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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 10 सितम्बर, 2024

का.आ. 3874(अ).—केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 15 मार्च, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1415(अ), तारीख 15 मार्च, 2024 (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) के द्वारा जम्मू और कश्मीर पीपुल्स लीग (जेकेपीएल) के चार गुट, अर्थात् जेकेपीएल (मुख्तार अहमद वजा), जेकेपीएल (बशीर अहमद तोता), जेकेपीएल (गुलाम मोहम्मद ख़ान उर्फ़ सोपोरी), जिसे जम्मू और कश्मीर पीपुल्स पॉलिटिकल लीग के रूप में भी जाना जाता है और याकूब शेख के नेतृत्व में जेकेपीएल (अज़ीज़ शेख) को विधिविरुद्ध संगम के रूप में घोषित किया था;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 5 अप्रैल, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1630(अ), तारीख 5 अप्रैल, 2024 के द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय की न्यायाधीश न्यायमूर्ति नीना बंसल कृष्णा थीं;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या जेकेपीएल के उपरोक्त गुटों को विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 12 अप्रैल, 2024 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए तारीख 29 अगस्त, 2024 को एक आदेश पारित किया था;

अत:, अब, केंद्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में, उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात्:-"

"

---: अधिकरण का आदेश अंग्रेजी भाग में छपा है :---

(न्यायमूर्ति नीना बंसल कृष्णा)

विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण"

[फा. सं. 14017/54/2024/एन.आई.-एम.एफ.ओ]

अभिजीत सिन्हा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 10th September, 2024

S.O. 3874(E).—Whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the said Act), declared the four factions of Jammu and Kashmir Peoples League (JKPL) namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan alias Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh as unlawful associations *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1415(E), dated the 15th March, 2024 (hereinafter referred to as the said notification) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 15th March, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 read with sub-section (1) of section 4 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Justice Neena Bansal Krishna, Judge, High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1630(E), dated the 5th April, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 5th April, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on 12th April, 2024 for the purpose of adjudicating whether or not there was sufficient cause for declaring the abovesaid factions of JKPL as unlawful associations;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, passed an order on 29th August, 2024, confirming the declaration made in the said notification;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely :-

"**UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL,**

HIGH COURT OF DELHI, NEW DELHI

Date of Decision: **29th August, 2024**

IN THE MATTER OF:

Gazette Notification No. S.O. 1415(E) dated 15th March 2024 declaring the 4 factions of Jammu and Kashmir Peoples League (JKPL) namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed

Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, as unlawful associations under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF:

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967 made to this Tribunal by the Government of India through Ministry of Home Affairs vide Gazette Notification No. S.O. 1630(E) dated 5th April 2024.

Present : Dr. Ajay Gulati, Registrar, Unlawful Activities (Prevention) Tribunal.

Ms. Aishwarya Bhati (ASG) along with Mr. Amit Prasad, Mr. Rajat Nair, Ms. Poornima Singh, Ms. Manisha Chava and Mr. Abhijeet Singh, ld. Advocates for the Union of India.

Mr. Parth Awasthi, and Ms. Deepika Gupta ld. Advocates for Union Territory of Jammu & Kashmir.

Mr. Antariksh Singh Rathore, Asstt. Commandant and Mr. Sameer Shukla, Asstt. Section Officer, Ministry of Home Affairs.

Mr. Arjun Chopra, Law Researcher.

CORAM

HON'BLE Ms. JUSTICE NEENA BANSAL KRISHNA

ORDER

1. This order answers reference under Section 4(3) read with Section 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the '**Act**' or '**UAPA**', for short) made to this Tribunal which has been constituted by the Central Government *vide* Gazette Notification no. S.O. 1630(E) dated 5th April, 2024 under Section 5(1) of the 'Act', for adjudicating whether or not there is sufficient cause for declaring the 4 factions of Jammu and Kashmir Peoples League ('**JKPL associations'** in short) *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, as 'unlawful associations'.

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) no. S.O.1415 (E) dated 15th March, 2024 in exercise of powers conferred under Section 3(1) of the Act and declared 4 factions of JKPL to be 'unlawful associations'. A copy of the said notification has been sent to this Tribunal, as contemplated under Rule 5(i) of the Unlawful Activities (Prevention) Rules, 1968 ("**UAP Rules**" in short). The said notification dated 15th March, 2024 reads as under:

> *"S.O. 1415(E)-Whereas, the four factions of Jammu and Kashmir Peoples League (JKPL), namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, are indulging in unlawful activities, which are prejudicial to the integrity, sovereignty and security of the country;*
>
> *And whereas, members of the aforesaid factions of JKPL have remained involved in supporting terrorist activities and anti-India propaganda for fuelling secessionism in Jammu and Kashmir;*
>
> *And whereas, the leaders and members of the above said factions of JKPL have been involved in mobilizing violent protest in various parts of Jammu and Kashmir for perpetrating unlawful activities, including sustained stone-pelting on Security Forces in Jammu and Kashmir;*
>
> *And whereas, above said factions of JKPL have constantly asked to the people of Jammu and Kashmir to refrain from taking part in elections and thereby targeted and hampered the very basic constitutionally recognized fundamentals of Indian democracy;*
>
> *And whereas, the members of above said factions of JKPL, by their activities show sheer disrespect towards the constitutional authority and constitutional set up of the country;*
>
> *And whereas, above said factions of JKPL are involved in promoting, aiding and abetting secession of Jammu and Kashmir from India by involving in anti-national and subversive activities; sowing seeds of dis-affection amongst people; exhorting people to destabilise public order; encouraging the use of arms to separate Jammu and Kashmir from the Union of India; promoting hatred against established Government, giving clarion call to boycott elections on multiple occasions and for 'Black Day' and Shutdown on the Republic Day and Independence Day in Jammu and Kashmir;*
>
> *And whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the above said factions of JKPL, they will use this opportunity to-*
>
> *(i) continue with the anti-national activities which are detrimental to the territorial integrity, security and sovereignty of the country;*

(ii) continue advocating the secession of the Jammu and Kashmir from the Union of India while disputing its accession to the Union of India; and

(iii) continue propagating anti-national sentiments of the people of Jammu and Kashmir with the intention to cause disaffection against India and disrupt public order;

And whereas, the Central government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the aforesaid factions of JKPL, it is necessary to declare the above said four factions of Jammu and Kashmir Peoples League (JKPL), namely, JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, as 'unlawful associations' with immediate effect;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the four factions of Jammu and Kashmir Peoples League (JKPL),namely, JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, as unlawful associations;

The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the four factions of Jammu and Kashmir Peoples League (JKPL),namely, JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohammed Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) led by Yaqoob Sheikh, as 'unlawful associations' with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of Section 3 of the said Act, the Central Government hereby directs that this notification shall, subject to any order that may be made under Section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette."

3. As can be seen, the aforesaid notification enumerates the reasons/ circumstances, as contemplated under *proviso* to Section 3(3) of the Act, for declaring the four factions of JKPL as unlawful with immediate effect.

II. THE BACKGROUND NOTE

4. Along with the reference to this Tribunal under Section 4 of the UAPA, the Central Government has submitted and filed before this Tribunal a Background Note, as contemplated under Rule 5(ii) of the UAP Rules, 1968.

5. The Background Note states that JKPL was floated in October 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan), Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits and presently, 4 separate factions namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmed Tota), JKPL (Ghulam Mohd. Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League, and JKPL (Aziz Sheikh) are functional.

6. JKPL and its four factions, since its inception, have been propagating anti-India narrative and secessionist/separatist propaganda in Jammu and Kashmir organization as a full-fledged secessionist/separatist organisation, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations active within Jammu and Kashmir. It not only boycotted the constitutional democratic process in J&K but also through overt/covert means to derail the process, is nurturing the secessionist eco-system in Jammu and Kashmir.

7. The Background Note further states that JKPL and its all the above said four factions, have been actively luring the youth of Kashmir into secessionism and terrorism by radicalization through different means like seditions and secessionist writings, publications, indoctrination of youth by means of sermons/debates, hijacking religious institutions like schools and other governance institutions like Courts, hospitals etc, anti-India sloganeering, waving of Pakistani flags, issuing *bandh* calls in support of terrorists who were being killed, glorifying them, organising widely broadcasted *namaaz-e-janazas* and gun salutes, to give it a feeling of grandeur, aimed at further brainwashing the gullible/vulnerable minds of youth for keeping the wheels of terrorism and separatism rolling. It has further been stated in the Background Note that JKPL and its 4 factions have openly organized and addressed conferences/symposiums and unlawful assemblies so as to spread hatred and disaffection against the Union of India by openly challenging India's sovereignty and territorial integrity.

8. The Note further highlights that JKPL/its factions do not accept any democratically elected establishment in J & K and that all 4 factions of JKPL covertly and overtly are constantly fueling extremism so as to create a tacit acceptance for terrorist activities in J & K, and in order to achieve the goal of J&K's secession from the Union of India, are providing logistical/financial support to terrorist groups.

Leadership

9. As per the background note, some of the important leaders associated with JKPL/its 4 factions, are stated to be as under:

a) Mukhtar Ahmed Waza (Acting Chairman of his faction)

b) Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of JKPL)

c) Mohd. Yaqoob Sheikh (Chairman, Pakistan Chapter)

d) Mohd. Yasin Dar @ Attie (Chairman, Kashmir chapter associated with Yaqoob Sheikh)

e) Farooq Ahmed Dagga (Activist)

f) Bashir Ahmad Tota (Chairman of his faction)

g) Ghulam Nabi Derzi (Vice-Chairman of Tota faction)

h) Mukhtar Ahmad Sofi (Activist)

Activities Supporting Anti-National Activities and Linkages with Cross Border Agency/Establishment

10. As per the Background Note, all 4 factions of JKPL have been at the forefront for spreading false narratives, subverting/boycotting the democratic process of elections, inciting youth into terrorism and secessionism, glorifying & sympathising with terrorists, supporting them, generating feelings of hatred and disaffection against India besides causing large scale arson and street violence within the valley. Background Note highlights the specific instances and role of JKPL/ its factions in fanning the anti-India secessionist feelings. Note states that in 2008, JKPL fanned people's sentiments against the Government over Amarnath Land Row by spreading misinformation/false information which resulted in an agitation causing large scale violence and damage to public/private properties through stone pelting and other anti-national acts. Further, all 4 factions took pivotal part in *Muzaffrabad Chalo* call which was given by a co-ordination committee to march to the capital of POK. In the ensuing law & order situation, Sheikh Aziz died which escalated street violence, leading to 449 stone pelting incidents on security forces in which 53 civilians died and 522 were injured, and in addition, about 170 police/security forces personnel were also injured.

11. Further, to sustain the secessionist ecosystem, JKPL and its factions portrayed the death of 2 ladies in *Shopian* in the year 2009 by describing it as rape and murder perpetrated by the security forces. The purpose was to create a false narrative against the Central Govt. and security forces so as to generate hatred and disaffection against India and which eventually resulted in intense law & order issues. Still further, death of some youth while handling stone pelting incidents in Kashmir valley during 2010 by the security forces was exploited by the 4 factions of JKPL in instigating the youth and fueling mass unrest for the Quit Kashmir movement. These acts included issuing protest calendars for long drawn protests during the year, patronizing the elements which fomented trouble in the State, resulting in 2794 stone pelting incidents leading to loss of lives of 112 civilians and 1 police personnel, injury to 1047 civilians and 5188 police/security personnel.

12. In 2016, after the death of Burhan Wani, acting on the instructions of Pakistan and ISI, all 4 factions of JKPL exploited the situation and actively provoked and incited the youth of J & K to indulge in violence, and issued protest calendars resulting in the death of 2 civilians and 2 police jawans, injury to 8932 civilians and injury to 8370 police/security personnel in the ensuing riots.

Criminal Cases involving complicity of Jammu and Kashmir Peoples League (JKPL)/its 4 factions

13. The Background Note mentions a series of criminal cases which have been registered against the JKPL cadres on account of its criminal and anti-national activities. The cases have been registered against the above 4 factions of JKPL and its activists under various provisions of law including the Unlawful Activities (Prevention) Act and other substantive offences which provide clinching evidence regarding their involvement in various unlawful activities. Following are the details of the cases registered by Jammu and Kashmir Police against the members/ activists of the aforesaid 4 factions of JKPL:

Details of The Cases Registered Against Members/activists of the 4 factions of Jammu And Kashmir Peoples League (JKPL)

Sl. No.	Case FIR No.	Name of the accused in FIR	Brief of the case
1.	FIR no. 141/2000 u/s 188, RPC, u/s 13 UAPA P/S Kupwara, Dist. Handwara	Syed Ali Shah Geelani s/o Peer Shah r/o Dooru, Sopore Masrat Azam Bhat s/o Abdul Hamid Bhat r/o Zinder Mohalla,	Syed Shah Geelani, Masrat Alam Bhat and Sheikh Abdul Aziz who at the condolence meet of Aijaz Ahmad Wani r/o Chotipora, delivered anti-national speeches and instigated youth against the nation.

		Srinagar Sheikh Abdul Aziz r/o Drangbal, Pampore	
2.	FIR no. 198/2004 u/s 132-B, ROP Act, PS & District Anantnag	Shabir Ahmad Shah Mohd. Yaseen Malik Sheikh Abdul Aziz	Accused persons exhorted the general people to boycott the election process.
3.	FIR no. 119/2009 u/s 147, 336, 353, 427 RPC, PS & District Anantnag	1. Majid Ahmad Magloo s/o Wali Mohd. r/o Lukbawant Larkipora 2. Mukhar Ahmad Sofi s/o Ghulam Mohd. r/o Maliknag, Anantnag 3. Zahoor Ahmad Sheikh s/o Ambrirdin Sheikh r/o Samal 4. Zeyadin Najari s/o Abdul Qayoom r/o Kuri Batpora 5. Mohd. Assadullah Shah s/o Abdul Gani r/o Lar, Ganderbal 6. Manzoor Ahmed Malik s/o Abdul Gani r/o Berru Khag 7. Ghulam Hassan Hajam s/o Mohd. Ismail r/o Qazigund 8. Bilal Ahmad Ganie s/o Abdul Rashid r/o Wafzan Bijebehara 9. Adil Ahmad Khan s/o Ghulam Qadir r/o Shirpora 10. Showkat Ahmad Mir s/o Mohd. Afzal r/o Pehroo 11. Sahbir Ahmad Bb s/o Abdul Ganie r/o Sarnai Balang	On 17.4.2009, some miscreants at Lal Chowk Anantnag were asking people for election boycott. In the meantime, they also pelted stones upon security forces/police personnel.
4.	FIR no. 173/2012u/s 148, 149, 336, 427, 341 RPC, PS & District Shopian.	Mukhtar Ahmad Sofi s/o Ghulam Ahmad Sofi r/o Malaknag	Mukhtar Ahmad Sofi and others instigated youth to pelt stones on security forces which resulted in injuries to various police personnel.
5.	FIR no. 40/2015u/s 147, 148, 336 RPC; u/s 13 UAPA, PS Budgam & District Magam	Farooq Ahmad Rather s/o Ali Mohd. Rather r/o Gutpora Mehraj-u-din Kalwal Ghulam Ahmad Khan @ Sopori Zahid Ali	The case pertains to anti-national speech/slogans delivered by Hurriyat leaders namely Farooq Ahmad Rather, Mehraj-u-din Kalwal, Ghulam Ahmad Khan Sopori, Zahid Ali (of Jamat e Islami) at Narbal on 24/04/2015 while visiting the residence of deceased Suhail Ahmad Sofi r/o Abdul Ahad Sofi r/o Narbal for condolence purposes.
6.	FIR no. 394/2016 u/s 147, 148, 149, 336, 427, 153 – A RPC, PS Baramulla, district Sopore	Ghulam mohd. Khan @ Sopori Abdul Gani Bhat	On 12.9.2016, accused persons delivered anti-national speech and raised anti-national slogans. Meanwhile, during this, some terrorists fired upon police and mob pelted stones upon security forces.

		Manzoor Ahmed Kulloo	
7.	FIR no. 22/2017 u/s 13, UAPA, PS and District Kulgam	Mukhtar Ahmed Waza	Mukhtar Ahmad Waza instigated the people of the area to shout slogans against the integrity of India and provoked the youth to raise pro-Pak slogans and slogans Go India Go Back, and asked them to continue the struggle till freedom from India is achieved.

III. STATUTORY PROVISIONS

The relevant statutory provisions concerning the present Reference proceedings are discussed under.

14. Section 2 (o) and (p) of the UAPA, read as follows:

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

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) Which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or, the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) Which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) Which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii), shall apply to the State of Jammu and Kashmir".

15. Section 2(o) of the Act defines 'unlawful activity'. It means "*any action taken*" by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to "*action taken*" with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Clause (ii) refers to "*action taken*" which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to "*action taken*" which causes or is intended to cause disaffection against India.

16. Unlawful Association has been defined in Section 2(p) of the Act and consists of two parts: (i) and (ii). Part (i) refers to the unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourage or even aid persons to undertake the said activity. The last part of Part (i) widens the definition of the term "*unlawful association*" to include an association of which members undertake unlawful activity. In a way, therefore, the association is vicariously liable and can be regarded as an unlawful association if members of an association undertake unlawful activity.

17. Section 2(p)(ii) does not refer to unlawful activity defined in Section 2(o) of the Act but refers to Sections 153A and 153B of the *Indian Penal Code, 1860* (IPC for short). An association which encourages *or* aids *or* the object of which is to encourage or aid persons to undertake activities punishable under Section 153A or 153B is an unlawful association. "*Object*" for which an association is formed can in many cases be in writing but encouragement and aid to persons to undertake activities under Sections 153A and 153B may be oral *or* in writing. The last part of Section 2(p)(ii) widens and expands the scope of the term "*unlawful association*", when it stipulates that an association of which members undertake activities which are punishable under Section 153A or 153B of the IPC, is an unlawful association. An association, therefore, can become an unlawful association if its members undertake any activity covered by Section 153A or 153B of the IPC.

IV. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

18. The nature of the proceedings before this *Tribunal* and the scope of inquiry in the present proceedings have been laid down by the Supreme Court in ***Jamaat-e-Islami Hind vs. Union of India*** (1995) 1 SCC 428 in the specific context of the provisions of the UAPA, 1967. The proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra). This *lis* has to be decided by objectively examining which version i.e. of the Central Govt. or that of the concerned organization, is more acceptable and credible. In this regard, reference may be made to following observations in ***Jamaat-e-Islami Hind*** (supra):

> *"30. The allegations made by the Central Government against the Association - Jamaat-E-Islami Hind - were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute "unlawful activity" within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained."*

19. The present Tribunal, constituted under the UAPA, has been vested with certain powers and the procedure to be adopted by it, under Section 5 read with Section 9 of the said Act, which are reproduced as under:

> *"5.* ***Tribunal****. (1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court.*
>
> *(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.*
>
> *(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.*
>
> *(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.*
>
> *(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.*
>
> *(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:*
>
> *(a) the summoning and enforcing the attendance of any witness*

and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office ;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (5 of 1898)."

***"9. Procedure to be followed in the disposal of applications under this Act**.–Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final."*

20. Further, under Section 4(1) of Act, the Central Government refers the notification (issued under Section 3(1) of the Act) to the Tribunal for "*adjudicating*" whether or not there is "*sufficient cause*" for declaring the association unlawful. Section 4(2) requires issuance of notice on the association affected to show-cause why the association should not be declared as unlawful. Section 4(3) mandates an inquiry in the manner specified in Section 9 after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the UAPA in ***Jamaat-e-Islami Hind*** (supra), it was held by the Supreme Court as under:

"11…. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context."

21. On the question of confidential information that is sought to be withheld, the Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest enables the Tribunal to test the credibility of confidential information for objectively deciding the reference. It was emphasized that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information for various reasons may require confidentiality. Disclosure, it was held, can jeopardize criminal cases which have pending investigation or are on trial.

22. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3 of UAP Rules, 1968. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, "*as far as practicable*", the rules of evidence laid down in Indian Evidence Act, 1872 (hereinafter 'The Evidence Act'). In this regard, reference can be made to the following observations in ***Jamaat-e-Islami Hind*** (supra):

"22. …The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer [408 US 471: 33 L Ed 2d 484 (1972)] the

United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

> *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.".*

xxx *xxx* *xxx*

26. ……The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."

23. Before assessing the credibility of material and analyzing evidence adduced, it is apposite to take note of Sections 25, 26 and 27 of the Indian Evidence Act, as well as Sections 161 and 162 of the Code of Criminal Procedure, 1973. The same are reproduced hereunder:

Indian Evidence Act, 1872

25. Confession to police-officer not to be proved*.—No confession made to a police-officer , shall be proved as against a person accused of any offence.*

26. Confession by accused while in custody of police not to be proved against him.*—No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.*

*Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 6 *** or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 18827 (10 of 1882).*

27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

Code of Criminal Procedure, 1973

"161. Examination of witnesses by police*.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 3 section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

162. Statements to police not to be signed: Use of statements in evidence.—*(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

24. As per Sections 25 and 26 of the Evidence Act, confessions made to a police officer or while in custody shall not be proved against a person accused of any offense during the trial of that offense. As per Section 162 of the Cr.P.C., no statement made by any person to a police officer in the course of an investigation under Chapter XII (which includes Section 161 Cr.P.C.) can be used, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. However, these sections do not prohibit the use of such statements in proceedings where the accused is not being tried for the specific offense in question, or in civil proceedings or ancillary proceedings.

25. The Supreme Court in ***Mahesh Kumar v. State of Rajasthan***, 1990 Supp SCC 541 (2), noted the possible use of statement made to the police by the accused persons for being use of as evidence against the accused in an "*enquiry*" although inadmissible as evidence against them at the trial for the offence with which they were charged. Relevant extract of the said judgment is as under:

"3. In Queen Empress v. Tribhovan Manekchand, a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in Pohlu v. Emperor where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in Dhanraj Baldeokishan v. State and the Mysore High Court in Veerabhadrappa v. Govinda. In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt."

26. The Supreme Court in ***Khatri (IV) v. State of Bihar***, (1981) 2 SCC 493 with reference to the bar under Section 162 of the Cr.P.C against use in evidence of statement made before a police officer in the course of investigation, held, the same would not apply where court calls for such statement in a civil proceeding provided the statement is otherwise relevant under the Evidence Act, 1872. Relevant extract of the said judgment is as under:

"3. *Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines "inquiry" to mean "every inquiry, other than a trial conducted under this Code by a Magistrate or court". Clause (a) of Section 2 gives the definition of "investigation" and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf".*

Section 4 provides:

> *"4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."*

It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Penal Code, 1860 or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chapter XII dealing with the powers of the police to investigate into offences. That section, so far as material, reads as under:

> *"162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*
>
> *Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.*
>
> *(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."*

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made". If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in Tahsildar Singh v. State of U.P. It is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence". This Court, in Tahsildar Singh case approved the following observations of Braund, J. in Emperor v. Aftab Mohd. Khan:

> *"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths"*

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in Baliram Tikaram Marathe v. Emperor that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in Malakala Surya Rao v.G. Janakamma. The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ

petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

27. With reference to police diaries and Section 172 of the Cr.P.C., the Supreme Court in ***Khatri*** (supra) held as under:

"...These reports are clearly relevant under Section 35 of the Indian Evidence Act which reads as follows:

> *"35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."*

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC p. 667) "made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent". This Court in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal. So also in Jagdat v. Sheopal, Wazirhasan, J. held that the result of an inquiry by a Kanungo under Section 202 of the Code of Criminal Procedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Raj where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, insofar as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edwards Limited v. State of W.B. that official correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated February 16, 1981 we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981 it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after

January 20, 1981 and the last of them was submitted on January 27, 1981. All these reports including the report submitted on December 9, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the court in deciding the question at issue between the parties."

28. The Supreme Court in ***Vinay D. Nagar v. State of Rajasthan***, (2008) 5 SCC 597, again held that bar of Section 162 of the Cr.P.C. is with regard to the admissibility of the statement recorded of a person by the police officer under Section 161 Cr.P.C. and by virtue of Section 162 Cr.P.C. would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The relevant extract of the said decision is as under:

"14. On account of Section 162 CrPC, a statement made by any person to a police officer in the course of investigation under Chapter XII, if reduced into writing, will not be signed by the person making it, nor such statement recorded or any part thereof be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Such statement may be used by an accused and with the permission of the court by the prosecution to contradict the witness whose statement was recorded by the police in the manner provided under Section 145 of the Evidence Act and can also be used for re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. Bar of Section 162 CrPC of proving the statement recorded by the police officer of any person during investigation however shall not apply to any statement falling within the provision of Clause (1) of Section 32 of the Evidence Act, nor shall it affect Section 27 of the Evidence Act. Bar of Section 162 CrPC is in regard to the admissibility of the statement recorded of a person by the police officer under Section 161 CrPC and by virtue of Section 162 CrPC would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

15. In Khatri (IV) v. State of Bihar this Court has held that Section 162 CrPC bars the use of any statement made before the police officer in the course of an investigation under Chapter XII, whether recorded in the police diary or otherwise. However, by the express terms of Section 162, this bar is applicable only where such statement is sought to be used "at any inquiry or trial" in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted."

29. After examining the aforementioned provisions, as well as the legal principles established in a catena of judgments, and considering that the inquiry before this *Tribunal* does not entail adjudicating the guilt of the accused but rather assessing the adequacy of material before the Central Government to designate JKPL and its 4 factions as *unlawful associations*, the statement of witnesses recorded by the police officers, the statements made by the accused before police officers, along with the lists of items seized and seizure memos, are deemed admissible before this *Tribunal*. They can be utilized to ascertain the sufficiency of material before the Central Government for making the declaration under Section 3(1) of UAPA ('the Act' for short).

V. PROCEDURE FOLLOWED BY THIS TRIBUNAL

30. Consequently, upon due consideration of the aforesaid Notification No. 1415(E) dated 15th March, 2024 and Notification No. 1630(E) dated 5thApril, 2024, this *Tribunal* held a preliminary hearing on 16.04.2024, whereupon on a consideration of the material placed on record by the Central Government, notice under Section 4(2) of the Act was issued to the JKPL/its 4 factions to show cause, within a period of 30 days, as to why they ought not to be declared as unlawful associations. The notices issued were given due publicity as is required under Section 3(4) of the Act.

31. The Gazette Notification dated 15.03.2024 was also published in two National Newspapers (all India Edition), out of which one was in English while the other was in Hindi. The said notification was also published in two local newspapers one of which was in vernacular and the other was in English, both having wide circulation in Jammu & Kashmir where the activities of the JKPL and its 4 factions were or are believed to be ordinarily carried out. The method of affixation and proclamation by beating of drums, as well as loudspeakers, was also adopted. Proclamation was made at the last known addresses of the JKPL along with all of their leaders, members, factions, wings and front organization as well as that of their principal office bearers.

32. The notice issued by the Tribunal along with the Gazette Notification dated 15.03.2024 was displayed on the notice board of the Deputy Commissioner/District Magistrate/Tehsildar in all the district headquarters of the UT of Jammu & Kashmir where the activities of the association were or are believed to be ordinarily carried on. Help of All-India Radio and electronic media of the State edition were also taken. Announcements were made through radio/electronic media at prime time.

33. Apart from the above, notice was also issued to the Union Territory of Jammu and Kashmir through its Chief

Secretary.

34. The Registrar attached to the Tribunal was directed to ensure the compliance of the service of notices issued to the JKPL/its 4 factions in the manner indicated. The Registrar was directed to file an independent report in that behalf before the next date of hearing i.e. 20.05.2024.

35. Accordingly, the Union Territory of Jammu and Kashmir filed its affidavit of service, affirming that service of statutory Notice had been effected as directed by the Tribunal. The Registrar, vide his report dated 18.05.2024, also confirmed service of notices issued by the Tribunal.

36. This *Tribunal* having satisfied itself that service had been effected on JKPL/its 4 factions as per the directions contained in the order dated 16.04.2024, proceed further with the inquiry. On the next hearing which was scheduled for 20.05.2024, appearance was put in on behalf of only 1 of the 4 factions of JKPL *i.e.* Bashir Ahmad Tota faction. Sh. Mohd. Mobin Akhtar, ld. Advocate filed his memo of appearance as Advocate for the said faction. Directions were given to the Union of India to supply the relevant documents concerning the declaration/Notification of the 4 factions of JKPL as unlawful associations to Sh. M.M. Akhtar who also sought 2 weeks to file a response. However, no appearance was entered by or on behalf of any of the 3 other factions of JKPL and resultantly, the Tribunal was constrained to proceed ahead with its inquiry as a composite Reference had been received in regard to all the 4 factions of JKPL. Further, on behalf of Union of India, more time was sought to file affidavits and relevant documents in support of the notification declaring the 4 factions of JKPL as unlawful associations.

37. In order to afford an opportunity to both the Central Govt. and the Union Territory of Jammu and Kashmir to lead evidence in support of the grounds set out in the Notification dated 15.03.2024, as also to give another opportunity to JKPL/its 4 factions to rebut the material placed on record by the Central Govt. and the Union Territory of Jammu and Kashmir, by the same order i.e. order dated 20.05.2024, further proceedings for recording of evidence were fixed for 20.06.2024, 21.06.24 and 24.06.2024 at Srinagar with due consent of the counsels appearing for the UOI, the Union Territory of Jammu and Kashmir and for Bashir Ahmad Tota faction. Accordingly, a public notice was issued for the hearings at Srinagar on the aforesaid dates. However, prior to the hearings scheduled at Srinagar, this Tribunal also fixed a prior hearing on 05.06.2024 in Delhi, for directions.

38. On 05.06.2024, more time was sought on behalf of Union of India/ Central Govt. for filing the affidavits in evidence in support of the Notification of declaration dt. 15.03.2024. Even on behalf of JKPL Bashir Ahmad Tota faction, no response or affidavit was filed although a formal *vakalatnama* was filed. Consequently, this Tribunal further adjourned the proceedings for 13.06.2024 and permitted the filing of affidavit/s on behalf of the Union of India as also JKPL/ its 4 factions by 13.06.2024. Direction was also given to file a list of witnesses.

39. On 11.06.2024, an affidavit of Mr. Bashir Ahmad Tota was filed with the Registrar of the Tribunal. On 13.06.2024, it was submitted before the Tribunal on behalf of Bashir Ahmad Tota faction that in view of the contents of the affidavit of Mr. Bashir Ahmad Tota, the Bashir Ahmad Tota faction shall not contest the reference proceedings. A copy of the said affidavit was supplied to ld. Counsel for the Union of India. However, this Tribunal informed the ld. Counsel appearing for Bashir Ahmed Tota faction that he can make a final decision in regard to whether or not to contest the Reference proceedings after the affidavit/s in evidence have been filed by the Union of India. Also, on 13.06.2024, it was submitted on behalf of the Union of India and UT of J&K that of the 6 witnesses mentioned in the list of witnesses furnished with the Registrar of the Tribunal, 5 affidavits in evidence of J&K police officers shall be filed by 15.6.2024. Accordingly, the Tribunal directed the next proceeding to be held at Srinagar, as already scheduled, in the premises of the High Court of Jammu & Kashmir and Ladakh.

40. On 20.06.2024, statement of the following witness from the Union of India was recorded at **Srinagar**:

S. No.	**Name of Witness**	**Details of Affidavit**	**Affidavits kept in File no and at pages -**
I	Sh. Kuldeep Raj, D.S.P, HQ, Anantnag, Kashmir	Ex. PW-1/A dated 19.06.2024	Vol. - IV Affidavit at page nos. 1 to 10; and exhibits from page nos. 11 to 24

At the stage of tendering of evidence by PW 1, an objection was raised by ld. counsel Mr. Md. Mobin Akhtar (who had joined through VC) that the copy of affidavit of PW 1 as also of the other witnesses to be examined, have been supplied in the morning of 20.06.24 and that he would like to go through the contents of the Affidavits. The Tribunal, thereafter, adjourned the recording of evidence of witnesses to 24.06.2024, to enable ld. Counsel for Bashir Ahmad Tota faction to go through the contents of the affidavits. However, on 24.06.2024, a submission was made on behalf of Mr. Md. Mobin Akhtar that they do not wish to cross-examine any witness. Consequently, Mr. Kuldeep Raj was discharged.

41. On 24.06.2024 itself, following witnesses on behalf of the UOI were also examined:

S. No.	Name of Witness	Details of Affidavit	Affidavits kept in File no. and at pages
2.	Sh. Aftab Awan, SDPO, Magam, Kashmir	Ex. PW-2/A dated 13.06.2024	Vol. - IV Affidavit at page nos. 1 to 9; and exhibits from page nos. 10 to 24
3.	Sh. Satish Kumar, Sub – Divisional Police Officer, Handwara, Kashmir	Ex. PW-3/A dated 16.06.2024	Vol. - IV Affidavit at page nos. 1 to 8; and exhibits from page nos. 9 to 20.
4.	Sh. Ghulam Nabi Dar, Sub-Inspector, Sopore, Kashmir	Ex. PW-4/A dated 13.06.2024	Vol. - IV Affidavit at page nos. 1 to 9; and exhibits from page nos. 10 to 18
5.	Sh. Gazanfur Syed, Dy. Superintendant of Police, Kulgam, Kashmir	Ex. PW-5/A dated 18.06.2024	Vol. - IV Affidavit at page nos. 1 to 6; and exhibits from page nos. 7 to 14

42. It needs a highlight that for the Tribunal's proceedings at Srinagar, Union of India was directed to ensure that any interested party who desires to appear physically before the Tribunal on 20.06.2024, 21.06.2024 and 24.06.2024, should be duly assisted for the said purpose. For the said purpose, ASI Mohd. Niyaz, ARP: Q51324/XI-SEC was deputed for all three dates of hearing at Srinagar, in the High Court premises, for facilitating the appearance of any interested party who desired to appear before this Tribunal. However, none from the general public or from the other associations/factions of JKPL joined the Reference proceedings at Srinagar.

43. Vide the order dt. 24.06.2024, further proceedings of the Tribunal were directed to be held at High Court of Delhi, on 03.07.2024 on which date ld. Counsel for the UOI informed the Court that another affidavit in evidence of an official from the Ministry of Home Affairs, GOI has also been filed with the Registrar of the Tribunal. The proceedings were thereafter adjourned further to 15.07.2024 for which date the said witness from the MHA, GOI was directed to be present for recording his deposition.

44. It needs a highlight that after 24.06.2024 which was the last of the 3 hearings at Srinagar, no one appeared to attend or join the Tribunal proceedings from or on behalf of any of the 4 factions of JKPL.

45. Vide order dated 03.07.2024, statement of the following witness from the Ministry of Home Affairs was recorded separately on 15.07.2024 at **Delhi High Court, New Delhi**:

Sl. No.	Name of witness	Details of Affidavit	Affidavits kept in file number and at pages
1.	Mr. Rajesh Kr. Gupta, Director (CT), Government of India, Ministry of Home Affairs, New Delhi	Ex. PW-6/A dated 01.07.2024	Vol. – IV Affidavit at page nos. 1 to 8; and exhibits from page nos. 9 to 30, along with documents/confidential material in a sealed cover.

The Witness PW 6 submitted certain confidential documents in a sealed cover during his testimony and claimed privilege against public disclosure in regard to those documents under *section* 123 of the Evidence Act read with *Rule* 3(2) of the UAP Rules, 1968, as referred to in the paragraph 11 of the affidavit of the said witness. Subject to the claim for privilege being decided in the final judgment, the sealed envelope containing the relevant documents in respect of which the privilege had been claimed, was opened and the documents were taken on record. PW 6 was discharged as no one appeared on behalf of any of the 4 factions of JKPL to cross examine. *No other witness was examined on behalf of the Union of India.*

46. After recording of the statement of final witness, as aforesaid, on 15.07.2024, the matter was listed for final arguments on 27.07.2024 at New Delhi.

47. On 27.07.2024, learned Additional Solicitor General for the Union of India was heard at length, and on the

same day, the matter was reserved for orders.

VI. NON-APPEARANCE/NO REPLY ON BEHALF OF THE 4 FACTIONS OF JKPL IN THESE PROCEEDINGS

48. Despite service of notice upon the leaders/office bearers of the 4 factions of JKPL, appearance was initially put in only on behalf of Bashir Ahmed Tota faction. Subsequently, after submitting an affidavit on behalf of Bashir Ahmad Tota, neither Bashir Ahmad Tota entered the witness box to tender his affidavit *nor* the witnesses who deposed on behalf of the Union of India were cross-examined. So far as the 3 other factions of JKPL are concerned, no appearance at all was put in on behalf of any of them at any stage of the Tribunal's proceedings. This Tribunal has also not received any intimation from any interested party seeking to depose before this Tribunal. Infact, after the proceedings of 24.06.2024 at Srinagar, no one appeared again to join the subsequent proceedings even on behalf of Bashir Ahmed Tota faction, as already highlighted.

49. Ample opportunity has been afforded by this Tribunal to the concerned factions of JKPL/ its office bearers to appear before this Tribunal and give their written version/ adduce evidence, in opposition to the factual version of the Central government, as regards the activities of the concerned factions. Apart from effecting service on the 4 factions of JKPL and its office bearers in the manner aforesaid, this Tribunal even held public hearing/s in Srinagar to enable members of the concerned factions of JKPL and/ or member of the public, to participate in the proceedings of the Tribunal. However, the said opportunity was not availed of by the JKPL factions or any of its office bearers.

50. This Tribunal is conscious that despite there being no contest from the 4 factions of JKPL to the notification of the Central Govt. declaring these factions as illegal associations, Tribunal is still required to make an "*objective determination*" as mandated in the judgment of the Supreme Court delivered in ***Jamaat-e-Islami Hind*** (supra). The credibility of the material/evidence placed on record by the Central Government is still required to be tested. The Supreme Court has cautioned that the procedure to be adopted must achieve this purpose and must not be reduced to mere acceptance of the "*ipse dixit of the Central Government*". This Tribunal is required to independently assess the credibility of the material/evidence placed on record by the Central Government, and on that basis, come to a conclusion as to whether or not there is sufficient cause for declaring the 4 JKPL factions as unlawful.

VII. EVIDENCE ADDUCED BEFORE THE TRIBUNAL

PW-1

51. **Mr. Kuldeep Raj (PW-1)** tendered his affidavit as **Ex.PW 1/A** and deposed that he is posted as Dy. S.P., Anantnag, Kashmir. He stated that he is the supervising officer of the cases bearing FIR No. 198/2004 and 119/2009 and in course of discharge of his duties as supervising officer, had gone through the records of the case FIR no. 198/2004 and 119/2009 and hence, was well conversant with the facts and circumstances of the case. He also deposed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization as PW 1/X.

52. PW 1 deposed that the Central Government, in exercise of its powers under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 vide notification number S.O. 1415 (E) dated 15th March 2024 had *declared* 4 factions of Jammu & Kashmir Peoples League (**JKPL**), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan), also known as Jammu & Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh to be '*unlawful associations*'. *Witness* further deposed that he had read the brief background note on JKPL prepared by the Central Government and in view of the various cases registered against the said factions and its leaders, and the knowledge acquired during the course of his service, he could state that JKPL and its leaders were involved in the secessionist activities.

53. PW 1 further deposed that Jammu and Kashmir Peoples League (JKPL) was formed on 3rd October 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan), Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits due to personal bickering among leadership of JKPL to lead the party. *Witness* further deposed that it was borne out from intelligence reports and records that at the instance of Pakistani intelligence agency ISI, Sheikh Abdul Aziz formed various factions of JKPL to evade surveillance on their separatist activities, however, all the factions worked under one umbrella of JKPL under the overall leadership of Sheikh Abdul Aziz, Chairman JKPL. PW 1 further deposed that presently, JKPL has four factions, namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League **and** JKPL (Aziz Sheikh) led by Yaqoob Sheikh which are functional. *Witness* stated that all the four factions are popularly known as JKPL in common and are one in soul for all purposes but to connect with more people, they were further bifurcated into four factions under leadership of different separatist leaders of JKPL.

54. PW 1 also deposed that it was borne out from records that the prominent leaders of the 4 factions of JKPL are Mukhtar Ahmad Waza (Acting Chairman of his faction of JKPL), Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of his faction of JKPL), Mohammad Yakoob Sheikh (Chairman Pakistan Chapter of JKPL), Mohammad

Yasin Dar @ Attie (Chairman Kashmir Chapter of JKPL associated with Yakoob Sheikh), Farooq Ahmad Dagga (Activist), Bashir Ahmad Tota (Chairman of his faction of JKPL), Ghulam Nabi Darzi (Vice Chairman of Tota Group of JKPL) and Mukhtar Ahmad Sofi (Activist).

55. PW 1 further deposed that after the death of Sheikh Abdul Aziz, Chairman JKPL in the year 2008, all the above four factions of JKPL continued to operate as per the constitution and manifesto of JKPL which was framed in 1987/1991 and on the directions of Pakistan's ISI. These factions cooperate with each other in carrying out anti-national activities, spreading false narrative against Union of India, boycotting democratic process of elections, leading violent protests, inciting youth into secessionism and terrorism, glorifying terrorists, vilifying security forces, generating feelings of hatred and disaffection against India and supporting terrorist organizations besides causing large scale street violence and arson within the J&K with an aim/objective to secede J&K from the Union of India and its further merger with Pakistan. PW 1 affirmed that these factions have been spearheading the above activities by taking collective decisions, details of which are given in the dossier.

56. PW 1 further deposed that all the aforementioned facts not only form a part of record of the brief background note annexed with the Reference made by the Central Govt. concerning the Notification dt. 15thMarch 2024 but also during course of the discharge of his official duties as a police officer in J&K, he had on several occasions come across with reports of secessionist activities/movements perpetrated by JKPL and its leaders.

57. *Witness* testified in regard to FIR No. 119/2009 that on 17.04.2009, Police Station Anantnag received a written docket submitted by SHO P/S Anantnag disclosing that on the said day, some miscreants were seen near Lal Chowk in the shape of a mob which was headed by Majid Ahmad Magloo, Sofi Mukhtar, Zahoor Ahmad Sheikh, Ziyaud Din Bukhari, Md. Assadullah Shah, Manzoor Ahmad Malik, Gh Hassan Hajam, Bilal Ahmad Ganie, Adil Ahmad Khan, Showkat Ahmad Mir **and** Shabir Ahmad Baba. The said mob, in the form of a violent procession, was urging the people to boycott the upcoming elections and also pelted stones on the deployed troops and the vehicles passing thereby resulting in mild *lathi* charge and firing of tear gas shells to disperse them. *Witness* stated that since the contents of the written docket disclosed commission of offences against the sovereignty and integrity of India, the FIR No. 119/2009 under section 147, 336, 353, 427, 171-C-F of RPC was registered at PS Anantnag on 17.04.2009 and investigation was conducted. PW 1 relied on a true and correct copy of **FIR No. 119/2009** in vernacular along with true English translation of its relevant portion as **Ex. PW 1/1.**

58. PW 1 further testified that during the course of investigation, statements of witnesses were recorded u/s 161 Cr.P.C. who corroborated the incident and the contents of the FIR, and the IO also seized some stones and bricks from the place of occurrence for which a seizure memo was prepared during investigation. PW 1 relied on a true copy of statement of a witness recorded in vernacular along with its true English translation as **Ex. PW 1/3** and a true copy of seizure memo in vernacular along with its true English translation as **Ex. PW 1/4.**

59. PW 1 further deposed that sufficient material was collected against all the accused persons during the investigation and consequently, a Charge-sheet was filed before the concerned Court vide *Challan* No. 15/2010 on 25.02.2010, true copy of which in vernacular along with its true English translation was relied upon by PW 1 as **Ex. PW 1/2**.

60. PW1 further deposed in respect of FIR No. 198/2004 that on 04.05.2004, Police Station Anantnag received a written docket submitted by SHO P/S Anantnag disclosing that on the said day *Hurriyat* leaders (i) Shabir Ahmad Shah (ii) Sheikh Abdul Aziz (iii) Mohammad Yaseen Malik and (iv) Javid Ahmad Mir were seen leading a procession whereby they provoked the general public to boycott the coming parliamentary elections. The procession was dispersed by using tear smoke shells due to which the *Hurriyat* leaders fled away from the spot. *Witness* deposed that as the written docket of the SHO P/S Anantnag disclosed commission of offences against the sovereignty and integrity of India, the FIR No. 198/2004 was registered at PS Anantnag on 04.05.2004 under section 132-B Representation of Peoples Act 1957. **PW 1** relied upon a true and correct copy of FIR No. 198/2004 in vernacular along with true English translation of its relevant portion as **Ex. PW 1/5.** PW 1 further deposed that investigation in the FIR was conducted during the course of which the statements of witnesses were recorded u/s 161 Cr.P.C. who corroborated the incident and the contents of the FIR. PW 1 relied upon a true copy of the statement of a witness recorded in vernacular along with its true English translation as **Ex PW 1/6**.

61. PW 1 further deposed that though the investigation of the case began, and statements of witnesses were recorded but due to the adverse situation created in the valley by the separatist leaders and their organizations including JKPL who had staunch support from across the border and terrorist outfits, people used to fear in giving statements against them. Any investigation carried out against the separatist organizations and their leaders resulted in huge outcry and turmoil in the respective regions which has always been a prominent cause for delay in conclusion of investigation against these organizations and their leaders.

62. *Witness* further deposed that JKPL and its all the above said four factions, since inception, have been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 1 further deposed that the ban imposed upon the said organization by the Central Government is

appropriate and needs to be upheld in national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance/no-contest on the part of the 4 factions of JKPL.

PW-2

63. **Aftab Awan (PW-2)** who is currently posted as Sub Divisional Police Officer, Magam, Kashmir tendered his affidavit as **Ex.PW2/A** and deposed that since 2023, he is the supervisory officer of the case bearing FIR No. 40/2015 and hence, was well conversant with the facts and circumstances of the case. PW 2 deposed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization as Ex. PW 2/A-1.

64. PW 2 deposed that the Central Government in exercise of its powers under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 vide notification number S.O. 1415 (E) dated 15th March 2024 has *declared* 4 factions of Jammu & Kashmir Peoples League (**JKPL**), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan), also known as Jammu & Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh to be '*unlawful associations'*. *Witness* stated that he had read the brief background note on JKPL prepared by the Central Government and in view of the various cases registered against the said organization and its leaders, he could affirm that JKPL and its leaders were involved in the secessionist activities.

65. PW 2 further deposed that Jammu and Kashmir Peoples League (JKPL) was formed on 3rd October 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan), Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits due to personal bickering among leadership of JKPL to lead the party. *Witness* deposed that it was borne out from intelligence reports and records that at the instance of Pakistani intelligence agency ISI, Sheikh Abdul Aziz formed various factions of JKPL to evade surveillance on their separatist activities, however, all the factions worked under one umbrella of JKPL under overall leadership of Sheikh Abdul Aziz. *Witness* deposed that presently, JKPL has four factions, namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh which are functional and that all the four factions are popularly known as JKPL in common and are one in soul.

66. PW 2 affirmed on the basis of records that the prominent leaders of the 4 factions of JKPL are Mukhtar Ahmad Waza (Acting Chairman of his faction of JKPL), Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of his faction of JKPL), Mohammad Yakoob Sheikh (Chairman Pakistan Chapter of JKPL), Mohammad Yasin Dar @ Attie (Chairman Kashmir Chapter of JKPL associated with Yakoob Sheikh), Farooq Ahmad Dagga (Activist), Bashir Ahmad Tota (Chairman of his faction of JKPL), Ghulam Nabi Darzi (Vice Chairman of Tota Group of JKPL) and Mukhtar Ahmad Sofi (Activist). *Witness* further affirmed that after the death of Sheikh Abdul Aziz, chairman JKPL in the year 2008, all the above four factions of JKPL continued to operate as per the constitution and manifesto of JKPL framed in 1987/1991 and on the directions of Pakistani agency ISI. PW 2 deposed that these factions cooperate with each other in carrying out anti-national activities, spreading false narrative against Union of India, boycotting democratic process of elections, leading violent protests, inciting youth into secessionism and terrorism, glorifying terrorists, vilifying security forces, generating feelings of hatred and disaffection against India and supporting terrorist organizations besides causing large scale street violence and arson within the J&K with an aim/objective to secede J&K from the Union of India and its further merger with Pakistan. *Witness* further stated that these factions have been spearheading the above activities by taking collective decisions, details of which are given in the dossier.

67. PW 2 also deposed that during course of the discharge of his official duties as a police officer in the J&K, he had on several occasions come across about reports of secessionist activities/movements perpetrated by JKPL and its leaders. Witness further deposed that on 24.04.2015 at 1730 hrs., a written docket was received which had been forwarded by SI Mohd Yousuf 51/PAU (Camp Narbal) to the effect that Farooq Ahmad Rather *s/o* Ali Mohammad Rather, affiliated with *Hurriyat G*, assisted by Mehraj-ud-Din Kalwal, Ghulam Ahmad Khan Sopori, Nayeem Ahmad Khan (of Salvation Movement) and Zahid Ali Lone of JEI had come to Narbal to offer condolence to the family of a deceased person namely Suhail Ahmad at his house, and addressed a huge crowd of people at Narbal Chowk and raised pro-*azadi* and pro-Pakistan, and anti-India slogans resulting in pelting of stones on police personnel, IRP and CRPF deployed for law & order duties. These acts by the above-mentioned persons amounted to the commission of cognizable offences u/s 147, 148, 336, 341, 353 of RPC and section 13 ULA (P) Act. On receipt of this docket, **FIR No. 40/2015** under relevant sections of law was registered. A true copy of **FIR No. 40/2015** in vernacular along with its true English translation was relied upon by PW 2 as **Exhibit PW2/1.**

68. PW 2 further deposed that investigation of the case was conducted during which incriminating material was seized and statements of witnesses were recorded and after collecting sufficient material, substantiating the guilt of the accused persons, a charge-sheet was filed on 03.11.2022 in the jurisdictional Court of JMIC, Magam (Budgam), a true copy of which in vernacular along with its true English translation of the relevant portion, relied upon as **Ex.**

PW 2/2, and a true copy of seizure memo dt. 24.04.2015 prepared during the investigation of FIR no. 40/2015 in vernacular along with its true English translation, was relied upon as **Ex. PW 2/3.** *Witness* further relied upon true copies of the statements of the witnesses recorded u/s 161 Cr.P.C in vernacular along with their true English translations, as **Ex. PW 2/4 to Ex. PW 2/5.** *Witness* further deposed that the investigation faced significant challenges due to the volatile situation in the valley orchestrated by separatist leaders and their affiliated groups, who received unwavering support from across the border and terrorist organizations which deterred individuals from coming forward to provide statements, hindering the progress of the investigations which were further delayed due to widespread unrest and turmoil in the affected regions.

69. PW 2 further deposed that JKPL and its all the above said four factions, since inception, have been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations active within Jammu and Kashmir. *Witness* further deposed that he is in police service since the year 2011 and during various postings in the Kashmir Valley, has come across various incidents, reports, FIR's and cases including the above stated cases, which show that the factions of JKPL, its chairmen and other leaders of the said organization have indulged in anti-national activities and were working for secession of the State of Jammu and Kashmir from the Union of India. *Witness* further affirmed that the ban imposed upon the said organization by the Central Government is appropriate and needs to be upheld in national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance/no-contest by the 4 factions of JKPL.

PW-3

70. **Satish Kumar (PW-3)** who is currently posted as Sub-Divisional Police Officer, Handwara, Kashmir tendered his affidavit as **Ex.PW 3/A** and deposed that he was the supervising officer of the case bearing FIR no. 141/2000 and that in the course of his duties, had gone through the records of the case diary of FIR no. 141/2000, and hence, was well conversant with the facts. *Witness* further deposed that he had been authorized by the competent authority to depose before this Tribunal and relied upon such authorization as **Ex. PW 3/A-1.**

71. PW 3 deposed that the Central Government in exercise of its powers under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 vide notification number S.O 1415 (E) dated 15th March 2024 has *declared* 4 factions of Jammu & Kashmir Peoples League (**JKPL**), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan), also known as Jammu & Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh to be '*unlawful associations'*. *Witness* stated that he had read the brief background note on JKPL prepared by the Central Government and in view of the various cases registered against the said organization and its leaders, he could affirm that JKPL and its leaders were involved in the secessionist activities.

72. PW 3 further deposed that Jammu and Kashmir Peoples League (JKPL) was formed on 3rd October, 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan), Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits due to personal bickering among leadership of JKPL to lead the party. *Witness* deposed that it was borne out from intelligence reports and records that at the instance of Pakistani intelligence agency ISI, Sheikh Abdul Aziz formed various factions of JKPL to evade surveillance on their separatist activities, however, all the factions worked under one umbrella of JKPL under overall leadership of Sheikh Abdul Aziz. *Witness* deposed that presently, JKPL has four factions, namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh which are functional. All four factions are popularly known as JKPL in common and are one in soul. *Witness* deposed that it is borne out from records that the prominent leaders of the 4 factions of JKPL are Mukhtar Ahmad Waza (Acting Chairman of his faction of JKPL), Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of his faction of JKPL), Mohammad Yakoob Sheikh (Chairman Pakistan Chapter of JKPL), Mohammad Yasin Dar @ Attie (Chairman Kashmir Chapter of JKPL associated with Yakoob Sheikh), Farooq Ahmad Dagga (Activist), Bashir Ahmad Tota (Chairman of his faction of JKPL), Ghulam Nabi Darzi (Vice Chairman of Tota Group of JKPL) and Mukhtar Ahmad Sofi (Activist).

73. PW 3 further deposed that after the death of Sheikh Abdul Aziz, chairman JKPL in the year 2008, all the above four factions of JKPL continued to operate as per the constitution and manifesto of JKPL framed in 1987/1991 and on the directions of Pakistani agency ISI, co-operating with each other in carrying out anti-national activities, spreading false narrative against Union of India, boycotting democratic process of elections, leading violent protests, inciting youth into secessionism and terrorism, glorifying terrorists, vilifying security forces, generating feelings of hatred and disaffection besides causing large scale street violence and arson within the J&K with an aim/objective to secede J&K from the Union of India and its further merger with Pakistan.These factions have been spearheading the above activities by taking collective decisions, details of which are given in the dossier.

74. PW 3 further deposed that during course of the discharge of his official duties as a police officer in the J&K, he had on several occasions come across reports of secessionist activities/movements perpetrated by JKPL and its

leaders. *Witness* deposed that on 01.11.2000, a written docket sent by ASI Ahamadullaha was received in PS Handwara disclosing that he received a reliable information that Syed Ali Shah Geelani, Masarat Aalam and Sheikh Ab Aziz affiliated with *Hurriyat Conference* had come to the residential house of Aijaz Ahmad Wani for condolence of deceased Aijaz Ahmad Wani who was killed by the Special Forces. The *Hurriyat* activists provoked and instigated the general public for secession of J&K from India and pressurized the shopkeepers to close their shops, and also provoked the general public for joining militant ranks.

75. PW 3 testified that the contents of the written docket disclosed commission of offences against the sovereignty and integrity of India, and accordingly **FIR No. 141/2000** under section 13 UAPA and section 188 of RPC was registered at PS Handwara on 01.11.2000 and investigation was conducted. A true and correct copy of **FIR No. 141/2000** in vernacular along with true English translation of its relevant portion was relied upon by the *Witness* as **Exhibit PW 3/1.**

76. PW 3 further testified that during the investigation of the FIR, statements of 17 witnesses, including independent witnesses, were recorded under section 161 Cr.P.C including the statement of an *eye-witness*, namely Sannullaha Wani, in whose house the Hurriyat leaders came for offering condolences. Witness further deposed that said *eye-witness* in his statement stated that while offering condolences for the death of his son at the hands of the security forces *the Hurriyat activists Syed Ali Shah Geelani, Sheikh Abdul Aziz and Masrat Aalam Bhat* delivered speeches and provoked/instigated the general public for secession of J&K from India also raised slogans *"Hindustan Murdabad, Pakistan Zindabad"*. *Witness* further deposed that the statement of the independent witness corroborated with the statements of the police officers who were on duty and with the contents of the written complaint mentioned in the FIR. True copies of the statements of witnesses recorded in vernacular along with their true English translations were relied upon by PW 3 as **Ex. PW 3/3** and **Ex. PW 3/4**.

77. *Witness* further stated on oath that though sufficient material was collected against all the accused, however, during investigation accused Abdul Aziz and Syed Ali Shah Geelani passed away but a charge-sheet was filed against the other accused persons. A true copy of *Charge-sheet* filed in **FIR no. 141 of 2000** in vernacular along with its true English translation was relied upon by the *Witness* as **Ex. PW 3/2**. *Witness* also deposed that all the above said four factions, since their inception, have been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations active within Jammu and Kashmir.

78. PW 3 further deposed being in police service since 2012 and having been posted at various places in the Kashmir Valley, he had come across various incidents, reports, FIR's and cases, facts of which show that the factions of JKPL, its chairmen and other leaders of the said organization have indulged in anti-national activities and were working for secession of the State of Jammu and Kashmir from the Union of India. PW 3 further affirmed on oath that the ban imposed upon the said organization by the Central Government is appropriate and needs to be upheld in the national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance/no-contest by the 4 factions of JKPL.

PW-4

79. **Ghulam Nabi Dar (PW-4),** who is currently posted as Sub-Inspector at Police Station Sopore, Kashmir tendered his affidavit as **Ex.PW 4/A** and deposed that he was the supervising officer case FIR no. 394/2016, and hence, was well conversant with the facts and circumstances of the case. *Witness* further affirmed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization as **PW 4/ A-1.**

80. PW 4 deposed that the Central Government in exercise of its powers under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 vide notification number S.O. 1415 (E) dt. 15th March 2024 has *declared* 4 Factions of Jammu & Kashmir Peoples League (**JKPL**), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan), also known as Jammu & Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh to be '*unlawful associations*'. *Witness* stated that he had read the brief background note on JKPL prepared by the Central Government and in view of the various cases registered against the said organization and its leaders, he could affirm that JKPL and its leaders were involved in the secessionist activities.

81. PW 4 further deposed that Jammu and Kashmir Peoples League (JKPL) was formed on 3rd October 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan) Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits due to personal bickering among leadership of JKPL to lead the party. *Witness* deposed that it was borne out from intelligence reports and records that at the instance of Pakistani intelligence agency ISI, Sheikh Abdul Aziz formed various factions of JKPL to evade surveillance on their separatist activities, however, all the factions worked under one umbrella of JKPL under overall leadership of Sheikh Abdul Aziz. *Witness* deposed that presently, JKPL has four factions, namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz

Sheikh) led by Yaqoob Sheikh which are functional that all the four factions are popularly known as JKPL in common, and are one in soul. *Witness* deposed that it is borne out from records that the prominent leaders of the 4 factions of JKPL are Mukhtar Ahmad Waza (Acting Chairman of his faction of JKPL), Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of his faction of JKPL), Mohammad Yakoob Shiekh (Chairman Pakistan Chapter of JKPL), Mohammad Yasin Dar @ Attie (Chairman Kashmir Chapter of JKPL associated with Yakoob Sheikh), Farooq Ahmad Dagga (Activist), Bashir Ahmad Tota (Chairman of his faction of JKPL), Ghulam Nabi Darzi (Vice Chairman of Tota Group of JKPL) and Mukhtar Ahmad Sofi (Activist).

82. PW 4 further deposed that after the death of Sheikh Abdul Aziz, chairman of JKPL in the year 2008, all the four factions of JKPL continued to operate as per the constitution and manifesto of JKPL framed in 1987/1991 and on the directions of Pakistani agency ISI, co-operated with each other in carrying out anti-national activities, spreading false narrative against Union of India, boycotting democratic process of elections, leading violent protests, inciting youth into secessionism and terrorism, glorifying terrorists, vilifying security forces, generating feelings of hatred and disaffection besides causing large scale street violence and arson within the J&K with an aim/objective to secede J&K from the Union of India and its further merger with Pakistan. These factions have been spearheading the above activities by taking collective decisions, details of which are given in the dossier.

83. *Witness* further stated on oath that on 12.09.2016, at 1505 hours, Police Station Sopore received a written docket that some Hurriyat-(G) members namely Abdul Gani Bhat@ Gani Guroos/o Ghulam Ahmad Bhat, Manzoor Ahmad Kaloo @ Mam Kul s/o Abdul Kabir, Mohammad Ashraf Malik s/o Abdullah Malik, Ghulam Muhammad Khan @ Khan Soporee s/o Mahad Khan, Muhammad Shaban Khan s/o Habibullah Khan, Yadullah Mir s/o Ghulam Ahmad, and Ghulam Nabi Zaki s/o Abdul Aziz were delivering anti-national speech and provoking the youth to carry out agitation for secession of J&K from Union of India. *Witness* further deposed that in the meantime, some terrorists appeared and fired on Police/security forces resulting in injury being caused to H.C. Shakeel Ahmad. Thereafter, a mob in the shape of an-unlawful assembly appeared from different streets who pelted stones upon the Police/security forces resulting in damage to vehicles of Police. Resultantly, **FIR No. 394/2016** u/s 147, 148, 149, 153-A, 336, 307, 427 of RPC, sec. 3 PPD Act, and ss. 7/27 A. Act was registered in Police Station Sopore. *Witness* relied upon a true and correct copy of **FIR No. 394/2016** in vernacular along with its true English translation as **Ex. PW 4/1**.

84. PW 4 further deposed that investigation of the case was conducted during which incriminating materials were seized and statements of eyewitness were also recorded under section 161 Cr.P.C which corroborated the contents of the FIR. *Witness* relied upon a true and correct copy of Seizure Memo dt. 12.09.2016 prepared during the investigation of FIR no. 394/2016, in vernacular along with the true English translation of its relevant portion as **Ex. PW 4/2**, and true copies of statements of witnesses recorded during investigation, in vernacular along with their true English translations as **Ex. PW 4/3** *and* **Ex. PW 4/4**. *Witness* further affirmed that the investigation conducted till date *prima facie* establishes commission of the offences, however, it is yet to be concluded since the investigation has been hampered due to extreme law and order situation in the *Valley* though the charge-sheet is likely to be filed soon.

85. PW 4 further deposed that JKPL and its all four factions, since its inception, have been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir and are nurturing the secessionist eco-system in Jammu and Kashmir. PW 4 also deposed that having come across various incidents, reports, FIR's and cases including the above stated cases, facts of which show that factions of JKPL, its chairmen and other leaders of the said organization were working for secession of the State of Jammu and Kashmir from the Union of India, the ban imposed upon the said *factions* by the Central Government is appropriate and needs to be upheld in national interest.

Opportunity for cross-examination was given but not availed due to non-appearance/no-contest on behalf of the JKPL factions.

PW-5

86. **Gazanfur Syed (PW-5),** currently posted as Dy. Superintendent of Police, Kulgam, Kashmir, tendered his affidavit as **Ex. PW5/A** and deposed that he was the supervising officer of case FIR No. 22/2017 and hence, was well conversant with the facts and circumstances of the case. *Witness* further stated that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization as **Ex. PW 5/A-1.**

87. PW 5 deposed that the Central Government in exercise of its powers under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 vide notification number S.O 1415 (E) dated 15th March 2024 has *declared* 4 Factions of Jammu & Kashmir Peoples League (**JKPL**), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan), also known as Jammu & Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh to be '*unlawful associations'*. *Witness* stated that he had read the brief background note on JKPL prepared by the Central Government and in view of the various cases registered against the said organization and its leaders, he could affirm that JKPL and its leaders were involved in the secessionist activities.

88. PW 5 further deposed that Jammu and Kashmir Peoples League (JKPL) was formed on 3rd October, 1974 by a group of secessionists including Farooq Ahmed Shah @ Farooq Rehmani (currently in Rawalpindi, Pakistan), Ghulam Rasool Zehgeer, Syed Hamid, Musadiq Bhat, Ghulam Mohammad @ Khan Sopori and others. Subsequently, JKPL suffered several splits due to personal bickering among leadership of JKPL to lead the party. *Witness* deposed

that it was borne out from intelligence reports and records that at the instance of Pakistani intelligence agency ISI, Sheikh Abdul Aziz formed various factions of JKPL to evade surveillance on their separatist activities, however, all the factions worked under one umbrella of JKPL under overall leadership of Sheikh Abdul Aziz. *Witness* deposed that presently, JKPL has four factions, namely JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohammad Khan @ Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh which are functional. All the four factions are popularly known as JKPL in common and are one in soul. *Witness* deposed that it is borne out from records that the prominent leaders of the 4 factions of JKPL are Mukhtar Ahmad Waza (Acting Chairman of his faction of JKPL), Ghulam Mohammad Khan @ Khan Sopori (Acting Chairman of his faction of JKPL), Mohammad Yakoob Shiekh (Chairman Pakistan Chapter of JKPL), Mohammad Yasin Dar @ Attie (Chairman Kashmir Chapter of JKPL associated with Yakoob Sheikh), Farooq Ahmad Dagga (Activist), Bashir Ahmad Tota (Chairman of his faction of JKPL), Ghulam Nabi Darzi (Vice Chairman of Tota Group of JKPL) and Mukhtar Ahmad Sofi (Activist).

89. PW 5 further deposed that after the death of Sheikh Abdul Aziz, chairman JKPL in the year 2008, all four factions of JKPL continued to operate as per the constitution and manifesto of JKPL framed in 1987/1991 and on the directions of Pakistani agency ISI, co-operating with each other in carrying out anti-national activities, spreading false narrative against Union of India, boycotting democratic process of elections, leading violent protests, inciting youth into secessionism and terrorism, glorifying terrorists, vilifying security forces, generating feelings of hatred and disaffection besides causing large scale street violence and arson within the J&K with an aim/objective to secede J&K from the Union of India and its further merger with Pakistan. These factions have been spearheading the above activities by taking collective decisions, details of which are given in the dossier.

90. *Witness* affirmed on oath that on 02.03.2017, Police Station Kulgam received an information that one *Hurriyat* activist namely Mukhtar Ahmad Waza along with other associates came to village Souch, Kulgam, where he delivered a hate speech to continue the process of freedom in order to get Jammu & Kashmir liberated from the Union of India which was against the sovereignty and integrity of the nation. Accused had also raised anti-national slogans such as '***Go India Go back***' '***Hum kya chahate Azadi***'. As the said information disclosed commission of a cognizable offence, **FIR No. 22/2017** was registered at PS Kulgam on 02.03.2017 u/s 13 of UAPA and investigation of the case commenced. A true and correct copy of **FIR No. 22/2017** in vernacular along with true English translation of its relevant portion was relied upon by the *Witness* as **Ex. PW 5/1.**

91. PW 5 further deposed that during investigation of the FIR, statements of the witnesses were recorded u/s 161 Cr.P.C. who corroborated the incident and the contents of the FIR. Since there was credible evidence collected during investigation substantiating the guilt of the accused, a charge-sheet was filed before the concerned court on 08.12.2018, a true copy of which, in vernacular along with its true English translation was relied upon as **Ex. PW 5/2**. PW 5 also relied upon a true copy of statement of a witness recorded u/s 161 Cr.P.C., in vernacular along with its true English translation as **Ex. PW 5/3.**

92. *Witness* further deposed that JKPL and its all the above said four factions, since inception, have been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir and are nurturing the secessionist eco-system in Jammu and Kashmir. PW 5 also affirmed on oath that having been posted in various parts of the Kashmir Valley, he had come across various incidents, reports, FIR's and cases including the above stated case, facts of which show that factions of JKPL, its chairmen and other leaders of the said organization were working for secession of the State of Jammu and Kashmir from the Union of India. PW 5 *further* deposed that the ban imposed upon the said *factions* of JKPL by the Central Government is appropriate and needs to be upheld in national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance/ no-contest on the part of the 4 factions of JKPL.

PW-6

93. **Rajesh Kumar Gupta**, Director (CTCR) in the Government of India, Ministry of Home Affairs, New Delhi appeared as **PW 6** and deposed that he has been authorized to depose on behalf of the Central Govt. as he had been dealing with all the relevant files/records concerning JKPL in his official capacity. A copy of the relevant office noting vide which he was authorized to appear and depose before this Tribunal was relied upon as **Ex. PW6/ A-1**[1]. *Witness* also tendered his affidavit in evidence as **Ex. PW 6/A**.

94. *Witness* further deposed that the Notification no. S.O. 1415(E) dt. 15th March, 2024, declaring the 4 factions of the JKPL as unlawful has been issued by the Central Government based on the information and material received from the central intelligence agency and Criminal Investigation Department of Government of Union Territory of Jammu and Kashmir, with regard to the unlawful activities of the 4 factions of Jammu and Kashmir Peoples League (JKPL), *namely* JKPL (Mukhtar Ahmed Waza), JKPL (Bashir Ahmad Tota), JKPL (Ghulam Mohd. Khan@Sopori) also known as Jammu and Kashmir Peoples Political League and JKPL (Aziz Sheikh) led by Yaqoob Sheikh. **PW 6**

[1] The original file containing the office noting was submitted in a sealed cover by PW 6.

further stated on oath that based on the information received from the intelligence and investigation agencies of the Central Government and the Union Territory of Jammu and Kashmir regarding unlawful activities of the above mentioned 4 factions of JKPL, a note was prepared for the consideration of the Cabinet Committee on Security. Thereafter, the Cabinet Committee on Security took the decision and approved the proposal contained in the above note, in the meeting held on 13thMarch, 2024. Accordingly, the *declaration* was made and published vide notification dated 15th March, 2024, bearing no. S.O. 1415(E). A copy of the said notification dt. 15.03.2024 which was published in the official gazette, was relied upon by PW6 as **Ex. PW 6/1.**

95. PW 6 further affirmed on oath that in terms of sub-section (1) of Section 5 read with sub-section (1) of Section 4 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA) and vide notification dated 05thApril, 2024, bearing no. S. O. 1630 (E), this *Tribunal* was constituted. *Witness* stated that the Background Note submitted to this *Tribunal* in terms of Rule 5 of the Unlawful Activities Prevention Rules 1968, vide letter dated 12th April, 2024 is based upon the material/ information as contained in the concerned file. A copy of the said Background Note was relied upon by PW 6 as **Ex. PW 6/2.**

96. *Witness* further deposed that the various cases registered by the Jammu and Kashmir Police, throw light on the unlawful and subversive activities of the chairpersons and members of the aforesaid factions of JKPL. Further, the officers concerned of the Union Territory of Jammu and Kashmir have filed affidavits before this *Tribunal* in respect of cases registered in the UT of Jammu and Kashmir against the chairpersons and members of the aforesaid factions of JKPL under various provisions of law including the Unlawful Activities (Prevention) Act, 1967 and Ranbir Penal Code. PW 6 also deposed that various witnesses have already adduced evidence during the course of proceedings before this *Tribunal* in support of the declaration as contained in notification no. S. O. 1415(E) dated 15th March, 2024 which clearly establishes that all the aforesaid factions of JKPL are continuously indulging in unlawful activities which pose a serious threat to the internal security of the country.

97. PW 6 also deposed that in addition to the above adduced evidences, various intelligence inputs show that all four factions of JKPL are continuing their unlawful activities for separation of Jammu and Kashmir from the Union of India which are prejudicial to the security of the country, and considering all these facts, circumstances and evidences adduced before this Tribunal, all factions of JKPL have been banned under the UAPA, 1967 and the same may be affirmed by this *Tribunal*.

98. PW 6 further affirmed on oath that as per the information received from various agencies, it is justified that the banning of all four factions of JKPL is necessary in the interest of national security, sovereignty and territorial integrity of India as chairpersons and members of all four factions of JKPL have indulged in radicalizing and brainwashing the minds of Kashmiri youth through provocative speeches for separation of Jammu and Kashmir from Union of India. *Witness* submitted the original file (duly indexed) containing above mentioned central intelligence reports/inputs for the perusal of this *Tribunal* which file has been identified as **Ex. PW 6/3** for which the Central Government also sought privilege against its public disclosure, placing reliance on *section 123* of the Indian Evidence Act read with *Rule* 3(2) and *proviso* to *Rule* 5 of Unlawful Activities (Prevention) Rules of 1968. *Witness* further deposed that the contents of **Ex. PW 6/3** being privileged and confidential in nature, cannot be made available to the banned associations or to any third party as the Government considers it against the public interest to disclose the same *inter-alia* in terms of the provisions of the Unlawful Activities (Prevention) Rules, 1968.

99. *Witness* further deposed that from the cogent and irrefutable evidences, which have emerged till now, the four factions of JKPL are continuously encouraging veiled armed terrorist activities and are openly advocating and inciting people to bring about a secession of a part of the territory of India from the Union by causing disaffection, disloyalty and dis-harmony, and promoting feeling of enmity and hatred against the lawful government, and *hence*, the declaration made by the Central Government vide Notification No. S. O. 1415(E) dated 15th March, 2024 may please be confirmed and upheld in the national interest.

Opportunity for cross-examination was given but not availed in view of non-appearance/ no-contest on behalf of the 4 factions of JKPL.

No other witness was examined on behalf of the Union of India. The proceedings were thereafter, adjourned to 27.07.2024 for addressing final submissions on behalf of the Union of India, in support of the grounds of sufficiency for carrying out the aforesaid declaration of JKPL/its 4 factions as '*unlawful associations*'.

VIII. SUBMISSIONS ON BEHALF OF THE UOI

100. On 27.07.2024, learned Additional Solicitor General for the Union of India, put forth submissions in support of the existence of sufficient cause/grounds for declaring the JKPL/its factions as '*unlawful associations*' vide the Notification no. S.O. 1415 (E). Additionally, ld. Addl. S.G. also addressed arguments for claiming privilege for the documents which had been submitted in a sealed cover by PW 6. While submitting on the claim for privilege, ld. Addl. S.G. has referred to *section* 123 of the Evidence Act read with *Rule* 3(2) of the UAP Rules, 1968, which are reproduced as under:

Indian Evidence Act, 1872

*"**123. Evidence as to affairs of State** – No one shall be permitted to give any evidence derived from*

unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

The Unlawful Activities (Prevention) Rules, 1968

"3. Tribunal and District Judge to follow rules of evidence.-

(1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,-

(a) Make such books of account or other documents a part of the records of the proceedings before it; or

(b) Allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."

101. Ld. Additional Solicitor General submitted that the claim of privilege by the Union of India for the documents placed sealed cover has been made as the documents are of such a nature that the non-disclosure of which would be in the interest of the public. It was submitted that this concept of public interest is taken into account even in the criminal proceedings qua the accused, whereas in juxtaposition, the present matter stands at a much higher pedestal and involves the issue of sovereignty and integrity of the country. Ld. Addl. SG submitted that the cases concerning national security, sovereignty and integrity, the Tribunal has to interpret and analyze the material differently as the decisions taken by the Central Government in such manner are based on highly sensitive information and inputs; and the effects of such decisions are not confined to the boundaries of the nation.

102. To support her arguments, ld. Addl. SG has relied upon the judgment delivered in ***Raj Kumar Singh vs. State of Bihar*** (1986) 4 SCC 407 which is a case of preventive detention where the Supreme Court, *inter alia*, held as under:

"The executive authority is not the sole judge of what is required for national security or public order. But the court cannot substitute its decision if the executive authority or the appropriate authority acts on proper materials and reasonably and rationally comes to that conclusion even though a conclusion with which the court might not be in agreement. It is not for the court to put itself in the position of the detaining authority and to satisfy itself that untested facts reveal a path of crime provided these facts are relevant. See in this connection the observations of O. Chinnappa Reddy, J. in Vijay Narain Singh case [(1984) 3 SCC 14: 1984 SCC (Cri) 361: AIR 1984 SC 1334: (1984) 3 SCR 435] at p. 440 and 441. (SCC p. 19, para 1) 346. Similarly, in the case of Union of India vs. Rajasthan High Court, (2017) 2 SCC 599: 2016 SCC Online SC 1468.. It was not for the court in the exercise of its power of judicial review to suggest a policy which it considered fit. The formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond legitimate domain of judicial review. Formulation of such a policy is based on information and inputs which are not available to the court. The court is not an expert in such matters. Judicial review is concerned with the legality of executive action and the court can interfere only where there is a breach of law or a violation of the Constitution."

103. The learned Addl. SG has also placed reliance upon the judgment delivered in ***Ex-Armymen's Protection Services (P) Ltd. v. Union of India,*** (2014) 5 SCC 409, wherein it has been inter alia held as under:

"15. It is difficult to define in exact terms as to what is "national security". However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of the State or not. It should be left to the executive."

104. The learned Addl. SG submitted that the UAPA and the Rules framed thereunder provide for a mechanism to claim privilege and withhold certain facts/documents to seek non-disclosure of the same. The learned Addl. SG then placed reliance on the judgment delivered in ***Jamaat-e-Islami Hind*** (supra), wherein the Hon'ble Supreme Court has held as under:

"19. ...the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of acts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit nondisclosure of

confidential documents and information which the Government considers against the public interest to disclose…

20…

21. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest.

22....in such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense.

23…

24. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken."

105. The learned Addl. SG also relied on the judgment delivered in ***People's Union for Civil Liberties vs. Union of India,*** (2004) 2 SCC 476, where it was, *inter alia*, held as under:

"69. The legislative policy behind the aforementioned provisions is no longer res integra. The State must have the prerogative of preventing evidence being given on matters that would be contrary to public interest.

70. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:

(1) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and

(2) whether disclosure of the contents of the document would be against public interest?

71. When any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. The claim of immunity and privilege has to be based on public interest.

72. The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can be found in Section 162. Under Section 162 a person summoned to produce a document is bound to bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court. It further says that: The court, if it deems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility

73. In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."

106. The learned Addl. SG, thus, submitted that from a bare reading of the aforesaid judgment of the Supreme Court, it is clear that an enquiry contemplated under the UAPA gives a right to the government to claim privilege of sensitive documents in public interest/national interest which right has been duly upheld by the Supreme Court; and that in the present case, the documents for which claim of privilege has been raised, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

107. The learned Addl. SG further submitted that the documents form a part of the evidence collected by the intelligence agencies which pertains to secessionist and unlawful activities of the JKPFL and those associated with it and the said documents are confidential and secret in nature. Hence, the same can be verified by the Tribunal only. The learned Addl. SG further submitted that the nature of material placed in the sealed cover by the Central Government is in the form of intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. The learned Addl. SG submitted that the material filed by the Central Government contains the note then put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the notification was issued. Hence, the claim of privilege of the documents by the Central Government is in accordance with law.

108. Learned Addl. SG also submitted that the sealed cover material as mentioned in the affidavit of PW 6, forms part of the evidence which is inherently and *dehors* being part of the evidence of the present proceeding, is of confidential nature, disclosure of which would be contrary, not only to the public interest but also to national interest.

109. Learned Addl. SG has further placed reliance in this regard on the following judgments of the Hon'ble Supreme Court:

(a) S.P. Gupta Vs. Union of India (1981) Supp SCC 87

(b) Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 370

110. Regarding the claim of privilege for non-disclosure of sealed cover documents, ld. Addl. SG further submitted that the Supreme Court in ***S.P. Gupta***(supra), has held as under:

> *"73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the nondisclosure would thwart the administration of justice by keeping back from the court a material document. There are two aspects of public interest clashing with each other out of which the court has to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer [(1968) AC 910, 952, 973, 979, 987, 993 : (1968) 1 All ER 874 (HL)] :*
>
> > *"It is universally recognized that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved."*

111. Ld. Addl. SG, therefore, submitted that the rigors of ***S.P Gupta*** (supra) for claiming privilege have to be read in context of the provisions of UAPA and the Rules framed there-under which provide that document, disclosure whereof may not be in the public interest, be not disclosed. Accordingly, the Tribunal is mandated to grant privilege, forbidding disclosure where the claim of the Government is that the disclosure of such documents could affect the larger public interest of the nation by jeopardizing the safety and sovereignty of the country and where the Tribunal also finds that the public interest outweighs the interest of the association/members/office bearers.

112. The ld. Addl. SG also submitted that the decision of the previous Tribunals constituted under Section 4 of the UAPA, in which the claim of privilege by the Central Government had been allowed holding that the same satisfied the requirement of Section 123 of the Evidence Act, are binding on this Tribunal in view of the provisions of Section 5(7) of the UAPA which provides that the proceedings before this Tribunal are judicial proceedings and, therefore, reliance has been placed on the Extraordinary Gazette Notification bearing no CG-DL-E-27032023-244721 published in Part II—Section 3—Sub-section (ii) having no. 1382 dated Monday, March 27, 2023/CHAITRA 6, 1945 whereby, Tribunal comprising of Hon'ble Mr. Justice Dinesh Kumar Sharma, Judge, Delhi High Court in exercise of the powers conferred by *sub-section (3)* of section 4 of the said Act, passed an order on the 21st March, 2023, confirming the declaration made by Central Government declaring the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala as *unlawful associations* vide notification of the Government of India

bearing number S.O. 4559 (E), dt. 27th September, 2022, published in the Gazette of India, Extraordinary, Part II, dt. 28th September, 2022.

113. In view of the aforesaid legal position, the ld. Addl. SG submitted that the Central Government respectfully claims privilege on the documents contained in the sealed cover, as mentioned in the affidavit filed by the Central Government.

114. Adverting to the existence of sufficient reasons/grounds and material for the Central Govt. to have declared the 4 factions of JKPL as *unlawful associations*, ld. Addl. SG submitted that the *statement of objects and reasons* of the UAPA itself underlines the purpose of the enactment to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. She submitted that the *statute* empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form an association, freedom of speech and expression, and on the right to assemble peacefully and with arms. Ld. Addl. SG submitted that further, Section 48 of the UAPA itself provides that the provisions of the UAPA and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act, giving it a clear over-riding position.

115. Ld. Addl. SG further submitted that the validity of the provisions of the 'Act' ought to be judged in the backdrop of the history of the 'Act' necessitating their introduction. Ld. Addl. SG submitted that as per the *Statement of Objects and Reasons*, the Unlawful Activities (Prevention) Act, 1963 was enacted to make powers available for dealing with activities directed against the integrity and sovereignty of India which may take the manner and form either of "terrorism" or "other unlawful activity" which threatens the sovereignty of India.

116. Ld. Addl. SG further submitted that the exception to the freedom of speech and expression, and to form associations and union, under Article 19(1) of the Constitution of India, was inserted in the form of "*sovereignty and integrity of India*" in Article 19(2) and 19(4), after the National Integration Council appointed a Committee on National Integration and Regionalization. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Ld. Addl. SG submitted that pursuant to the acceptance of recommendations of the Committee, the Constitutional Sixteenth Amendment) Act 1963 was enacted to impose reasonable restrictions in the interests of the sovereignty and integrity of India. Further, to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament. The main objective of the Unlawful Activities (Prevention) Act thus is to make powers available for dealing with activities directed against the integrity and sovereignty of India.

117. Ld. Addl. SG submitted that after Independence, Parliament has passed many laws to regulate national security and to protect sovereignty of India. The UAPA, 1967 is an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and other matters connected therewith.

118. Ld. Addl. SG further submitted that to achieve the aforesaid purpose of tackling the menace of activities inimical to the sovereignty and integrity of India, the legislature in its wisdom decided to create two species of the offence i.e.

i. Unlawful Activity & Unlawful Association [S-2(o) r/w Chapter 2 & 3 (Sections 3-14)]; and

ii. Terrorist Act & Terrorist Organization [S-2(k), (I),(m) r/w Chapter 4-6 (Sections 15-40)].

119. Ld. Addl. SG further submitted that notably, the repeal of the Prevention of Terrorist Activities Act, 2002 entailed an absence of a legal framework to address the menace of terrorism. Accordingly, as a consequence, the UAPA was *amended* to include a definition of the term *'terrorism'* and to give substantive powers to the Indian State to address the same. The amendments made therein were made also keeping in mind India's commitments under the Security Council Resolution dated 28th September, 2001, which enjoined to fight both terrorism as well as terror funding, which was to be treated as a genus of terrorism. The amendments were in furtherance of the global fight against terrorism.

120. In view of the aforesaid, ld. Addl. SG submitted that it is evident that the provisions of UAPA have been enacted by the Parliament which had the legislative competence to enact the same and that once it is clear that the Parliament had the legislative competence to enact the law, there is a presumption of constitutionality in favour of the statute. It is further submitted that there is always presumption of constitutional validity of the statute and it is presumed that the Legislature understands the needs of the people. Ld. Addl. SG submitted that an organization can be banned solely based on the opinion of the Central Government and, therefore, the challenge to Chapter II of UAPA has already been repelled by the Hon'ble Supreme Court in *paras* 84 -92 of ***Arup Bhuyan v.State of Assam*** (2023) 8 SCC 745. In *para* 90 of this judgment, the Hon'ble Supreme Court held as under:

> *"90. Thus from the aforesaid it can be seen that before any organization is declared unlawful a detailed procedure is required to be followed including the wide publicity and even the right to a member of such association to represent before the Tribunal. As observed hereinabove the notification issued by the Central*

Government declaring a particular association unlawful, the same is subject to inquiry and approval by the Tribunal as per Section 4. Once that is done and despite that a person who is a member of such unlawful association continues to be a member of such unlawful association then he has to face the consequences and is subjected to the penal provisions as provided under Section 10 more particularly Section 10(a)(i) of the UAPA, 1967."

121. On the aspect of *standard of proof* required in the present Reference proceedings to judge the existence of sufficiency of grounds for declaring an association as an unlawful association, ld. Addl. SG submitted that the proceedings before this Tribunal are civil in nature. The standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and the matter has to be decided by objectively examining which version is more acceptable and credible. In this regard, ld. Addl. SG has referred to the observation made in *para* 30 of ***Jamaat-e-Islami Hind*** (supra). Ld. Addl. SG also argued that the procedure to be followed by the Tribunals can be read from the law enacted under the Administrative Tribunals Act, 1985. Ld. Addl. SG then submitted that similarly the Tribunal established under the UAPA has been bestowed with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act.

122. Learned Addl. SG has submitted that as per the mandate of Section 4 of the UAPA, the jurisdiction of this Tribunal is to adjudicate whether or not there is sufficient cause available with the Central Government to ban the organization in question. Ld. Addl. SG has submitted that any procedural irregularities or defects in material adduced before this Tribunal are to be tested by the concerned trial court within the parameters of the Indian Evidence Act, 1872 and other relevant laws. Learned ASG further submitted that the jurisdiction of this Tribunal is to satisfy itself whether these documents can be relied upon to ascertain '*sufficiency of cause*' and whether the agencies responsible for the enforcement of law and order could or could not have ignored the same for recommending suitable action under the UAPA.

123. Ld. Addl. SG also submitted that for the purpose of assessing the sufficiency of the cause, this Tribunal has to holistically look into the entire materials / incidents and if the material / incidents are relatable acts of commission of unlawful activity for secession or '*cession of a part of the territory of India*', on the anvil of preponderance of probability, then the ban is justified and is required to be confirmed. Ld. Addl. SG submitted that the Central Government has led cogent evidence to demonstrate that there was sufficient material available with the Central Government to form an opinion that the four factions of JKPL and its associates were indulging in unlawful activities. Ld. Addl. SG submitted that the law does not require that the cases which should form the basis of opinion formed by the Central Government should be proximate to the date of the decision or there should be 'X' number of cases to prove an association to be an unlawful association; and that even one case may be sufficient for the said purpose. Ld. Addl. SG also submitted that the delay in the investigation will have no bearing in the present proceedings as the degree of evidence required before this Tribunal and the adjudication thereon is to be based on the principles of preponderance of probabilities.

124. Ld. Addl. SG has further submitted that the evidence adduced by the Central Government has not been refuted on any ground whatsoever, and as such, in view of non-rebuttal of the evidence adduced by the Central Government by any member / erstwhile member of the four factions of JKPL opposing the ban, the Notification No. S.O. (E) 1415 (E) published in the Gazette of India, Extraordinary, dated 15th March, 2024, declaring the aforementioned 4 factions of Jammu and Kashmir Peoples League (JKPL) as '*unlawful associations*' under sub-Section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 is liable to be confirmed.

125. As regards the hostile environment prevailing in the territory of Jammu & Kashmir creating hurdles in conclusion of cases against the separatist and militants, ld. Addl. SG submitted that as has been stated in the testimonies of various witnesses, delay in the investigation and trial has occurred due to extremely hostile environment which prevailed in the erstwhile State of Jammu and Kashmir, and that it is a matter of public knowledge that since last more than three decades, the erstwhile State of Jammu and Kashmir has been adversely affected by the acts and deeds of the separatist groups and its leaders. Ld. Addl. SG has submitted that these facts have been referred to in the concurring opinion of Justice Sanjay Kishan Kaul in para-31 and Epilogue recorded in *para* 113-135 in the judgment ***Re:Article 370 of the Constitution***, reported in 2023 SCC Online SC 1647.

126. Ld. Addl. SG submitted that the separatist leaders and their activists had created such terror in the minds of public that the general public, which even did not support their cause, feared to oppose them or to report to the police against various incidents and even feared to depose or give evidence against the said separatist leaders. Ld. Addl. SG also highlighted that the investigation was further slowed thereafter due to Covid which had brought all the routine activities to a standstill as a complete lockdown in the entire nation was imposed. Hence, the investigation in the cases registered against the JKPL in the State of Jammu & Kashmir could not be processed at the pace it should have been.

127. Ld. Addl. SG submitted that despite several FIRs having been lodged against the members of the 4 factions of JKPL, its activists / sympathizers are still active and are indulging in unlawful/anti-national activities as defined in the UAPA, posing a serious threat to the sovereignty and integrity of India, communal harmony, and internal security. Ld. Addl. SG thus submitted that if the 4 factions of JKPL are not banned, the activists and sympathizers of JKPL will pose a serious threat to the internal security and integrity of the country.

128. Ld. Addl. SG concluded that the notification no. S.O. 1415 (E) dt. March 15th 2024, issued by the Central Government declaring the 4 factions of JKPL as unlawful associations is liable to be confirmed.

IX. ANALYSIS AND CONCLUSION

129. Before analysing the aspect of existence of sufficiency of grounds to declare the 4 factions of JKPL as unlawful associations, it is important to return a finding on the claim of privilege in regard to the documents submitted by PW 6 in a sealed cover as those documents have a significant bearing on the declaration in question itself. The concerned witness from the Ministry of Home Affairs (PW 6) has tendered along with his affidavit, a sealed envelope containing intelligence reports/inputs.

130. The issue regarding claim of privilege by the Central Government in respect of the documents produced in a sealed cover, disclosure whereof is injurious to public interest, is specifically envisaged in the UAP Rules, 1968. Rule 3 of the said UAP Rules is as follows:

> ***"3. Tribunal and District Judge to follow rules of evidence***.*—(1) In holding an enquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of Section 7 or sub-section (8) of Section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).*
>
> *(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not, --*
>
> *(a) make such books of account or other documents a part of the records of the proceedings before it; or*
>
> *(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."*

131. It can be seen that the Rule 3 (2) starts with a *non-obstante* clause providing that notwithstanding anything contained in the Indian Evidence Act, 1872, where any books of account or other documents are sought to be produced by the Central Government and these documents are claimed to be of a confidential nature, then the Tribunal shall not make such documents a part of the records of the proceedings before it or allow inspection of or grant a copy of the same to any person other than the parties to the proceedings before it.

132. Rule 5 of the UAP Rules which provides for the documents which should accompany a Reference to the Tribunal *i.e.* a copy of the notification and all facts on which grounds specified in the notification are based, further provides that nothing in the said Rule shall require the Central Government to disclose any fact to the Tribunal which it considers against public interest to disclose. The said rule is in the following terms:

> *"5.* ***Documents which should accompany a reference to the Tribunal.*** *– Every reference made to the Tribunal under sub-section (1) of Section 4 shall be accompanied by –*
>
> *(i) a copy of the notification made under sub-section (1) of Section 3, and*
>
> *(ii) all the facts on which the grounds specified in the said notification are based:*
>
> *Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose."*

133. The aforementioned provisions and the requirement of maintaining confidentiality of certain documents specifically came to be considered by the Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), wherein it was held as under:

> *"22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look*

into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In John J. Morrissey and G. Donald Booher v. Lou B. Brewer the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

> *"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."*

24. In Paul Ivan Birzon v. Edward S. King placing reliance on Morrissey, while dealing with a similar situation, when confidential information had to be acted on, it was indicated that the credibility issue could be resolved by the Board retaining confidentiality of the information but assessing the credibility itself, and a modified procedure was indicated as under:

> *"... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....*
>
> *We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.*
>
> *Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."*

25. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken.

26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available

material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself."

134. The High Court of Andhra Pradesh in ***Deendar Anjuman v. Government of India,*** 2001 SCC OnLine AP 663 after applying the test laid down in ***Jamaat-e-Islami Hind*** (supra) upheld the ban imposed and further held that the entire material available on record itself need not be published or made available to the aggrieved person but what is required is disclosure of reasons and the grounds. Relevant extract of the said judgment is as under:

"19. The expression "for reasons to be stated in writing" did not necessarily mean that the entire material available on record itself is to be published or made available to the aggrieved person. What is required is disclosure of reasons. The grounds must be disclosed. The notification issued under sub-section (1) of Section 3 alone is required to be referred to the Tribunal "for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful." The Tribunal after such reference is required to issue notice to the affected association to show cause, why the association should not be declared unlawful. The Tribunal is required to hold an enquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from the association and then decide whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is require "to adjudicate whether or not there is sufficient cause for declaring the association unlawful." As held by the Supreme Court in Jamaat-e-Islami Hind v. Union of India, the Tribunal is required to weigh the material on which the notification under sub-section (1) of Sec. 3 is issued by the Central Government after taking into account the cause shown by the Association in reply to the notice issued to it and by taking into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the action to be unlawful. The Tribunal is required to objectively determine the points in controversy. The Supreme Court further held that subject to non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. The Tribunal is entitled to ascertain the credibility of conflicting evidence relating to the points in controversy. It is observed by the Supreme Court:

> *"To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence of material in respect of which the Central Government claims non-disclosure on the ground of public interest."*

20. It is, therefore, evident that disclosure of all the facts and material available on record subject to the claim

of any privilege in this regard by the Central Government is only after the reference of the notification issued under sub-section (1) of Section 3 of the Act to the Tribunal for the purpose of adjudication whether or not there is sufficient cause for declaring the association unlawful. The material available on record may have to be revealed to the association or its members. In a case wherever any privilege is claimed, the Tribunal has to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. Therefore, there is no requirement to disclose the material itself and publish the same in the notification or provide to the association along with the notification issued in exercise of the power under proviso to sub-section (3) of Section 3 declaring the association to be unlawful with immediate effect. The requirement is disclosure of additional reasons and grounds and not the material. The notification issued in exercise of the power under proviso to sub-sec. (3) of Section 3 cannot be set aside on the ground that the material relied upon for stating the reasons is not communicated to the association concerned declaring it to be an unlawful association with immediate effect. Such notification would become vulnerable only when the reasons are not notified: The record should contain the reasons in writing and the same is required to be revealed and published in the notification or communicated to the association concerned. Such reasons are required to be distinct and different and cannot be the same for imposing ban under Section 3 of the Act. The reasons are required to be communicated but not the entire material. Disclosure of the material is only after reference of the notification issued under Section 3 of the Act to the Tribunal."

135. The legal position which thus emerges can be succinctly put in the following terms:

i. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder contemplates maintenance of confidentiality whenever required in public interest;

ii. The Tribunal can look into the confidential material without the same being disclosed to the Association or its office-bearers, for the purpose of assessing the credibility of the information and satisfying itself that the same is reliable;

iii. The Tribunal can devise a suitable procedure for itself for examining and testing the credibility of such material

iv. The requirement of natural justice can be suitably modified by the Tribunal in the manner it considers appropriate for the purpose of assessing/examining the confidential material/documents, and arriving at a conclusion based on a perusal thereof.

136. Further, the rigors prescribed by the Supreme Court in the judgment of ***S.P. Gupta*** (supra) have to be read in the context of the provisions of the UAPA and the Rules framed thereunder. In particular, it needs to be borne in mind that Rule 3(1) of the UAP Rules, 1968 expressly provides that in holding any inquiry under sub-section (3) of section 4 of the UAPA, the Tribunal shall follow "*as far as practicable*", the rules of evidence laid down in the Indian Evidence Act. Thus, the rigors that have been contemplated in the context of Section 123 of the Indian Evidence Act, cannot *ipso-facto* be made applicable to these proceedings. The legislative intent in making the provisions of the Evidence Act applicable only "as far as practicable" is evident from the nature of these proceedings. The proceedings before this Tribunal do not contemplate a full-fledged trial; rather the proceedings are in the nature of an "*inquiry*" as referred to in Section 4(3).

137. Further, these proceedings are time-bound and as laid down by the Supreme Court in the case of ***Jamaat-e-Islami Hind*** (supra), an appropriate procedure has to be devised/tailored by this Tribunal for the purpose of its inquiry. As such, any claim seeking privilege has to be assessed in terms of the in-built mechanism as provided under the UAPA and the Rules framed thereunder, and the Tribunal is mandated to grant privilege from disclosure where it finds that the disclosure would be against/injurious to public interest. Thus, the nature of the documents has to be assessed by the Tribunal.

138. On perusal of the documents submitted by the Central Government in a sealed cover, it is found that the same contains intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, notes/memos prepared by the investigating and intelligence agencies, information revealed on investigation including information as to the clandestine nature of the activities of the concerned associations and its office-bearers and linkage of the associations and its office-bearers with organizations and individuals outside of India and which are inimical to India.

139. This Tribunal finds from the perusal of these documents that the disclosure of these documents would be detrimental to the larger public interest and security of the State. One of the documents which is contained in the sealed cover, is a note prepared for consideration of the cabinet committee on security, which contains sensitive information about activities of the banned association and its inimical impact on national security. Clearly, the nature of these documents is such that it would be in public interest and in the interest of the security of the State to maintain confidentiality as regard thereto. It also is to be noted that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW 6) to be based on a specific approval/direction of the Union Home Secretary (Head of the Department). The said position is also borne out from the relevant official/noting files shared with this Tribunal *i.e.* Ex. PW 6/3. In the circumstances, this Tribunal allows the claim for privilege in

respect of the documents submitted in a sealed cover by the concerned witness from the Ministry of Home Affairs. Consequently, the Tribunal has proceeded to peruse the said documents, as contemplated in the Judgment of the Supreme Court in ***Jamaat-e-Islami Hind***(supra) and to assess the credibility thereof and the implications flowing therefrom for the purpose of the present inquiry.

140. Adverting now to the requirement of assessing whether or not there exist sufficient grounds for the Central Govt. to rely on and to declare the 4 factions of JKPL as unlawful associations, on the basis of the material placed on record and the evidence adduced by the Central Government, this Tribunal finds sufficient cause for declaring the four factions of Jammu and Kashmir Peoples League ('JKPL') as '*unlawful associations'* which conclusion is drawn for the following reasons.

141. The notification dated 15th March, 2024 issued under Section 3(1) of the Act *inter alia* mentions that (i) the members of the JKPL/4 factions have been at the fore-front of the secessionist activities in Jammu and Kashmir; (ii) the leaders or members of the JKPL/4 factions have been involved in unlawful activities, including supporting terrorist activities; (iii) JKPL/4 factions and its members have scant respect towards the constitutional authority and constitutional set-up of the country; (iv) JKPL/4 Factions and its leaders or members, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country; ***and*** (v) there are linkages between JKPL/4 factions with banned terrorist organizations.

142. The above grounds/justification cited in the notification issued under Section 3(1) of the Act is borne out from the extensive evidence adduced by the Central Government. The said evidence can be broadly categorized into 2 categories:

i. Evidence adduced by officers (senior police officers) from Union Territory of Jammu and Kashmir;

ii. Evidence in the form of documents/material submitted in a sealed cover before this Tribunal.

Evidence adduced by officers from the Union Territory of Jammu and Kashmir

143. As many as 5 senior police officers/officials from the UT of Jammu & Kashmir (PW1 to PW5) have deposed as regards the litany of incidents involving JKPL/ 4 factions since the past several decades. The same clearly brings out that the concerned association and its derivative 4 factions have been relentlessly indulging in "*unlawful activities*".

144. The incidents with regard to which voluminous evidence has been adduced, *inter alia* involves:

i. raising anti-India and pro-Pakistan slogans (evidence of PW-1,PW-2, PW-3, PW-4, PW-5),

ii. encouraging boycott of elections and openly professing dis-allegiance towards the Constitution of India (evidence of PW-1, PW-2, PW-2, PW-4, PW-5),

iii. inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones on security forces (evidence of PW-1, PW-2, PW-3, PW-4, PW-5),

iv. undermining the sovereignty and territorial integrity of India and professing affection towards Pakistan by making hate speeches and instigating the general public intending to cause disaffection against India (evidence of PW-1, PW-2, PW-3, PW-4, PW-5).

145. On a cumulative consideration of the various incidents/activities which are subject matters of the various FIRs with regard to which the aforesaid evidence has been led, it is evident that JKPL/4 factions have been indulging in "*unlawful activities*" and have posed a grave threat to the law and order situation in Jammu and Kashmir since the last several decades. Although it is true that the investigation in most of the FIRs (with regard to which PW-1 to PW-5 have deposed) has been protracted, ld. Addl. SG of Union of India has sought to emphasize that the same was on account of hostile environment prevailing in the Territory of Jammu and Kashmir over a long period of time. However, what is of relevance to this Tribunal is the clear pattern that is discernible as regards the nature of activities of the concerned associations and its office bearers. The pattern of conduct is to incessantly encourage secession of the State of Jammu and Kashmir, questioning or seeking to disrupt the sovereignty and territorial integrity of India, inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones etc., and to disrupt peace in the region of Jammu and Kashmir. These activities continued unabated for a long period of time; and it is only in the last few years (post enactment of the Jammu & Kashmir Re-organisation Act, 2019) that there has been a lull in the anti-national activities in Jammu & Kashmir, as is evident from the reduced instances of violence/disruption of law and order.

146. This Tribunal also takes note of the fact that each of the senior police officers from the State of Jammu and Kashmir, who have deposed before this Tribunal, during the course of their examination, strenuously emphasized from their own personal knowledge derived during the course of discharge of their official functions, that the four factions of JKPL i.e. its chairmen, other leaders and members have been:

i. incessantly encouraging and actively advocating claims for secession of Jammu and Kashmir from the Union of India and have been inciting the local population;

ii. promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;

iii. tacitly and tactically supporting militancy and incitement of violence in the territory of Jammu and Kashmir on religious lines and have sought to escalate the separatist movement.

147. The compelling testimony of officers from various districts of Jammu and Kashmir cannot be disregarded. The aforesaid evidence remains un-rebutted by the 4 factions of JKPL/ its office bearers. At every stage of these proceedings, a right was afforded to the 4 banned factions of JKPL/its members and any other interested party in the matter to appear before this Tribunal and cross-examine the concerned officers who have deposed before this Tribunal. However, the said opportunity has not been availed.

148. This Tribunal is conscious that the veracity of the contents of the aforesaid charge-sheet/s filed in the abovementioned criminal cases which have been registered against the 4 factions of JKPL, is required to be established at the trial in the said cases **but** the scope of scrutiny of the material cited by the Central Government (which is the subject matter of present *Reference*) is not akin to a criminal trial, as has been held in *para* 26 of ***Jamaat-e-Islami Hind*** (supra). For the purpose of these proceedings, the evidence adduced is in the nature of relevant material and same is liable to be considered, in terms of the *dicta* laid down by the Supreme Court in ***Khatri*** (supra) and ***Jamaat-e-Islami Hind*** (supra). As mandated in terms of the judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra), this Tribunal has examined the material cited by the Central Government for the purpose of making an "*objective assessment*" and to assess whether the same supports the declaration made under Section 3(1) of UAPA vide the notification dated 15th March, 2024.

Evidence in the form of documents/material submitted in a sealed cover before this Tribunal

149. As noted here-in above, the documents in a sealed cover submitted by the witness (PW 6) who has deposed on behalf of the Central Government, *inter alia*, includes reports of intelligence agencies, the note prepared for the Cabinet Committee on Security setting out the entire background of JKPL and its 4 factions which have been banned and its activities based on the information collated by the intelligence agencies and also bringing out linkage of JKPL with cross-border agencies/establishments, and finally from inputs received from Criminal Investigation Department, Jammu and Kashmir (Srinagar). A perusal of the said documents has brought out in vivid detail the terrorist and secessionist activities of the 4 factions of JKPL in close coordination with inimical elements in Pakistan. The systematic attempts to promote secession of Jammu and Kashmir from the territory of India, to undermine the sovereignty of India, to incite the local populace and to promote violence have been brought out in the said material/documents.

CONCLUSION

150. From the elaborate material/evidence placed on record in these proceedings, this Tribunal finds that there is ample justification to uphold the ban on the 4 factions of JKPL and uphold the declaration of the 4 factions of JKPL, namely JKPL (*Mukhtar Ahmed Waza*), JKPL (*Bashir Ahmed Tota)*, JKPL (*Ghulam Mohammed Khan @ Sopori*) also known as Jammu and Kashmir Peoples Political League, and JKPL (*Aziz Sheikh*) led by Yaqoob Sheikh as being 'unlawful associations', under the UA(P)A. Moreover, given the nature of activities of these 4 factions of JKPL, the Central Government was justified in taking recourse to the *proviso* to Section 3 (3) of the UAPA. As noticed here-in above, the activities of the concerned associations have had a toxic effect on maintenance of law and order in the region of Jammu and Kashmir over the last several decades. The measure of stability that has come about after 2019 (as is evident from the reduced number of un-conducive incidents) cannot be allowed to be jeopardized on account of continuing activities of the concerned associations/factions of JKPL. At the cost of repetition, it needs a reiteration that despite opportunities having been granted to the cadres/leaders of JKPL/ its 4 factions, except for an affidavit of Bashir Ahmed Tota having been filed, the present Reference proceedings have not been contested in any manner. The said affidavit also states that Bashir Ahmed Tota has no association left with JKPL and that he has no objection to the ban imposed on the factions of JKPL being upheld. The affidavit however has not been tendered and thus cannot be read into evidence to return a finding whether Bashir Ahmed Tota has no association left with JKPL. Further, the ban imposed on the 4 factions of JKPL is organisation specific and not person specific.

151. In the framework of the Indian Constitution and the UAPA, there is no space for associations like the JKPL/its 4 factions which openly propagate secessionism, avowedly express dis-allegiance to the Constitution of India and undermine the territorial integrity and sovereignty of India.

152. Thus, this Tribunal having followed the procedure laid down in the Unlawful Activities Prevention Act, 1967 and its Rules and having independently and objectively appreciated and evaluated the material and evidence on

record, is of the firm and considered view that there is sufficient cause for declaring the 4 factions of JKPL as unlawful associations under Section 3(1) of the UAPA, 1967, vide the notification dated 15th March, 2024. Thus, an order is passed under Section 4 (3) of the UAPA, 1967 confirming the declaration made in the notification bearing no. S.O. 1415(E) published in the official gazette on 15th March, 2024, issued under Section 3 (1) of the Unlawful Activities Prevention Act, 1967.

(JUSTICE NEENA BANSAL KRISHNA)

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

August 29th, 2024"

[F. No.14017/54/2024-NI-MFO]

ABHIJIT SINHA, Jt. Secy.

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