⁹⁸ Walker C. (2009) op cit.

⁹⁹ Section 1(5)(b) and 1(6) create the defence.

¹⁰⁰ Walker C. (2009) op cit at 59.

¹⁰¹ Ibid.

¹⁰² Hansard HL vol. 677, col. 583 (17 January 2006), Baroness Scotland.

remarks with the statement that they do not condone or endorse acts of terrorism or encouraging people to kill others. They could express sympathy and even support for the activity, but not in a way that encourages people to commit acts of terrorism.¹⁰³ It remains to be seen as to how the courts will assess this 'formula' especially under the premise of section 1(4).¹⁰⁴

Academic commentary has noted the significance of 'indirect incitement' and that there is no definition of this term 'beyond the concept of glorification.'¹⁰⁵ The underlying concept of national security and the aim to restrict terrorist activity is prevalent throughout this legislation. However, there was the concern¹⁰⁶ expressed by the Joint Committee on Human Rights which stated: 'terms such as glorification, praise and celebration are too vague to form part of a criminal offence which can be committed by speaking.'¹⁰⁷

This concern is further perpetuated by section 2 of the Terrorism Act 2006. Section 2 provides the offence of 'dissemination of terrorist publications' recklessly, or otherwise, thereby mirroring the direct or indirect encouragement referred to in section 1. Terrorist publication dissemination is identified in section 2(2).¹⁰⁸ This includes 'its distribution, circulation, giving, selling, lending, offering for sale or loan, provision of a service to others that enables them to access or acquire, transmitting electronically, or possessing 'with a view' to the foregoing activities section 2(2).'¹⁰⁹ The publication itself can occur in a variety of 'forms', and 'it covers matter likely to be understood . . . as a direct or indirect encouragement or other inducement to the commission,

¹⁰³ Hansard HC vol. 439, col. 429 (9 November 2005), Hazel Blears, and Hansard HL vol. 676, col. 458 (5 December 2005), Baroness Scotland.

¹⁰⁴ Walker C. (2009) op cit at 60.

¹⁰⁵ Ibid. Indirect incitement is defined as 'every statement which glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; (ss1(3)a & 2(4)(a)), 'and is a statement from which those members of the public could reasonably be expected to infer that what is being glorified as conduct that should be emulated by them in existing circumstances.' section 1(3) & 2(4)(b).

¹⁰⁶ Critique of the legislation will be considered in the subsequent sections.

¹⁰⁷ Hansard HC vol. 443, col. 1664, March 16, 2006, Session 2005-2006, HL 75 - 1 / HC 561 - 1, at [27] -[28].

¹⁰⁸ Section 2(2) states: 'For the purpose of this section a person engages in conduct falling within this subsection if he a). distributes or circulates a terrorist publication; b). gives, sells or lends such a publication; c). offers such a publication for sale or loan; d). provides a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan; e). transmits the contents of such a publication electronically; or f). has such a publication in his possession with a view to its becoming the subject of conduct falling within any of paragraphs (a) to (e).

¹⁰⁹ Walker C. (2009) op cit at 61.

preparation or instigation of acts of terrorism,' and 'likely to be useful in the commission or preparation of such acts . . .'¹¹⁰

Similar to section 1(6), the availability of defence under section 2(9) may create some ambiguity for the courts, as forewarned by Lord Carlile that scholastic studies on terrorism could be 'turned into samizdat activity.'¹¹¹ A similar situation occurred (although the student was arrested under section 58, and this did not test sections 1 and 2), at the University of Nottingham in 2008, where a postgraduate student downloaded material from the US Justice Department website, and he shared it with his friend, a former student. The material consisted of an Al-Qaeda training manual, and the University executive held that such research or study is illegal under the current legislation.¹¹² (Although the student was arrested, he was released without charge and subsequently received compensation).

It is perhaps significant that subsection (8) creates an offence to disseminate irrespective of the fact that it may have no impact on the person receiving the material. The courts have thus concluded that it is the material itself that is assessed as in *R v Rahman, R v Mohammed*,¹¹³ and limited regard is given to the fact that it occurred recklessly.

Section 3 considers the internet, and this is crucial since there were in Britain alone over four thousand 'extremist' websites in 2008, in comparison to twelve in 1998.¹¹⁴ The scope of the on-line or 'cyber terrorism'¹¹⁵ was illustrated by Mohammed Naeem Noor Khan, who was arrested in 2004 in Pakistan. He stated, 'most of al-Qaeda's communication was done through the internet.'¹¹⁶ Section 3 provides that a constable assesses and concludes that the provider of an internet site has 'unlawfully terrorism - related' material, and thus issues a notice to remove within two weeks, and a failure to comply results in liability.¹¹⁷

¹¹⁰ Ibid.

¹¹¹ Carlile, Lord (2005) *Proposals by Her Majesty's Government for changes to the laws against terrorism*. London: Home Office, para 28.

¹¹² *The Guardian*, 24 May 2008: p.8; <http://freehicham.co.uk>; *Times Higher Educational Supplement* 24 July 2008: Vice Chancellor Sir Colin Campbell; see also Walker C. (2009) op cit at 62-63.

¹¹³ [2008] EWCA Crim. 1465.

¹¹⁴ Home Office (2009) *Pursue, Prevent, Protect, Prepare: The UK's Strategy for Countering International Terrorism*. London: Cm. 7547, para 5.14; Walker C (2009) op cit at 63.

¹¹⁵ Walker C. (2011) op cit at 374.

¹¹⁶ *The Times* 3 August 2004 at p.1.

¹¹⁷ See Walker C. (2011) op cit at 376.

7.3.3 Critique of the Glorification and Dissemination Legislation under Terrorism Act 2006.

It is submitted¹¹⁸ that sedition laws¹¹⁹ that had traditionally been used to uphold the safety of society, and deter all forms of violence, are now reproduced in counter terrorism. This anti-terrorism law encompassing sedition targets the glorification of terrorism. The discourse surrounding such legislation has prompted a diversity of opinions. Concern is expressed that curtailment of speech is an unnecessary measure that does little to deter violence, but rather it deters political dissent. In addition, it undermines the function of democracy which sustains its esteemed position from the discarding or rejection of criminalisation of speeches, via encouragement of open debates and transparent media. The advocates of such laws on the curtailment of speech believe that a responsible society has to eliminate the 'permissibility conditions' that promote aggression, irrespective of terrorism risks. They link the speech with the potential or actual event.¹²⁰

British legislation has been partly instigated to allay the fears perpetuated by some Islamic speakers promoting sympathy and justification for terrorist actions.¹²¹ This reasoning is shared by many of the participants in the research for the thesis, summed by one interviewee in response to 'glorification legislation', 'if banned I agree with the government . . . preaching youngsters, brainwashing them at seventeen or eighteen, you need to stop it. Not kill innocent people for no reason . . . it's not education of Islam.' Int. 14. Thus, it has been argued that there is the need to differentiate between 'extremist political speech and criminal incitement.'¹²² It has been asserted¹²³ that where it can be identified that 'direct' harm can occur from the speech such as how to bomb a car, the speech should be criminalised, but other forms of speech that 'advocate

¹¹⁸ Sorial S. (2010) 'Can saying something make it so? The nature of seditious harm.' *Law & Phil.* 2010, 29(3), 273-305.

¹¹⁹ Sedition was abolished by Coroner's and Justice Act 2009, section 73.

¹²⁰ Sorial S. (2010) *op cit*. The test for sedition, which prior to the Terrorism Act 2006 was considered as a 'common law offence.' *R v Chief Metropolitan Stipendiary Magistrate; ex parte Choudhury* [1991] 1 QB 429, where the applicant alleged that defendant had the offence of seditious libel in distributing the novel 'Satanic Verses'. It was held by Watkins J. 'Proof of an intention to promote feelings of ill will and hostility between different classes of subjects does not alone establish a seditious intention. Not only must there be proof of an incitement to violence in this connection, but it must be violence or resistance or defiance for the purpose of disturbing . . . some person or body holding office or discharging some public function of the state.' (at 453).

¹²¹ Sorial S. (2010) *op cit* at 282.

¹²² *Ibid* at 283.

¹²³ Barendt E. (2005) 'Threats to Freedom of Speech in the UK.' *UNSW Law Journal* 28(3), 2005, 895-899.

violence' generally should not be an offence since they are considered 'remote from the actual commission of criminal acts.'¹²⁴

In advocating freedom of expression, it has been asserted that although there are 'harms' that have taken place as a consequence of an individual or individuals expression, they do not merit legal prohibitions on expressions or speech.¹²⁵ Scanlon distinguishes between 'expression' and actions; he concludes that despite the expression of others, the ultimate decision is that of the one undertaking the action, (in the present discussion, he would refer to the individual undertaking the act of terrorism). Thus according to this hypothesis, the criminal offence is the act and not the expression, (that may have encouraged or supported the action) because the individual performing the action ultimately has the choice, and chooses to act accordingly.¹²⁶

Next, it is argued that terrorist discussions, and indeed 'propaganda'¹²⁷ should be accessible to provide counter arguments and scrutiny. Moreover, (as discussed in the previous chapter), to prevent terrorism it is imperative that it is not 'driven underground';¹²⁸ with this consideration it has been submitted that, 'speech will no longer act as a safety - valve. The supporters of terrorism might be deterred from encouraging or glorifying it publicly, but there is no evidence that they will be prevented from counseling it in private or from participating in such activity.'¹²⁹ Others concur, 'unless we are able to hear and understand the views of our political adversaries, we cannot hope to turn their minds and convince them that they are wrong, or even change our own behaviour to accommodate opposing views that turn out to be right.'¹³⁰

Accordingly the views from the data analysis mirrored academic commentary, 'It's against the British values, the freedom of speech. Everything goes in the same way, media links all terrorist groups as highly skilled, proper network. They try to risk people simultaneously, provoke people. It's against the classic value of freedom of speech, and should be limits on this - when

¹²⁴ Sorial S. (2010) op cit at 283.

¹²⁵ Scanlon T. (1972) 'A theory of Freedom of Expression,' *Philosophy and Public Affairs* 1 (2) Winter 1972: 204-226 at 213.

¹²⁶ Sorial S. (2010) op cit at 283.

¹²⁷ Ibid at 284-285.

¹²⁸ Ibid.

¹²⁹ Barendt E. (2005) op cit at 898.

¹³⁰ Saul B. (2005) 'Speaking of Terror: Criminalising Incitement to Violence.' *UNSW Law Journal* 28(3), 2005, 868-886.

vague things like expressing views, does not mean glorification.' Int. 16. Freedom of speech is viewed as pivotal to a democratic society, one participant argued, 'What about democracy? It's freedom of speech if really trying to harm different, but should be able to talk it out and talk about this. Talk is democracy.' Int. 25.

Thus, it is argued, 'exceptionally strong reasons must be produced to justify proscription, otherwise we allow the state wide discretion to determine the content of acceptable public debate.'¹³¹ The interviewees commonly outlined as to what they perceived to be the exceptionally strong reasons, 'If sympathetic or support terrorism that kill civilians for example, in Pakistan bombing in Peshwar, then bans on glorification is correct, London bombing affected civilians, not government, it's wrong. But they are wrong in targeting all, for example someone is researching on nuclear science, they are wrongly targeted, someone we know was researching on nuclear science for academia, taken away [by security services] that is wrong.' Int. 9.

These 'exceptionally strong reasons' mentioned in the previous paragraph will now be outlined in the subsequent discussion. Academic commentary discussed shares the opinion that speech for example that justifies the actions of terrorist groups in Kashmir, are 'acts of expression', and should not be prohibited or criminalised.¹³² However, it is elaborated that a speech by a member of the religious order,¹³³ is 'in principle' subject to counter terrorism legislation such as that of Terrorism Act 2006. This argument is based on Austin's¹³⁴ work on illocutionary speech;¹³⁵ of the five criteria utilised by Austin. Two of the five criteria are selected to advance this argument, namely verdictive and exercitive speech acts. These involve the delivery of verdict by a person in authority, (for example, the words issued by an umpire in a cricket game - 'you are out' have expressed an opinion and a verdict, however if a spectator had used the same words or sentence, they would lack the 'illocutionary force'). Exercitive are the 'giving of a decision in favour of or against a certain course of action, or advocacy of it. It is a decision that something is to be so, as

¹³¹ Barendt E. (2005) op cit at 899.

¹³² See Saul B. (2005) op cit at 868-886.

¹³³ Although she writes, 'I am sceptical of the efficacy of censorship, given the ease and speed with which these ideas are disseminated through various media outlets, including the internet.'

¹³⁴ Austin J.L. (1955) *How to do things with words*, Oxford: Clarendon Press.

¹³⁵ 'An illocutionary act is an act we perform in saying something. It is what we do, in saying what we say. Paradigm illocutionary acts include warning, promising and marrying. Perlocutionary acts, by contrast, are 'what we bring about or achieve by saying something.'

distinct from a judgment that it is so.¹³⁶ Hence it is argued that 'when a verdictive is performed, the words fit the world: he says 'Out' because it is out. When an exercitive is performed, the world fits the words: you are fired because he says 'You're fired.'¹³⁷

The case of *United States v Rahman*,¹³⁸ is utilized to demonstrate this theory in counter terrorism legislation. This case involved the prosecution of an Islamic cleric primarily on the content of his speech.¹³⁹ The prosecution contended that Rahman, as a cleric, lead the lectures and sermons, and had said, 'do jihad with the sword, with the cannon, with the grenades, with the missile . . . against God's enemies.' Rahman's defence that his 'political views and religious practices', were not considered by the courts to adversely affect the freedom of speech, and were 'not simply the expression of ideas.'¹⁴⁰ Irrespective of the differences in the UK and the US legislation the content of Rahman's speech can be applicable in Britain and elsewhere in the world. Utilising Austin's analysis of illocutionary force, contain both verdictive and exercitive criteria, highlights that 'his words actually do the acts in question.'¹⁴¹ They are verdictive in the use of 'infidel', 'evil' and their order - counseling is deemed exercitive. In essence, he creates the environment for terrorism, and his position relays power and status to make the audience receptive to his 'commands'. This is in the context that those attending the sermons do so to learn and seek religious inspiration.¹⁴² Thus, the content of an Imam or cleric's speech is of particular significance as it carries an 'illocutionary force.' The Imam's status conveys the message as 'norms' that are obligatory. Hence the 'permissibility conditions' should be criminalised. It is the status of the cleric that is of significance.

¹³⁶ Austin J.L. (1955) op cit at 154.

¹³⁷ Langton R. (1998) 'Subordination, Silence, and Pornography's Authority,' in Post R. (editor) *Censorship and Silencing: Practices of Cultural Regulation*. Oxford: Oxford University Press and J. Paul Getty Trust. 261-284 at 265.

¹³⁸ 248F. Supp 254, S. D. N. Y. 1994.

¹³⁹ Sheikh Omar Abdel Rahman and nine co-defendants charged with crimes including breach of sedition laws, namely 'seditious conspiracy', 'to levy a war of urban terrorism against the United States, and by force to prevent, hinder and delay the execution of the laws of the United States.' *ibid* at 259.

¹⁴⁰ It was recognised by the Court of Appeal that words of this nature - ones that instruct, solicit, or persuade others to commit crimes of violence - violate the law and may be properly prosecuted regardless of whether they are uttered in private, or in a public speech, or in administering the duties of a religious ministry. The fact that speech or conduct was 'religious' does not immunise him from prosecution under generally applicable criminal statutes.' (p.117).

¹⁴¹ Sordial S. (2010) op cit at 297.

¹⁴² *Ibid*.

The argument is elaborated to emphasise that Austin's 'illucutionary speech act' excels as 'enabling'. Thus placed in the context of alienation, the uncertainty of identity, and media's portrayal of Islam's image and Western policies, the 'enabling' speech is the catalyst for terrorist action. In additional circumstances where individuals have limited knowledge of religion, in this case Islam, the cleric's words can have a profound impact. Hence it has prompted comments from those interviewed: 'I agree with that, glorification is how terrorism breeds and breeds in this area here. Impressionable, susceptible people there and around here, like that London bomber, I agree that there should be control on these people, completely agree that it should be illegal.' Int. 15. Indeed the sermons or counseling provides the individuals with 'reasons' to act thereby the 'straightforward line of causation can be established between the words and commission of violence.'¹⁴³ Thus the 'but for' criteria is applicable in such circumstances.¹⁴⁴ Had the cleric's speech not created the 'but for' chain, the subsequent action would not have occurred. The argument is not confined to a religious cleric, it can also be applied to a youth group facilitator or community leader, cricket coach, whom young and impressionable see as a figure of authority - the examples are endless but what is relevant here is the status that is relayed by the individual's role.

Indirect encouragement is considered worthwhile as a topic for criminal law when it is said to be 'cultivating certain environments.'¹⁴⁵ It is the extremist ideology that perpetuates the terrorism 'culture'. In searching for identity and religion, it is asserted by academic commentary that 'there's a strong possibility that he'll first come into contact with Islamists. They are over represented both on the internet as well as in the print media.'¹⁴⁶ This view is shared by one interviewee who provides, 'I can empathize how people wanting to learn about Islam get into the wrong groups and learn the wrong Islam . . . I say hooray to that [re: glorification legislation]. You have to understand that it's good to have freedom of speech, but if that incites hatred - whether its religious or racial it has to be curtailed, so it should extend to the far right groups as well as ignorant Muslim extremists who brain wash kids that have no idea about the meaning of Islam. We are like blank slates they can tell us anything and we will believe, and I supposedly have a high I.Q.' Int. 27. Moreover as recognised by Pirie, traditionally, religious leaders are

¹⁴³ Sorial S. (2010) op cit at 302.

¹⁴⁴ Schauer F. (1993) 'The Phenomenology of Speech and Harm' *Ethics* 103 (July 1993); 635-653 at 642.

¹⁴⁵ Sorial S. (2010) op cit at 304.

¹⁴⁶ Sorial S (2010) op cit at 304.

seen as the 'elite', and certainly in the Kashmiri (Indian or Pakistani) hierarchy, and thus followers are 'impressed by command there is a danger that we see little else.'¹⁴⁷

In this light, the importance of legislation such as sections 1 and 2 of the Terrorism Act 2006 can be understood since it is unwise to protect all speech, especially in cases where the authoritative speech 'enacts permissibility conditions' and 'instructs, recommend or order' the use of aggression on others.¹⁴⁸ Similarly, it has been submitted that any incitement to terrorism compromises the foundations of a democracy, and thus should not receive the guardianship of the law which is afforded to the freedom of expression. In essence, society is compelled to prevent the incitement of terrorism and hence any restrictions that may arise from such legislation are necessary means to uphold the rule of law.¹⁴⁹

However, such restrictions on speech caused concern to some participants interviewed given that the legislation's target reached beyond Britain, 'If glorifies and promotes harm against British people - then fine, but if sympathizes with a particular nation [Kashmir] not good, because like banning freedom of speech. It has affected me because lack of freedom of speech, have to be careful what you say. Even sympathy for people of Kashmir, said in a certain way, could be in trouble. Law is subjective in what it sees as promoting terrorism and sympathy; it's a fine line.' Int. 20.

Furthermore, there is also the assertion voiced by some of the participants that such legislation creates a 'police state, we have to adhere to what they are thinking or go to prison. There's no freedom of speech, it's victimisation and discrimination.' Int. 23. Academics view it as 'a thin disguise for the imposition of restriction on open discussion.'¹⁵⁰ It has been observed that since contemporary terrorism cannot be subdued and eliminated by the use of force and modern artillery, 'it will be won, instead by those who can best marshal their metaphors.'¹⁵¹ The fragility of the rule of law is tested by the pragmatism that the bombers in London, are 'home grown, politically and intellectually.' That the radicalisation occurred in Yorkshire and Luton, reflects the testimony that terror co-exists with democracy. This dual phenomena instinctively creates a

¹⁴⁷ Pirie F. (2010) 'Law before government: ideology and aspiration.' *O.J.L.S* 2010, 30(2), 207-228.

¹⁴⁸ Ibid.

¹⁴⁹ Ronen Y. (2010) op cit at 659.

¹⁵⁰ Barendt E. (2011) 'Religious hatred laws: protecting groups or belief?' *Res Publica* 2011, 17(1), 41-53.

¹⁵¹ Ward I. (2008) 'God, Terror and Law'. *O. J.L.S.* 2008, 28(4) 783-796.

shield to deflect the terror. The shield consists of the Terrorism Act 2006, and the proscription of 'statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism.'¹⁵² In turn, it is argued that section 1(3) Terrorism Act 2006, paradoxically increases the terror that it aims to decrease. It has been described as 'a prime expression of the neurotic dependency of terrifying state and terrified citizen.'¹⁵³

It is further argued that although terrorists, 'seek to strip off the mask of law to reveal the nihilist heart of coercion within', the executive legislature and democracy must ensure that 'rule of law is not a mask but the true image of our nature.'¹⁵⁴ Such commentators are dismissive of the concerns raised in the preceding discussion about glorifying terrorism by Islamic speakers and others in positions of authority. Instead they assert: 'for it is not the terror of the mad mullah and the clerical catastrophist that presents the immediate threat to the citizens of Britain or indeed America. That threat and that terror lie within.'¹⁵⁵ The discourse evident in the scholarly works is reflected in the data analysis, one participant states, 'I can see where they go with it. Overall if glorify terrorism and attacking UK, I have no issue, protect our young ones.' Int. 13, whilst another simply states, 'Just suspect, no one glorifies!' Int. 4, namely that the Muslim community are viewed with suspicion and that no one actually glorifies terrorism.

To summarise, whilst some of the participants interviewed recognised the need for proscription on speech, they also had anxiety as to what it constitutes, and whether they themselves may unknowingly commit such an offence. The discourse surrounding 'glorification' of terrorism was echoed by the participants, they were commonly keen to curtail speech because they recognised that those in position of authority can easily influence 'vulnerable youths' Int.11. However, others argued that 'talk' Int. 25, was also necessary to prevent terrorism, they viewed curtailment of speech as a form of 'victimisation and discrimination' Int. 23. In addition, it has been asserted

¹⁵² Ward I. (2008) op cit at 793.

¹⁵³ Ibid. See also: *A, X & Y v Secretary of State for the Home Office* [2002] EWCA Civ. 1502 [97], (Lord Hoffman argues: 'the real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the measure of what terrorism may achieve. It is for Parliament to decide whether to give terrorists a victory.'

¹⁵⁴ Ignatieff M. (2005) *The Lesser Evil: Political Ethics in an Age of Terror*. Edinburgh: Edinburgh University Press at 144.

¹⁵⁵ Ward I. (2008) op cit at 796.

that restrictions on speech could drive the discussion on terrorism 'underground', which, if openly discussed could be challenged.

7.4 The Offence of Withholding Information

The participants interviewed were not specifically asked about this offence, but when asked if they felt protected by the law, there was anxiety amongst some that they now lived in a 'police state' Int. 23, that demanded information that they 'I might have accidentally stumbled on, and I didn't know that it was terrorism until it's too late, so does that make me guilty?' Int. 26.

Crucial to the government's anti terrorism agenda is the co-operation of the public as outlined in CONTEST, and discussed in Chapter Six. Section 38B(2) Terrorism Act 2000 provides the offence of failing to disclose information on terrorism activity without reasonable excuse.¹⁵⁶ It may be viewed as a prudent step towards implementing civil duty but in enforcing the public to disclose the offence can perpetuate the notion of a 'police state' and unnecessary intrusion that has little to do with terrorism but more with state control.¹⁵⁷

It has been suggested that section 38B(1) creates 'inactivity' as an offence.¹⁵⁸ The words 'of material assistance' are crucial, thus information that is ambiguous does not compel disclosure. *Attorney General's Reference (No. 3 of 1993)*,¹⁵⁹ held that the mere belief that a terrorist offence had occurred was insufficient, and the prosecution had the burden of proving that the terrorist act had been committed. However, Walker observes that section 38B(1) covers situations where the offence may or 'would be committed.' The element of the section 38B involving *mens rea* was tested in *Sheriff*¹⁶⁰ when the courts held 'that it was not sufficient for the prosecution to establish that a defendant had closed his eyes, but that the jury was entitled to conclude, if satisfied that he had deliberately closed his eyes to the obvious because he did not wish to be told the truth, that

¹⁵⁶ Section 38(1) : 'This section applies where a person has information which he knows or believes might be of material assistance - a) in preventing the commission by another person of an act of terrorism, or b) in securing the apprehension, prosecution or conviction of another person in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism.'

¹⁵⁷ Walker C. (2010b) 'Conscripting the public in terrorism policing: towards safer communities or a police state?'

Crim. L. R. 2010, 6, 441-456.

¹⁵⁸ Walker C. (2010b) op cit.

¹⁵⁹ [1993] N.I. 50 at 56.

¹⁶⁰ [2008] EWCA Crim 2653; [2009] 2 Cr. App R. (S) 33 (p.235).

the fact was capable of being evidence to support a conclusion that the defendant either knew or believed the fact in question.¹⁶¹

The breadth of section 38B is underlined by four instances where no defence is offered under section 38B(4).¹⁶² Firstly, it is telling that there is no concession to the emotional ties created by the proximity of relationship of the one participating in terrorist activity and the one who is legally compelled to disclose information. The second context involves legal privilege. Although Lord Denning in *Sykes*,¹⁶³ preserves privilege for solicitors, medical and ecclesiastical professions, the current guidelines issued by the Law Society provide that privilege does not apply in cases where there may be 'serious bodily harm', and thus the defence under section 38B(4) is not applicable.¹⁶⁴ The third area identified by Walker is that of the right to silence, to ensure that the suspect does not self incriminate. Although case law precedent has preserved the 'privilege against self incrimination'¹⁶⁵, nevertheless the catastrophic consequences of terrorism, renders silence under section 38B as withholding information and therefore the offence under section 38B is enforced. In a similar vein, Walker comments that journalists are compelled just as other civilians to disclose information and that this therefore emphasises the priority of public safety.

The importance of this offence ensures that, '... it will be the seriousness of the terrorist activity about which a defendant has failed to give information which will determine the level of criminality, rather than the extent of the information which could be provided which will affect the sentence.'¹⁶⁶ However, Walker comments that it is 'troubling' that the prevention of harm principle takes precedent over the 'culpability of the accused.'¹⁶⁷ Nevertheless, there is the recognition of the importance of section 38B when appropriately utilised in circumstances when there is 'evidence of involvement in terrorism;' when police have evidence such as in the case of

¹⁶¹ Ibid at [27].

¹⁶² Walker C. (2010b) op cit at 445.

¹⁶³ [1962] A.C. 528 at 564.

¹⁶⁴ Walker C. (2010b) op cit at 446.

¹⁶⁵ *H M Advocate v Von* 1979 S.L.T (Notes) 62 HCJ. Lord Ross states, 'If Parliament had intended to make statements of suspects admissible against them in the event of their being subsequently charged I would have expected Parliament to have made that clear.' [at 64].

¹⁶⁶ *Sherif* [2008] EWCA Crim 2653; [2009] 2 Cr App R (S) 33 (p.235) at [45].

¹⁶⁷ Walker C. (2010b) op cit at 450.

the 21/7 bombers, where information is crucial to prevent terrorism; where 'active bystanders' have information and 'passive bystanders' such as family members have knowledge.¹⁶⁸

The importance of section 38B for prevention, and protection from terrorism is undermined by the lack of evidence on its effectiveness. The Jellicoe Report¹⁶⁹ stated: 'the section is of significant value to the police service, but that service could operate without it if required you do so.' Its 'crippling effect' on the media creates 'genuine doubts about its implications in principle and about the way it might be used in the course of interviewing someone . . . it has an unpleasant ring about it in terms of civil liberties.'¹⁷⁰ It is submitted that legislation such as section 38B mirrors the 'informer's society which exists in totalitarian states,'¹⁷¹ a view that is paraphrased by the participants interviewed, 'It's like big brother Russian style.' Int. 23. Walker argues that the priority of 'social responsibility' dominates and dictates legislature's goals with limited consideration to its adverse effects to society and communities within it.¹⁷² However the participants interviewed voiced concern and anxiety about the legislation, 'It's like I didn't at first want to be interviewed, I'm afraid of being accused of doing something or not reporting something that I know nothing about. I read about this withholding information stuff and it really scared me.' Int. 16. Another participant reiterated his feelings on section 38B,¹⁷³ 'I agree with the law but how do I know when to be suspicious and report people, like I said what if someone is staying with me, and I didn't know that he is a terrorist, but he turns out to be one, who's going to believe that I knew nothing.' Int.13.

7.5 Financing of Terrorist Organisations

Financing is said to be pivotal to the existence and expansion of the terrorist activity,¹⁷⁴ and thus it is fitting that counter terrorism financing be discussed here. Some participants also recognised

¹⁶⁸ Ibid at 451.

¹⁶⁹ Jellicoe Report (1983) *Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976*, Cmnd 8803, para 222.

¹⁷⁰ Lord Shackleton (1978) *Review of the Operation of the Prevention (Temporary Provisions) Acts 1974 & 1976*, Cmnd 7324, paras 132, 133.

¹⁷¹ Mikado I. (1976) Hansard HC Vol. 904, col. 475, January 28 1976.

¹⁷² Walker C. (2010b) op cit at 455-456.

¹⁷³ Although he never referred to section 38(B) merely on its contents.

¹⁷⁴ Sproat P.A. (2008) 'Counter terrorist Finance Policies in the UK: The Silver Bullet for Terrorism?' in Moran J. & Phythian M. (editors) *Intelligence, Security and Policing Post – 9/11 The UK's response to the 'War on Terror'*. Hampshire: Palgrave Macmillan at p.79.

the importance of the government's counter terrorism financing measures, whilst others expressed concern. The significance of counter terrorism financing has been recognised by the British legislature prior to September 2001, when this issue became the focus of the international arena. Prevention of Terrorism Act 1989, Part III was based on the opinion that '[m]oney is a crucial factor in the continuance of terrorism.'¹⁷⁵ Moreover, it has been highlighted in Chapter Two that the terrorist organisations in Kashmir have allegedly received considerable funding from British residents. Thus, an assessment of counter terrorism financing is a pre requisite for the effectiveness of CONTEST policies addressed in the previous chapter.

7.5.1 Overview of the UK Counter Terrorism Financing Legislation.

Part III of the Terrorism Act 2000 encompasses legislation which 'exceeds the demands of the United Nations Convention for the Suppression of the Financing of Terrorism.'¹⁷⁶ The legislation is further extended by the powers bestowed by the Anti Terrorism, Crime and Security Act 2001. However the 'tangible' offences are addressed by the Terrorism Act 2000,¹⁷⁷ and the broad definition of 'terrorist property' in section 14 has the aim of curtailing all possible avenues of terrorist finance activities. Section 15 prohibits fund raising when a person has the 'reasonable cause to suspect' that it could be utilised for terrorism,¹⁷⁸ therefore actual awareness of the events is crucial for prosecution under section 15.¹⁷⁹ In *R v McDonald, Rafferty & O'Farrell*,¹⁸⁰ members of the real IRA were prosecuted under section 15 (and section 17). They believed that they were purchasing weapons from a Iraqi agent, who was actually a CIA and British security service agent.

Section 16 creates the offence of possessing finances or materials that have the potential to be used for terrorism. As with section 15, Sproat argues that there must be 'reasonable cause to

¹⁷⁵ (1983) *Report of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976*, Cm 8803, London: HMSO at para 213. See also: Walker C. (2000) 'Briefing on the Terrorism Act 2000', *Terrorism and Political Violence*, Vol. 12:2 at 1-36.

¹⁷⁶ Walker C. (2009) op cit at 74. see A/RES/54/109. Cm 4663, London, 1999, art 1. See also Legal Department of the IMF (2003) *Suppressing the Financing of Terrorism: A Handbook for Legislature Drafting*. Washington DC: IMF, at p.5. However, Walker argues that 'such a wider approach may be warranted by the UN Security Council Resolution 1373 (2001), art 1(c).

¹⁷⁷ Walker C. (2009) op cit at 74.

¹⁷⁸ Sproat P. (2010) 'Counter terrorist finance in the UK: a quantitative and qualitative commentary based on open - source materials.' *J. M. L. C. (2010)*, 13(4), 315-335.

¹⁷⁹ Walker C. (2009) op cit at 74.

¹⁸⁰ [2005] EWCA Crim 1945.

suspect' for prosecution under section 16.¹⁸¹ Section 17 prohibits 'funding arrangement' that may be used for terrorism purpose. Section 18 creates the offence related to terrorist 'money laundering.' For each of these offences, the gravity of the crime is reflected by the custodial sentence of up to fourteen years. In addition an omission to report as governed by section 19 creates the offence.

The Anti Terrorism, Crime and Security Act 2001, 'supplements' the counter terrorism financing powers issued in the Terrorism Act 2000; it introduced 'account monitoring and customer information orders, and extra powers to freeze the assets of overseas bodies or residents.'¹⁸² Additional powers are implemented by the Counter Terrorism Act 2008, Schedule 7, which is viewed as '... very potent regulations with the ability to require, at the say - so of the Treasury, a business to completely cease trading with another business or with the whole of a Government. In fact, they constitute some of the widest powers on finance matters that I can remember coming through the House.'¹⁸³ An example of its operation is that of the 'Financial Restrictions (Iran) Order 2009.'¹⁸⁴ Thus 'in response to the risks posed to the national interests of the UK'¹⁸⁵ by Iran's plans of nuclear weapons, Parliament was presented with a request to impose 'restrictions' on Iran's financial institutions. 'This was the first use of powers under Schedule 7.' The order prohibited those in the financial services from working with Bank Mellat or indeed the Islamic Republic of Iran Shipping Lines. According to the Treasury, Sarah McCarthy-Fry, both organisations are actively involved in the advancement of Iran's nuclear plans.¹⁸⁶ As observers have commented this demonstrates the 'far reaching . . . effect' of Schedule 7 Counter Terrorism Act 2008.¹⁸⁷

Any redress to the evidence submitted is governed by the umbrella of national security and thus a 'lack of disclosure' inevitably effects the challenge. In addition, a breach of directions may lead to a custodial sentence of up to two years, and thus Parliament scrutiny should be accordingly

¹⁸¹ Sproat P. (2010) op cit at 315-335.

¹⁸² Walker C. (2009) op cit at 74.

¹⁸³ Baroness Miller, Hansard, HL col. 586 : November 11, 2008.

¹⁸⁴ Rees G. & Moloney T. (2010) 'The latest efforts to interrupt supply lines: Schedule 7 to the Counter-Terrorism Act 2008.' *Crim. L. R.* 2010, 2, 127-135.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Rees & Moloney (2010) op cit at 127-135.

forthcoming and observed for all 'orders'.¹⁸⁸ The crucial feature of this legislation is the capacious powers it has bestowed on the Treasury which can either follow the lead of the Financial Action Task Force (FATF) or act unilaterally.

These capacious powers provided to the Treasury are further extended by the Terrorist Asset-Freezing Etc. Act 2010. These powers enable the Treasury to freeze assets of individuals and groups in the United Kingdom and abroad, on the 'reasonable belief' that they are involved in terrorism. No conviction of the individuals is required for these powers to be enforced. The basis of this reasonable belief is to protect the public from terrorism.¹⁸⁹ However Anderson recommended that the Treasury should justify its actions to Parliament, and promote transparency through 'quarterly reports'.¹⁹⁰

7.5.2 Effectiveness of the Counter Terrorism Financial Crimes.

In examining the effectiveness of the said legislation, Sproat found any analysis 'problematic'.¹⁹¹ Nevertheless, Sproat found that 'seventy four counter terrorism finance charges' occurred between 11 September 2001 and 31 July 2007, which consisted of seventeen per cent of the total charges under the powers issued by the Terrorism Act 2000.¹⁹²

The 'problematic' nature identified in the above paragraph, was addressed by Anderson's evaluation of the counter terrorism financing.¹⁹³ The importance of the legislation is underlined by several high profile convictions. One example is that of the two Algerian men: Brahim Benmerzouga and Baghdad Meziane¹⁹⁴, who raised two hundred thousand British pounds 'for terrorist causes'.¹⁹⁵ Mr Justice Curtis in sentencing emphasised the need to consider the severity

¹⁸⁸ And not merely for those governing as is the present situation, in a country where it is 'against the whole financial sector or a description of persons within that sector.' Rees & Moloney, *ibid*.

¹⁸⁹ Anderson D. (QC) (2011) 'First Report on the Operation of the Terrorist Asset-Freezing etc. Act 2010' London: The Stationery Office. December 2011, at p.3-4.

¹⁹⁰ *Ibid* at p.4.

¹⁹¹ Intelligence and Security Committee (2009) *Could 7/7 have been Prevented? Review of the Intelligence on the London Terrorist Attacks on July 2005*. London: HMSO, May 2009, pp.88-9: 'that such a simple, yet essential, piece of the evidence base - the successful conviction of terrorists - was not only unused, but was not even available.'

¹⁹² Sproat P. (2010) *op cit* at 315-335.

¹⁹³ Anderson D. (QC) (2011) 'First Report on the Operation of the Terrorist Asset-Freezing etc. Act 2010' London: The Stationery Office. December 2011.

¹⁹⁴ *R v Meziane* [2004] EWCA Crim 1768.

¹⁹⁵ Sproat P. (2010) *op cit* at 315-335.

of the offence namely, the 'conspiracy to defraud in respect of banks and credit card companies and entering into a funding arrangement for the purposes of terrorism.'¹⁹⁶

The Intelligence and Security Committee¹⁹⁷ states that section 17 Terrorism Act 2000 offences were utilised to convict Komoka, Bourouag and Abusalama in 2007. In the same year Hasan Mutegomgwa was convicted under section 17. In 2008, (Omar Trevor Brooks) Abu Izzadeen, Simon Keeler, Shah Jalal Hussain, and Abdul Muhid were convicted under section 15 of the Terrorism Act 2000. The custodial sentences awarded to them reflected the seriousness of the offences, and re-emphasised to those sympathetic to terrorist activity that terrorist financing results in severe consequences.¹⁹⁸ Such examples have resulted in the FATF to conclude:

'The provisions criminalising terrorist financing under sections 15-18 of the TACT [Terrorism Act 2000], read together with the definitions in sections 1 and 14 have a very wide coverage. The UK authorities are firmly of the opinion, and the evaluation team agreed, that this is sufficient to ensure the successful prosecution of the provision or collection of funds for use by terrorist organisations and individual terrorists.'¹⁹⁹

However, there was the recognition and acknowledgement that for the legislation to be completely effective global co-operation is crucial.²⁰⁰ Perhaps what is of greater significance is that counter terrorism financing via the Terrorism Act 2000 is viewed as a 'key intelligence role,'²⁰¹ and indeed '[e]nquiries following the attacks of 7 July and attempted attacks of 21 July demonstrated the critical role of terrorist finance investigation in progressing specific enquiries and establishing an enhanced intelligence picture.'²⁰² In addition, it has been argued that the counter terrorism financing investigations have been used to 'identify' 'the warning signs of

¹⁹⁶ Ibid. See also Anderson D. (2011) op cit at p.38.

¹⁹⁷ Intelligence and Security Committee (2009) *Could 7/7 have been Prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005*. London: HMSO, May 2009.

¹⁹⁸ Sproat P. (2010) op cit. at 315-335.

¹⁹⁹ FATF (2007) op cit s.165 at p.46.

²⁰⁰ Sproat P. (2010) op cit at 315-335.

²⁰¹ HM Treasury (2007) *The Financial Challenge to Crime and Terrorism*. Home Office, Serious and Organised Crime Agency, and Foreign and Commonwealth Office. London: HM Treasury. February 2007.

²⁰² HM Government (2006) *Countering International Terrorism: The UK's Strategy*. London: HMSO, July 2006, s.78; p.20.

criminal or terrorist activity.²⁰³ Thus in the words of Lord Carlile of Berriew QC, 'The powers for the seizure and forfeiture of terrorist cash and property remain useful and necessary powers, though there are some problems with the collection of statistics.'²⁰⁴ These words were echoed by Anderson (QC) three years later.²⁰⁵

The July 2005 bombings and subsequent 21 July plot may be viewed as 'self funded'. However there are those that have actively sought funding from al-Qaeda, such as Dhiren Barot,²⁰⁶ thus emphasising the need for perpetual scrutiny. The Joint Money Laundering Steering Group website provides that 'suspicious' activity reported by the bank that an individual with a salary of twelve thousand per annum, had a turnover of two hundred and fifty thousand, upon investigation it transpired that the funds were linked to terrorist organisation and that there was no individual in existence.²⁰⁷ 'This fraud resulted in over eight hundred thousand being fraudulently obtained.'²⁰⁸

Nevertheless, there are limitations to the counter terrorism finance initiatives, as observed by a senior member of a national counter terrorism financial organisation, 'In terms of domestic terrorism, people who are determined to attack the country in which they reside, the banks have really no chance under this system of identifying suspicious behaviour unless through some sheer fluke.'²⁰⁹

There is also the view²¹⁰ that counter terrorism finance legislation and regulations have produced 'inefficiency and waste,²¹¹ and that 'Suspicious Activity Reports, sensitive to political considerations, now flood the systems, making it difficult to separate the wheat from the

²⁰³ Sproat P. (2010) op cit at 322-3.

²⁰⁴ Lord Carlile of Berriew QC (2009) *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*. London: Bell Yard. June 2009.

²⁰⁵ Anderson D. (2012) op cit.

²⁰⁶ Sproat P. (2010) op cit at 326.

²⁰⁷ Cited in Sproat P. (2010) op cit at 315-335.

²⁰⁸ Sproat P. (2010) . op cit at 327.

²⁰⁹ BBC Radio 4 (2008) 'Transcript of the File on 4 - financial war on terror,' 3 June, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/03_06_08_f04_terror.pdf. Indeed in relation to the 7 July 2005 bombers, it was observed 'To my recollection there was no significant information on these particular people, but then again the financial activity was at a very low level, the majority of them only used cash that they withdrew from the benefit payments or whatever low paid jobs they had at the time, so there was very little opportunity for them to actually come to the notice of the banks to the extent that they would submit a Suspicious Activity Reports'. BBC Radio 4 (2008) op cit at pp.13-14.

²¹⁰ Donohue L.K. (2006) 'Anti terrorism finance in the UK and the US,' *Michigan Journal of International Law*, vol.27, pp.303-435.

²¹¹ Sproat P. (2010) op cit at 329.

chaff.²¹² In addition, Donohue submits that stringent regulations have resulted in the counter terrorism finances moving to territories that are extremely difficult to identify.

Donohue's third criticism is that counter terrorism financing has had a detrimental effect on charities, thus alienating 'important allies both at home and abroad.'²¹³ This detrimental effect is voiced commonly by of the British Kashmiri Muslims interviewed, 'Financing was sent for the poor and now they are suffering, now we are not even allowed to sent money to our families, we never funded terrorists. Also banned money to madarasses, it's wrong.' Int. 11. However Sproat argues that this assertion submitted by Donohue on charities, is incorrect and that 'there is little hard evidence' that the counter terrorism legislation on finances has had any 'negative impact on charities.'²¹⁴ The data analysis reveals that the participants interviewed contradicted some of Sproat's assertions, 'sometimes people sending money to the charities - the right people - if British government says we are sending to terrorist it's wrong.' Int. 14.

The fourth criticism is that such regulation and legislation is 'counter productive' since terrorist organisations have commenced diverting the money from 'paramilitary' to 'political activity.'²¹⁵ The participants interviewed had some reservations on the limits to financing, 'If can be proved terrorists - then limit finances - without prove it is not enough, as is the present.' Int. 12. (In other words, it is asserted that if the government can prove that persons are terrorists then the finances should be limited. However, without any prove of their terrorist involvement, as in the present case, then the finances should not be limited). One participant bluntly stated, 'when no evidence of their acts . . . it's a person's personal choice, paid tax, it's up to them who they pay or not, not the government's obligation. To me it's another way of state policing.' Int. 23. There was also the difficulty of distinguishing between 'freedom fighters' and 'terrorists', 'Any financing of terrorists should be prohibited but freedom fighters - that is a difficult one.' Int. 27. Donohue submits that counter terrorism financing 'initiatives have been spectacularly unsuccessful in making a significant dent in terrorist operations.'²¹⁶ This assertion is disputed by those who 'claim that counter terrorism financing initiatives have had some success in ending planned terrorist

²¹² Donohue (2006) op cit at 307.

²¹³ Sproat P. op cit at 329.

²¹⁴ Ibid.

²¹⁵ Sproat P. (2010) op cit 315-335 and Donohue (2006) op cit at 396.

²¹⁶ Donohue L.K. (2006) op cit at 390.

operations.²¹⁷ In addition, the Intelligence and Security Committee²¹⁸, acknowledges that 'the intelligence and security agencies and the police have prevented a number of attacks. Since 2000 they have prevented twelve terrorist plots in the UK. Most of these have taken place since CREVICE in 2004,' this includes the work undertaken by counter terrorism financing, which is described as 'one weapon amongst an arsenal.'²¹⁹ The counter terrorism financing work is seen as crucial to the on-going counter terrorism agenda.

This view is also echoed by some of the participants (albeit not as commonly), who endorsed the government's anti terrorism finance legislation, 'I agree with it - shouldn't be financing - when you give money you're as good as being the terrorist themselves.' Int.13. There was also the view that proscription of the groups should extend to finances, 'If these groups are banned should limit funds too.' Int. 7. Others were keen to express their compliance with the law, 'We request all not to finance we are peaceful citizens of this country,' Int.18.

However, more equivocation occurs, 'where funds are sent by expatriates back to the region [such as Kashmir], there are not just reasonable, but strong grounds to suspect that they are to be used for terrorist purposes.'²²⁰ A view that is commonly contradicted by the data analysis, 'Limits on financing not really interested, but created problems for people to send money innocently. I send money to parents and if I send it one lump sum, if buying land or a house, I cannot, I am wary even though innocent and legal.' Int. 16.

7.6 Conclusion

A responsible society is compelled to eliminate terrorist activities. In order to do this the counter terrorism legislation has to balance the national security agenda and the individual's rights to a fair process as well as maintaining community endorsement.²²¹ The preceding discussion has established that the laws on terrorist activities discussed in this chapter have caused concern in one British Muslim community, whose co-operation is vital for counter terrorism to be effective.

²¹⁷ Sproat P. (2010) op cit at 330.

²¹⁸ (2009) op cit at p.55.

²¹⁹ Sproat P. (2010) op cit at 331.

²²⁰ Alexander R. (2009) 'Money laundering and terrorist financing: time for a combined offence.' *Comp. Law* 2009, 30(7), 200-204.

²²¹ Scheppele K. L. (2011) 'Global security law and challenge to constitutionalism after 9/11.' *P.L.* 2011, April, 353-377.

The participants interviewed reflect and mirror the discourse surrounding legal and academic commentators. 'Alarm bells are justifiably rung by the executive's possession of a wide and largely unconstrained discretion affecting the lawfulness of political and religious groups.'²²²

The research findings emphasise and re-emphasise that terrorism activity is not justified and should be punished, but the difficulty arises on the issue of what is terrorism. The participants interviewed are divided and perplexed by the laws on proscription of international groups; they question as to why the United Kingdom considers the Kashmiri 'freedom fighters' as they described them, as terrorists. The government's 'Manichean debate,'²²³ of 'either you are with us or against us' is difficult for the participants to accept. They view themselves as 'with' the government, yet do not agree with the government's stance on Kashmiri 'militants', who they believe are not a threat to the British national security. However, as emphasized at the outset, international solidarity together with national interests dictates the UK's counter terrorism legislation. The 'chill'²²⁴ on community relationships may be viewed as an inevitable consequence by some, but the government's aim is to protect its citizens and diminish terrorism.

The interviewees felt threatened by some areas of law. They commonly recognised the need to curtail speech promoting terrorism, but feared that they may inadvertently be implicated by unknowingly saying 'the wrong thing.' (Int. 13), or not reporting information that they should know but have no knowledge of, an example given by one participant was that if a guest was staying with them, and was a terrorist, who would possibly believe that the participant had no knowledge of the guest's terrorist links. Similarly they questioned the terrorism financing, and its implications on the individuals compelled to financially assist those in their place of birth, namely, Kashmir. There is no clear cut answer to such genuine anxieties experienced by the participants of this Muslim community. One partial answer may reside in the pressing need to 'listen to and act on the grievances of community,'²²⁵ to ensure that support for terrorism is eliminated and the counter terrorism strategies prevail. This can ultimately only be achieved by the additional recognition that there is the overwhelming need for education, and to inform

²²² Lynch A., et al. (2009) op cit at p. 25.

²²³ Walker C. (2011) op cit at p.109.

²²⁴ Cram I. (2009) 'Terrorism investigations and the coerced disclosure of journalists' materials.' *Comm. L.* 2009, 14(2), 40-45 at 44.

²²⁵ Moran J. & Phythian M. (editors) op cit at 229.

communities that the law is balanced with rights for each individual irrespective of their religion or place of origin.

There may be the further 'danger of net-widening surveillance.'²²⁶ Nevertheless, the significance of some of the powers discussed under the counter terrorism legislation cannot be ignored, curtailing activities may have created the 'police state' articulated by some of the interviewees, but certain activities have to be curtailed. As terrorism is increasingly lethal the government's response has to mirror those activities to preserve national security. Yet equity in law can only be achieved with appropriate and balanced judicial re-dress that at present this is not always forthcoming. In the words of Lord Bingham: 'Security concerns do not absolve member states from their duty to observe basic standards of fairness.'²²⁷ Thus, the concluding Chapter Eight will focus on the lessons to be learned and recommendations to be made.

²²⁶ Walker C. (2009) op cit at 386.

²²⁷ In *Sheldrake v Director of Public Prosecutions; Attorney General's Reference (No.4 of 2002)* [2004] UKHL 43 at para. 21.

The purpose of this chapter is to conclude the thesis with a discussion about the analysis and findings presented in the preceding chapters. It has been established that the ongoing terrorism threat is interlinked with Islam and Muslim communities. Hence the focus of the counter terrorism legislation is on the Muslim communities. This thesis has identified one such Muslim community, and via a qualitative study highlighted the effectiveness or in some cases the counter-productive anxiety that the counter terrorism legislation has created for the participants of the British Kashmiri Muslim community.

8.1 The Rhetoric and Reality

The basic premise of the research as identified by Chapter One was to test whether the legal conception of terrorism and the implications of counter terrorism laws are in conflict with the views of the British Kashmiri Muslims. In addition, it was an objective to identify whether the clash is because of the manner of implementation of British law, or the manner of implementation of the 'Kashmiri' culture combined with Islamic beliefs. It has been established initially in Chapter Four that whilst the participants accepted the legal definition of terrorism as identified by section 1 of the Terrorism Act 2000, the clash arose from the manner of the implementation of the said counter terrorism law. They could not accept how the foreign fighters such as those in Kashmir could be perceived as terrorists, and they commonly viewed them as those legitimately fighting for self determination. Moreover, the clash arose not necessarily because of their Islamic beliefs, since they unanimously accepted that their religious faith as identified in Chapter Five, did not support terrorism. However, their view of terrorism is influenced and affected by the historical and present situation in Kashmir, about which many of them have decided views. Furthermore, as highlighted in Chapters Six and Seven, they viewed the British foreign policy, such as the events in Iraq and Afghanistan, as a catalyst that created support for terrorism, and ultimately hindered counter terrorism work in their locality. Whilst they felt protected by the local police, they were overall threatened by the national counter terrorism measures as discussed in Chapters Six and Seven.

8.2 Analysis of the Reality

It may be simplistic to state that Muslims are responsible for the terrorism, but it is equally simplistic to claim that Muslims are not tainted by those claiming to commit terrorism in the name of Islam. There is indeed an inevitability that the focus of media attention will be on Muslim communities. However the objective eye of the law requires and dictates that decisions should not be ruled by emotions but be based on facts. Overzealous implementation of the anti terrorism legislation hinders the community co operation that is vital for counter terrorism.

The broad definition of terrorism discussed in Chapter Four does little to solve the predicament regarding those insurgents that are perceived as 'freedom fighters' by some and 'terrorists' by others. This is the conflict that appears to exist with the British Kashmiri Muslims interviewed and the government's stance on the Kashmiri 'terrorist groups'; the participants struggle to accept that they are terrorists when they do not directly affect the United Kingdom's national interests. Saul's solution is to formulate an 'international definition' of terrorism that recognises 'legitimate forms of violent resistance to political oppression,'¹ and thus they would have to adhere to the international legislation on armed conflict and be liable for 'war crimes.' In recognising the 'terrorist' in Kashmir as those fighting for self determination as some of participants interviewed view them, there would also be the official recognition of the ongoing Kashmiri dispute. The ascription of the label 'Terrorism', referred to as 'moralised name calling',² offers no long term solutions for the dispute. Saul succinctly states that 'it is not possible coherently or systematically to describe, analyse, understand or ultimately counter the threat posed by terrorism unless there is basic agreement on what constitutes it.'³

In Chapter Two, it was presented that the conflict in Kashmir continues to remain unresolved. Significantly, the discourse in Kashmir is being exploited by the extremist elements to create and perpetuate sympathy for terrorism. British Kashmiri Muslims are particular vulnerable because of their marginalization. The allegation is that their identity and their status in society is eroded by their Pakistani 'counter parts' who perceive them as 'inferior'; their religion differs from the

¹ Saul B. (2006) *Defining Terrorism in International Law*. Oxford: Oxford University Press, at p.317.

² Wardlaw G. (1982) *Political Terrorism: Theory, Tactics and Counter measures*. Cambridge: Cambridge University Press at p.8.

³ Saul B. (2006) op cit at 320.

majority Christian faith, coupled with underachievement in the education system, they face social isolation and disenfranchisement. It is perhaps not surprising that out of the various origins of Muslims residing in the United Kingdom, that the majority of the 'home-grown' jihadis are of Kashmiri - or 'Mirpuri' origin. Chapter Three highlighted that all the participants interviewed are of 'Mirpuri' origin, and they encapsulate the 'identity' predicament faced by the British born generations. The dynamics facing these individuals⁴ are also epitomized by the identification of themes and typologies, discussed in Chapter One from the fieldwork data.

8.3 Themes and Typologies

It is accepted that each person's contribution to the research findings is distinct. Nevertheless on closer scrutiny there are common and similar responses which are categorized below.⁵ These form the basis of the thesis findings and understandings of the British Kashmiri Muslims. It is important to re-emphasise that these findings may not represent the general or popular views of British Kashmiri Muslims across the country, however, they represent the views of the participants in this fieldwork. It is important to note that these common or similar responses are not ideal types but used to highlight aspects of the research findings.

8.3.1 The Dismissive.

The Dismissive are those that are of the second and third generation British Kashmiri Muslims. These were construed by identifying their responses to questions specifically on the situation in Kashmir. Although they identify themselves as Muslims, irrespective of whether they are practicing or not, they have no awareness or concerns about their ancestral land. They identify themselves as British' not 'British Kashmiri', when informed that the researcher was interviewing British Kashmiri Muslims. One interviewee effectively described her feelings, 'I don't really know about Kashmir – not exposed to the war over there, difficult to have an opinion of it having been brought up over here. It doesn't have an impact on me at all.' Int.22. There was embarrassment at the fact that Kashmir was not a significant factor in their lives, 'I feel embarrassed. Sorry, don't know anything at all about it.' Int. 23. Another comment was 'not well read up on it.' Int.1. Some expressed no embarrassment or apologies for their lack of knowledge

⁴ Discussed in chapter six also.

⁵ Some of the categories/views overlap, and therefore are identified accordingly.

or awareness of the situation in Kashmir, boldly stated, 'I am indifferent to it,' Int. 2 and 'what situation? You describe [to] me the situation.' Int. 25. The Dismissive are successfully summed by one participant who states on Kashmir, 'I have to have a view, I'm not really that fussed. It's not my area, why should I get involved.' Int. 26.

Although this group was 'indifferent' to the situation in Kashmir, it was not to the issues surrounding Muslims around the world: 'I am not too concerned about Kashmir, more concerned about Palestine and Iran, do you know all the atrocities going on out there.' Int. 8. 'What is happening in Palestine is disgusting', Int. 26; 'I don't know a huge amount about Kashmir, no political position on that but I can understand why someone in West Bank or Gaza would commit terrorism because they have no power to do anything, but I could not be sympathetic towards it. Understanding is different from sympathy.' Int. 15. Their main source of knowledge was obtained from 'what is conveyed in the media.' Int.23.

8.3.2 Advocates of Kashmir

Unlike the Dismissive, the Advocates of Kashmir had considerable awareness of the political situation in Kashmir, and perhaps not surprisingly were more articulate. This group was also construed from their responses on Kashmir. They consisted of first and second generation British Kashmiri Muslims. This group was in unison in declaring that the situation in Kashmir is 'diabolical. I think international community should do more. In 1947, when partition happen, there was UN resolution but no action was taken, nothing happened. Iraq and Iran threatening to ban them, why are there rules for one community and another for others. Pakistani Administered Kashmir, they have taken off Gilgit, the best part of Kashmir. Everyone is using and abusing Kashmir, the UN, I mean the Americans, they are the UN, it only serves American needs.' Int.13.

The Advocates of Kashmir spoke passionately about their views in Kashmir, 'Situation in Kashmir is depressing, the people over there are suffering, the rest of the world is ignoring them. I'll divide this response into two since Kashmir is in two parts. Pakistani administered Kashmir which some describe as Azad Kashmir, is an oxymoron to me, it suffers at the hands of Pakistan financially and politically. Financially because Pakistan is using it, takes its resources and gives nothing in return. Politically because there is no democracy, it's a puppet government of

Pakistan; if they disagree they are sent to prison or banned. Indian administered Kashmir is worse still, there is no freedom of movement, what is worse is the abuse to the women, girls as young as nine are being raped by the Indian army. The abuse is government sanctioned; everyone turns a blind eye to the atrocities that the army is committing there. I want you to write this in your thesis: Muslim women are raped by the army as a way of demoralizing the men and the whole community, and then these women are further abused by the community who shun them as though it was their fault. They also line up men and boys, shoot them or take them away. People, Muslim people are living in constant fear in that part of Kashmir. So is it any wonder that they retaliate with anger. With such abuse, your rationality will disappear, and you will want revenge will you not? As Shakespeare said, 'If you prick me do I not bleed? If you tickle me do I not laugh? If you poison me do I not die? If you wrong me, shall I not revenge?' there I've said it all.' Int.27.

Some shared their personal accounts of what they had witnessed during their visits to Indian Administered Kashmir. This perpetuated their need for advocating and asserting on behalf of the Kashmiris. 'It's unfair, inhumane what is happening in the Indian controlled Kashmir, against the United Nations and Human Rights, because India has the strength and population, so they fear loss of business, so people are not speaking out because benefits from India. Seen children and women done things that I cannot discuss with you because you are a sister, and murdered. People defend their rights; want independence not terrorism. What they do there is against humans especially the shameful things to our sisters.' Int. 11. Another participant described his experiences, 'Indian army and government treating people inhumanely, been to Kashmir, visited in 1998, viewed it all, it's terrible. Here in England because of Indian pressures Kashmiris are detained forever, yet the judge gave sentence of seven years, that passed long time ago. I have visited them in prisons here. They keep as what you call political prisoners.' Int. 12.

The Advocates viewed the situation, the conflict in Kashmir as a legitimate war, and not terrorism. 'They are not terrorists but freedom fighters, they just want independence.' Int. 12. 'Kashmir is not terrorism. Only fight for their rights. One man's freedom fighter is another's terrorist. It's against American agenda, until 15-20 years they called them freedom fighters.' Int.13.

Their criticism was not just leveled at the Indian government, 'Pakistanis treat us unfairly, and there is no electricity yet in Pakistani part of Kashmir. Kashmir should be independent of both Pakistan and India.' Int.9. However the situation on the Indian side was seen to be harder to live with, 'Pakistani controlled Kashmir is better than Indian controlled Kashmir, they are not using force against us . . .it's not ideal but at least we have the freedom of movement. We are not tortured. It's not democratic, our resources are drained by Pakistan, they only use us.' Int. 16.

Unlike the Dismissive, who believed that there was 'no role for the British government.' Int.2. The Advocates believed that Britain had a crucial role to play in finding a solution to the Kashmiri conflict, 'The best way forward is to talk. Only certain countries respected by both sides are from the UN: Russia, China, France, USA and UK. UK has a history of involvement in the area, maybe partly responsible for creating the mess there, could act as mediator.' Int. 7. However some were pragmatic as to Britain's limitations, 'There is a role for UK but all depends on how involved Muslim people are in politics, lobbying group could write and do something. I think Britain could but whether they will because India is helping them on war on terror. Its strategically important because of water, India won't give up; people of Kashmir are unfortunate caught in the middle.' Int. 17.

The issue of the UK's involvement in the Kashmiri dispute evoked some emotional responses from this group. 'The main role is USA, but UK if not considering its own benefit and did justice, could persuade the USA to do something about it. All the innocent that are dying there their blood is on UK's hands because they left the situation there, they are in a position to do something and should do so.' Int. 19. Voices were raised when asked whether the UK should be involved, 'Yes, they created the bloody mess, Lord Mountbatten and his elite, the EU, USA and all the superpowers could stop this tomorrow if they wanted to, they just don't care as long as it doesn't affect them personally.' Int. 27.

8.3.3 The British Patriots.

This group comprised perceived their Britishness to be a priority. This group comprised of first, second, third generations, both male and female. Their loyalty was first and foremost to their country, and they held a belief that all solutions could be obtained from the British system. They

were constituted by their response to whether there was anything the UK government could do that would create sympathy for terrorism, and from 'further comments'. 'I genuinely think that no society or government is perfect or well behaved. Countries with the highest morals are countries that look out for people weaker than myself, and these are the West. Misguided in opinion, for example, Iraq, but I could never turn against them. Most countries are flawed but the reaction of the West after July 2005, people saw that we were treated so well by the government and media. It changed a lot of opinion that Muslims are treated well by the UK.' Int.7.

The Patriots possessed the unwavering faith in the British system, 'This is my home. I am influenced by Western society. My home I will defend. And I won't go against Islam, I will use the political system to bring change, but not everyone can afford that and are easily influenced by extremist elements.' Int. 13. 'British society is great, but politics I disagree, but best place to live in the world. Pakistan would not let us in as the British have done, I have greatest respect for it.' Int. 8.

Accordingly, this group placed its trust in the law, 'make sure you write: the law and policing in this country is very good.' Int.3. They expressed and recognised that it was not a perfect system, 'I think as a country, we are extremely mature, we have one of the best legislation in the world. This country does not do things lightly, government is proud of expressing opinion. I trust the lawmakers in this country, sometimes reactionary after 9-11, personal freedom taken away, but it does happen. But we will find equilibrium in years again, as soon as things calm down.' Int. 8. The limitations of the British way of life were described as 'side effects of medicine, and we cannot survive without medicine.' Int. 19.

The Patriots expressed the need to defend their country, 'I am proud to be a British Muslim, and if needs must I will defend my country.' Int. 27. In addition some felt it necessary to undertake counter terrorist work, 'Need people amongst the government to keep an eye on things, need Asian to work with secret services. I would do it to protect the country. Only person that could access them is a fellow, Asian, Muslim male. People's opinions mellowed when they witnessed terrorism in their own country, in London, but I think that there may still be people out there still a danger.' Int. 7. The Patriots continuously expressed concerns for national security, and took personal responsibility for the British actions, 'We should stop aggressive foreign policy,

strengthen *our* own UK borders, increase national security to stop leading to terrorism. I think with less aggressive foreign policy, *we* will have decrease in terrorism.' Int. 20.⁶

8.3.4 The Advocates of Ummah

The Advocates of Ummah, unlike the Kashmiri Advocates were concerned about the worldwide Muslim perspective, and some were Dismissive of Kashmir. These were also construed from their responses to whether they could be sympathetic to terrorism, and their further comments. They viewed Islam as priority, contrary to the Patriots; British identity was secondary to their concerns for the Muslim Ummah. They expressed frustration in their current status; vexed at the West for 'demonizing Islam,' Int. 22, and in turn threatened by the law and government policies. The Advocates of Ummah consisted of second and third generation British Kashmiri Muslims.

It is perhaps not surprising that they were affected by international and national issues concerning Muslims. 'Things like making laws on burqa [veil], it affects me. Freedom to express our beliefs, what gives them the right to interfere. They are blatantly trying to attack Islam, in a way they are provoking sympathy towards terrorism. And it affects me because our people – Muslims at the end of the day, they are killing people for oil.' Int. 6. Theirs is the opinion that they are being indirectly and directly targeted for being Muslims, 'We are living in police state, adhere to what they are thinking or go to prison. No freedom of speech, victimisation, discrimination. I went to Jumma [Friday] lecture and a WPC was there. It's wrong, they wouldn't go to a normal talk.' Int. 23.

These Advocates did not feel as though they belonged to the society they lived in: 'I'm a traveler, not part of the Muslim community or part of Britishness, travelling through life.' Int.17. These sentiments were elaborated, 'I am conscious of being judged by people, inside and outside the Muslim community. People have stereotypes of Muslims, I struggle to have to set an example so they can go away and think maybe they are not at all that bad. I always find it shocking that people can't distinguish between propaganda and what is real.' Int. 22.

Accordingly, they felt threatened by the law and government policies. To illustrate an example for the purpose of this group, 'Law is disproportionate, more likely to be stopped if Asian or

⁶ Emphasise added.

Arab. It's harmful to inter community relations and damaging. Yet insignificant amount of people involved in terrorism: 230 people convicted in the two million Muslims. IRA, Abu Ghraib, Guantanamo, not learned any lessons, repeat the same mistakes.' Int. 17.

8.3.5 The Seekers

The Seekers belonged to second and third generation British Kashmiri Muslims. They could not, and did not, share the perspective of Islam that is practiced by their parents. They are an important group because they highlight the potential pitfalls discussed in Chapters Two and Five. Not knowing about Islam, and in their quest for knowledge, some encountered potentially dangerous routes, 'I wanted to learn about Islam, they took me to a café. It was spooky and dark, the guy started lecturing, and I realised it was trouble, so I quickly got out and never went back. They can brainwash you into thinking it's the real stuff, and they do it so cleverly that the cops don't ever go after them.' Int.20. Another said, 'Harkat Ul Mujahideen, terrorist group trying to recruit people in England, I was trying to find more about Islam on the Internet and they were trying to recruit, I never gave my details to them.' Int.6, when asked if he knew about the terrorist groups in Kashmir.

The difficulties encountered by the Seekers are summed up by one participant in response to which sect of Islam she practiced, 'I used to have no idea about religion, I learned things parrot fashion but did not know what it meant. I had a craving to learn about Islam, I knew more about Christianity, so whilst at University, I contacted a group and asked them to give me knowledge, I wanted to join their group. The woman on the phone had converted into Islam, I remember this vividly, laughed at me, she said, 'how can you be born Muslim and not know about Islam?' You have to understand my parents are illiterate, they tried their best, but their knowledge is only about what they got told not what they read, and a lot of their practices are cultural from India, not Muslim. So I taught myself, slowly, but it's hard, still hard. I can understand how people wanting to learn about Islam get into wrong groups, and learn the wrong things that are not Islam. You know to this day there is still a gap.' Int.27.

8.3.6 The Guardians

This group consists of both first and second generation. For the Guardians counter terrorist policies are secondary to their daily neighbourhood watch. It is important to highlight this group because they do not see terrorism as a major problem. Although their intentions are genuine meaningful, they reflect that priorities of a community may differ from the official priority of counter terrorism. Counter terrorism legislation and policies are a significant, life saving utility, however, for Guardians fighting illegal drugs is seen to be a more important agenda. In essence, what these findings highlight is that a balanced approach is necessary for successful incorporation of shared agendas.

They viewed the growing drug problems in their community as the evil of all evils. Terrorism to them was a distant problem; their immediate concern is the illegal distribution of drugs and gang warfare. Thus they resent the money and policing being utilised on what they perceive as a lesser threat, and firmly hold the opinion that priority should be given to fighting illegal drugs. The Guardians were described as 'the godfathers; they got rid of the dealers around here.' Int.2.

There was perplexity that the issue of drugs was not pivotal to the research. The focus on terrorism was seen to be purposeless by the Guardians, 'No-one, especially the law not doing enough, it should question the kids that drive forty thousand pounds cars, and drug addicts, instead of labelling all as terrorists. It is damaging to the community by focusing on one element of law: terrorism, and not illegal drugs, heroin, which is what is the real problem in the community.' Int.4. 'Problems not because of terrorism but because of money laundering drugs. When I deposit one thousand pounds [GBP], they say where did you get it from? When I withdraw they ask what are you going to do with it? A man of my age, I have worked hard all my life, and now made to feel like a criminal because of these drug dealers, it's all wrong.' Int.3. The theme of 'major drug problem in the area,' Int. 8, was reiterated by others who expressed their frustration at the police's perceived lack of intervention.

8.4 Further analysis

The above 'groups' emphasise the fact that even within one community there are varied opinions and priorities. It further highlights that whilst terrorism is a significant concern for some, it is not

a major or indeed the immediate concern for all, and thus counter terrorism is not always a priority. Their social needs as far the 'Guardians' are concerned, take precedence over any other criminal justice or national security agenda. 'Factionalism and in-fighting' within the Islamic theology is reflected in Muslim communities in the United Kingdom; perpetuating the confusion experienced by some of the British born Muslims who are not able to relate to the clash of culture with religion, as emphasised by 'The Seekers'. Significantly, when constructing their identities, the second and third generation of participants commonly emphasised their 'Britishness', and described themselves as 'British', irrespective of their individual views on the British government.

Islam is a religion that in the pre-colonial era was described as 'the best social and political order the times could offer. It prevailed because everywhere it found politically apathetic people robbed, oppressed, bullied, uneducated, and unorganised and it found selfish and unsound governments out of touch with people. It was the broadest, freshest and cleanest political idea that had yet come into actual activity in the world.'⁷ The image of Islam is now tarnished by misrepresentations, and authoritarian Islamic regimes. Thus as discussed in Chapter Five, Islam is regarded by some as a religion that advocates and sanctions terrorism. The majority of Muslims, including those interviewed by the author, categorically state that terrorism is not compatible with Islam. However there continues to exist a minority that acts and attacks in the name of Islam. It is thus crucial that the tensions that are exploited by those misrepresenting Islam are addressed. It is equally significant that the 'role models' within the Muslim communities continuously condemn the acts of terrorism, and simultaneously recognise the 'clashes' within society. *Prevent* work when effectively utilised could address these dynamics and enable the recognition of the core principles of Islam.

The core dilemma faced by the government is addressed by Moran and Phythian that there exist aspects of policing discussed in Chapter Six, and the legislation discussed in Chapter Seven that 'is seen as being aimed primarily at Muslims.'⁸ Indeed the participants interviewed believed that some aspects of the law viewed them as guilty simply because of their religion. The fear

⁷ Wells H. G. (1925) *The outline of History: Being a Plain History Life and Mankind*. London: Cassell at 613-14.

⁸ Moran J. & Phythian M. (2008) 'Conclusion: Future Directions in the "War on Terror"' in Moran J. & Phythian M. (editors) *Intelligence, Security and Policing Post - 9/11 The UK's response to the 'War on Terror'*. Hampshire: Palgrave Macmillan at p.223.

addressed by the author illustrates their severe anxiety and the diminished trust in the legislative process. Chapters Six and Seven identified that the counter terrorism policing and legislation is in danger of creating 'the increasingly unpalatable and counterproductive consequence of making no distinction between friend and foe.'⁹ However, the effectiveness of the neighbourhood policy cannot be underestimated. It is via such projects, for example those of Bradford and High Wycombe, discussed in Chapter Six, that enable the two sides to achieve permanent progress. The review of the *Prevent Strategy*, also discussed in Chapter Six, highlights some of the lessons learned in the mistakes made since its commencement, is an extremely useful tool for counter terrorism work. However, along with other allegations, *Prevent* has the task of re-instilling confidence in the communities, and overcome its link with espionage that has been identified by the participants of this thesis.

8.5 Overview of the Research Process

There are lessons to be learned and limitations have to be identified for future research. On reflection, the overall research process conducted for this thesis, as discussed in Chapter Three, worked well. The data generated were on aspects of counter terrorism policies and laws that were of importance to the interviewees. Their candid views identified areas that may not at first glance, appear to be related directly to counter terrorism, such as those of the Seekers and the Guardians, but are crucial in understanding this group, and their vulnerabilities and strengths.

The researcher was politely informed that the interview process was 'tiring' and too long for some of the first generation participants.¹⁰ As highlighted in Chapter Three, there were access difficulties with the females, some of whom refused to participate in a study that had 'terrorism' as a subject matter. The practical constraints of a self-funded PhD did not yield a sample representative of the general British Muslim population.

A salient feature that the research process generated was that of fear, as discussed in Chapters 3 and 6. It is imperative that researchers working in this field give due consideration to this issue. This is particularly significant because the emotion of fear may affect the scholarly aspect of the

⁹ Walker C. (2009b) 'Neighbour Terrorism and the All-Risks Policing of Terrorism.' *J. Nat'l Security & Pol'y* at 168.

¹⁰ To obtain a detailed data, the questions were all necessary.

research process, and in some circumstances halt the research itself. The level of fear in the community was such that the researcher whilst conducting the fieldwork, had concerns about 'bringing on' undue suspicion from the public authorities to the researcher herself because of the nature of thesis, and that the participants may also be at risk because of their involvement in the study. This fear experienced by the researcher was ultimately addressed via a reflective diary, and discussions with an understanding supervisor, both of which aided the writer to reflect that the fear is irrational, and that the research is a legitimate, scholarly study. These methods ensured that the data secured were not influenced by the researcher's personal feelings; the researcher ensured that prior to every interview all emotions, particularly those related to fear, were addressed because any preoccupation with personal feelings could hinder her focus on the individual interviewees and their views.¹¹ Nevertheless, it is recommended that future research in this area should be undertaken by a minimum of two researchers.

A crucial limitation of this thesis is that it does not, (due to time restrictions, and concerns for the participant confidentiality), following the interviews of the participants, also interview the counter terrorism policing branch of the area. It would be interesting to see how they perceive the legislation and policies, and their views on the results of the interview.

8.6 Future Trends

It is an unfortunate fact that the threat from terrorism continues to remain prevalent. Since the commencement of the thesis Bin Laden has been declared dead, but the ideology of al-Qaeda is alive and exists without him. The counter terrorism work is as relevant now as it was seven years ago. It is recommended in line with the fieldwork findings, that *Prevent* is the way forward. Its community involvement is effective, but its delivery is questionable. The perception that it is 'espionage' on Muslim communities hinders community co operation. The 'softer'¹² implementation is certainly more effective in preventing terrorism¹³ than the 'harder' image of *Pursue* which appears to perpetuate the marginalisation of the Muslim communities. Simply put,

¹¹ Complete focus was necessary to assure the individual interviewees on aspects such as confidentiality, and manual recording of the interviews requires additional concentration that cannot be compromised by the researcher's personal feelings.

¹² Joseph Nye's definition of 'soft power' as 'the ability to get what you want through attraction rather than coercion.' in Nye J. (2004) *Soft Power: The means to Success in World Politics*. New York: Public Affairs.

¹³ Forst B. (2009) *Terrorism, Crime and Public Policy*. Cambridge: Cambridge University Press at p.392 and p.440.

the participants of this research, support local policing and the national counter terrorism measures need to be implemented by local rather than regional or national policing. It is submitted that further research is necessary specifically on ascertaining the views of the Muslim communities on how to implement CONTEST, which this thesis did not address in detail, may offer another perspective.

The challenges faced by the government of the day reflect the 'dilemma' in addressing terrorism. Should the government act 'passively' it risks losing its credibility and public support; should it act 'harshly' it further risks the loss of public support and may create sympathy for the terrorist's cause.¹⁴ *Prevent* presents us with the unique opportunity of understanding the characteristics of the Muslim communities; otherwise these communities may appear excessively complex and inaccessible. In collaboration with neighbourhood policing, *Prevent* enables interference from outsiders that may in other circumstances be rejected. However, the fragility of this work is evidenced by *Prevent's* inadequate methods of enforcing its practices. Nevertheless, it has the potential of a fruitful, promising future.

In essence, it is crucial in achieving the public trust, to ensure that the executive discretion via its legislation be challenged by judicial oversight, which as discussed in Chapters Six and Seven is not always forthcoming. Measures incorporated in the name of national security have to be balanced by judicial redress - to maintain the credibility of the separation of powers which is crucial for the survival of our democracy.

The 'war on terror' has the danger of creating unfettered, unchallenged legislation that may indeed benefit the terrorists rather than the counter terrorism objectives. Nonetheless, the counter terrorism policing and legislation is necessary because amongst other duties, it is the core duty of the State to protect its citizens from terrorism and terrorist atrocities. However, the universal nature of law has to be safeguarded, this clarifies and reinforces to the 'marginalised' communities that the law is respectful and thus has to be respected.

¹⁴ Enders W. & Sandler T. (2006) *The Political Economy of Terrorism*. New York: Cambridge University Press at p.27.

Appendix One

Headings for the Interview Schedule / Guide

A. Personal Background

Following discussion on confidentiality and ethical issues:

Confidentiality Statement: *Thank you for agreeing to participate in this research. The information obtained will be used solely for the purposes of the thesis. Your anonymity and confidentiality will be protected; I will not be using your actual name. Your experiences, attitudes and views on the questions are relevant to the research, any form of illegal or criminal activity is not – and once you verbalize that the interview will be terminated. I will be asking you questions on an area of law, namely terrorism, and with that there are limits to confidentiality that are imposed by the law: s.38A Terrorism Act 2000 and s.1 Terrorism Act 2006. Therefore should you reveal to me any information about committing a terrorist offence, and / or financially supporting a terrorist organization; about encouraging others to commit acts of terrorism, whether it involves distributing leaflets, making statements online or lecturing, I will be obliged to report you to the relevant authorities. It is okay to say, 'I can understand why people join or what motivates them ...', but not beyond that. The notes that I will be taking during the interview will be transcribed following the interview, and as I stated earlier, I will record the information in the thesis only. Should you have any concerns about confidentiality, please feel free to express them before we start the actual interview.*

1. Interview will commence by ascertaining the gender, socio-economic status and age of the participant.
2. Were you born in the UK? Were your parents born in the UK?
3. How long have you lived in the UK?
4. Do you have family / relatives in Kashmir?
5. How often have you visited Kashmir?
6. Are you a practicing Muslim, if so, what sect of Islam do you practice?¹⁵

¹⁵ This is relevant since the government 'endorses' Sufism over other Islamic sects in its 'Prevent' document. 'The government was expressing a theological preference for Sufism over other trends': Kundnani A. (2009) *Spooked! How to Prevent violent extremism*. Institute of Race Relations: London, at p.36. See also: Pantazis C. & Pemberton S. (2009) 'From the 'old' to the 'new' suspect community: examining the impacts of recent UK counter-terrorist legislation.' *Brit. J. Criminol.* 2009, 49(5), 646-666.

B. General Attitudes towards the situation in Kashmir

1. What are your views about the situation in Kashmir?
2. Would you describe the Kashmir political situation as terrorism or not?
3. If there is terrorism, who is committing it?
4. Do you see a role for the UK government in the Kashmiri conflict?

C. General attitudes towards terrorism

1. What does the term 'terrorism' mean to you?
2. What do you think Islam says about terrorism?
3. What is 'Jihad' and how does it relate to terrorism?
4. What do you know about groups such as Jaish E Muhammad, Laskhar E Toiba, and Harkat Ul Mujahideen?
5. Do you think the Pakistani Army or the police are committing terrorism?
6. Do you think the Indian Army or the Indian police are committing terrorism?
7. Do you think the British Army is committing terrorism in Iraq or Afghanistan – if yes, how does that affect you?
8. Is there anything else that British society does which could motivate you to be sympathetic to terrorism against that society?

D. Counter Terrorism Law in the UK

1. Do you accept the definition of terrorism that is in the Terrorism Act 2000?

(Researcher will state definition in the TA)

2. How do you feel about the banning in UK law of the Kashmiri groups?
3. How do you feel about limits on financing those groups?
4. How do you feel about bans on glorification etc?
5. Has the law on counter-terrorism, namely:
 - a. Proscription (the banned list) of terrorist groups;
 - b. Glorification of terrorism (e.g. lecturing on support of terrorism);
 - c. Financing

Affected you? Your friends or relatives?

Is it compatible with your beliefs and culture?

6. Have you had any contact with the police involving terrorist activities?
7. Have you been stopped and searched?
8. Do you think that the 'law' is doing enough or not doing enough to combat terrorism?
9. Do you think that it is beneficial or damaging? If it is damaging, to whom: the community, the government or to you as an individual? And why?
10. Do you feel 'protected' or threatened by the law?
11. Do you feel the government is being helpful or unhelpful in assisting the community to resist extremism and terrorism?
12. Do you think you are being singled out for treatment as a suspect community or as a community worthy of respect?
13. Do you have any comments on the topics of terrorism law and policing in the UK?

The above may have to be changed into simpler language, and may require translation in the 'Kashmiri' language (for those that do not speak English).

Appendix 2: Interview Consent Form

I, _____ (participant's name), understand that I am being asked to participate in an interview that forms part of Kaniz I. Sattar-Shafiq's PhD thesis, School of Law at the University of Leeds. It is my understanding that this interview will cover the topic of terrorism and Kashmir.

I have been given some general information about the thesis, and the subject matter. I understand that the interview will be conducted at my convenience.

I understand that my participation in this interview is completely voluntary and that I am free to refuse to participate, without consequence, at any time prior to or at any point during the interview.

I understand that the information will be kept completely confidential and will be used only for the purpose of the PhD thesis.

I understand the confidentiality statement outlined to me by the researcher.

Signature:

Date (optional):

Appendix 3: Critical Self Reflection.

Prompts to reflect on and 'step back':

1. Feelings: Positive Negative.
2. Transference Counter transference
3. Behaviour – non-verbal communication in the interview

4. How did the views of the participants affect my feelings?

What are the best things that happened in the interview, and what are the worst things that happened?

5. Did I lead the interview?
6. Was it participant lead?¹

¹ See La Torre M.A. (2005) 'Self-Reflection – An Important Process for the Therapist.' *Perspectives in Psychiatric Care*. 2005, 41(2): 85.

Appendix 4: Characteristic Analysis of the Participants.

All the participants interviewed were of 'Mirpuri' origin.

Interviewee	Age (in years).	Generation or Time in UK	Education	Employment	Religion	Gender	Proficiency in English Language
1	18-24	British born, second generation.	BSc (Hons) Graduate	Seeking Employment	Non-Practising Muslim	Male	Fluent
2	25-35	British born, second generation.	Masters Graduate	Business Analyst	Non-Practising Muslim	Male	Fluent
3	70+	First generation, In UK 45-50 years.	No formal qualifications: basic education.	Retired Textile worker.	Islam:Sufism	Male	Can read and write in English.
4	70+	First generation In UK 45-50 years.	None	Retired Foundry worker	Islam: Sufism.	Male	Can speak very basic English only.
5	18-24	British born, second generation.	BA (Hons)	Telesales	Islam : Sufism	Male	Fluent.
6	18-24	British born, third generation	A Level student	Student	Islam: Sufism.	Male	Fluent
7	25-35	British born, second generation.	MSc. Graduate	IT support Manager in the public sector.	Non-Practising Muslim	Male	Fluent
8	25-35	British born, second generation.	BSc. (Hons).	Computer Programmer by HM Government.	Non-Practising Muslim	Male	Fluent
9	65-70	First Generation. In UK 40-45 years.	None	Retired Textile Worker	Islam: Sufism.	Male	Speaks very basic English
10	70+	First Generation. In UK 45-50 years.	None.	Retired Textile Worker	Islam: Sufism.	Male	Speaks very basic English
11	55-65	First Generation. In UK 40-	No formal education, but did attend	Taxi Driver	Islam: Sufism.	Male	Has good command of English,

		45 years.	schools.				can read and write at basic level.
12	55-65	First Generation. In UK 40-45 years.	None	Interior Designer	Islam: Sufism.	Male	Fluent in verbal English, but cannot read or write.
13	36-45	British born, second generation.	BA (Hons).	Employed by the Local Authority and is also a Councillor.	Non-Practising Muslim	Male	Fluent
14	45-54	First Generation, in UK 35-40 years.	No Formal Education.	Councillor and Travel Agent.	Islam: Sufism.	Male.	Moderate English Language.
15	25-35	British born, second generation	BA (Hons)	Self Employed: Motor Trader.	Non-Practising Muslim	Male.	Fluent
16	25-35	First Generation, in UK for 7 years.	BA (Hons)	Office Administrator	Islam: Sufism.	Male	Fluent
17	25-35	British born, second generation	BA (Hons)	Professional	Islam: Sufism.	Male	Fluent
18	55-65	First Generation. In UK 45-50 years.	None	Travel Agent	Islam: Sufism.	Male	Fluent
19	65-70	First Generation. In UK 45-50 years.	BA Graduate	Retired Bank Manager in the UK; Ex-Army Intelligence in Pakistani administered Kashmir.	Islam: Sufism.	Male	Fluent
20	18-24	British born, second generation	MA graduate	Student Teacher	Non-Practising Muslim	Male	Fluent
21	25-35	First Generation. In UK 10-	None	Unemployed Single Parent.	Islam: Sufism.	Female	Basic

		15 years					
22	25-35	British born, third generation	BSc (Hons)	Student	Islam: Sufism.	Female	Fluent
23	18-24	British born, third generation	Undergraduate student	Student	Islam: Sufism.	Female	Fluent
24	35-45	First Generation. In UK 15-20 years	None	Housewife	Islam: Sufism.	Female	Moderate
25	25-35	British born, second generation	MA	Social Worker with Local Authority.	Islam: Sufism.	Female	Fluent
26	25-35	British born, second generation	BSc (Hons)	Teacher, employed by local authority	Non-Practising Muslim	Female	Fluent
27	35-45	British born, second generation	Masters	Legal Profession	Practising Muslim: No sect.	Female	Fluent.

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