रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-अ.-18092025-266239
CG-DL-E-18092025-266239

असाधारण
EXTRAORDINARY

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

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 4106] नई दिल्ली, बृहस्पतिवार, सितम्बर 18, 2025/भाद्र 27, 1947
No. 4106] NEW DELHI, THURSDAY, SEPTEMBER 18, 2025/BHADRA 27, 1947

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 18 सितंबर, 2025

का.आ. 4223(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 11 मार्च, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1115(अ), तारीख 11 मार्च, 2025 (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) द्वारा आवामी एक्शन कमेटी (एएसी) 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 3 अप्रैल, 2025 में प्रकाशित अधिसूचना संख्यांक का.आ. 1579(अ), तारीख 3 अप्रैल, 2025 द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति सचिन दत्ता थे;

और, केंद्रीय सरकार ने, उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना को न्यायनिर्णयन के प्रयोजन के लिए कि क्या आवामी एक्शन कमेटी (एएसी) को विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 8 अप्रैल, 2025 को उक्त अधिकरण को निर्दिष्ट किया गया था;

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 3 सितंबर, 2025 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 सचिन दत्ता)

विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण ”

[फा. सं. 14017/13/2025-एन.आई.-एम.एफ.ओ.]

राजीव कुमार, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 18th September, 2025

S.O. 4223(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 Awami Action Committee (AAC) as an unlawful association, *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1115(E), dated the 11th March, 2025 (hereinafter referred to as the said notification) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 11th March, 2025;

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 Sachin Datta, Judge, High Court of Delhi, *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1579(E), dated the 3rd April, 2025, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 3rd April, 2025;

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 8th April, 2025 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Awami Action Committee (AAC) as an unlawful association;

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 3rd September, 2025, 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,

NEW DELHI

Date of Decision: **03.09.2025**

IN THE MATTER OF:

Gazette Notification No. S.O. 1115(E) dated 11th March, 2025 declaring the Awami Action Committee (AAC) as an unlawful association under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF:

Reference under Section 4(1) 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. 1579 (E) dated 3rd April, 2025.

Present: Ms. Aishwarya Bhati (ASG) along with Ms. Poornima Singh, Ms. Shreya Jain, Mr. Ketan Paul, Mr. Sharath N. Nambiar, Mr. Shantnu Sharma, Mr. Aakarsh Mishra and Mr. Arkaj Kumar, Advocates for Union of India.

Mr. Parth Awasthi, Advocate, Advocate for Union Territory of Jammu & Kashmir along with Mr. Suhaib Ashraf, Chief Prosecuting Officer, J&K.

Dr. Sumedh Kumar Sethi, Registrar (DHJS) Unlawful Activities (Prevention) Tribunal.

Ms. Samridhi Vats, Ms. Sanjana Lal and Ms. Sanya Sikri, Law Researchers.

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

ORDER

1. This order answers the 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 constituted *vide* Gazette Notification No. S.O.1579 (E) dated 3rd April, 2025 under Section 5(1) of the Act issued by the Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring Awami Action Committee (hereinafter referred to as **'AAC'** or **'association'** or **'organisation'** for short) as an "unlawful association".

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) No. S.O. 1115 (E) dated 11th March, 2025 in exercise of powers conferred under Section 3(1) of the Act and declared AAC to be an "unlawful association". 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 11th March, 2025 reads as under:-

> *"**S.O. 1115(E)**—Whereas, the Awami Action Committee (hereinafter referred to as the AAC), chaired by Umar Farooq is indulging in unlawful activities, which are prejudicial to the integrity, sovereignty and security of the country;*
>
> ***And, whereas**, members of the AAC 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 AAC have been involved in mobilising funds for perpetrating unlawful activities, including supporting secessionist, separatist and terrorist activities in Jammu and Kashmir;*
>
> ***And, whereas**, the AAC and its members by their activities show sheer disrespect towards the constitutional authority and constitutional set up of the country;*
>
> ***And, whereas**, AAC is involved in promoting and aiding the 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 law and order; encouraging the use of arms to separate Jammu and Kashmir from the Union of India and promoting hatred against established Government;*
>
> ***And, whereas**, the Central Government is of the opinion that AAC is indulging in the activities which are prejudicial to the integrity and security of the country, inter alia, on the following grounds, namely: -*
>
> *(1) National Investigation Agency has filed charge sheet against Aftab Ahmad Shah @ Shahid-ul-Islam (spokesman and media advisor of AAC) and 11 others before the NIA Special Court, Patiala House, New Delhi in RC10/2017 on January 18, 2018 under sections 120B, 121, 121A and 124A of Indian Penal Code and sections 13, 16, 17,18, 20, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967;*
>
> *(2) Case Crime No. 96/2008 has been registered at Nowhatta Police Station, Srinagar under section 120B and 153 Ranbir Penal Code and section 13 of the Unlawful Activities (Prevention) Act, 1967 against*

Umar Farooq fordelivering a speech against the Government of India and for stressing upon the people for elections boycott etc;

(3) Case Crime No. 128/2010 has been registered at Safakadal Police Station, Srinagar under section 13 of the Unlawful Activities (Prevention) Act, 1967 against Umar Farooq and others for delivering a lecture and provoking the people against the Government and for raising anti-national slogans;

(4) Case Crime No. 60/2010 has been registered at Kothi Bagh Police Station, Srinagar under section 436,153A, 109,147, and 336 of Ranbir Penal Code and section 13 of the Unlawful Activities (Prevention) Act, 1967 against Umar Farooq, Mushtaq-ul-Islam, Nisar Ahmad Rather and Nisar Ahmad Bhat for shouting slogans against the integrity of India and for delivering a speech stating that they would struggle till Jammu and Kashmir is not separated from Union of India, and for also pelting stones;

(5) Case Crime No. 56/2011 has been registered at Kothi Bagh Police Station, Srinagar under section 13 ofthe Unlawful Activities (Prevention) Act, 1967 against Umar Farooq, wherein, he supported the Hartal call given by Syed Ali Shah Geelani for 03 August, 2011 and for instigating the general people and the youth of valley for waging waragainst the sovereignty of India;

***And, whereas**, the Central Governmentis further of the opinion that if there is no immediate curb or control ofunlawful activities of the Awami Action Committee (AAC), it will use this opportunity to –*

(i) continue with the anti-national activities which are detrimental to the territorial integrity, securityand sovereignty of the country;

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

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

(iv) escalate secessionist movements, support militancy and incite violence in the country;

***And, whereas**, the Central Government for the above mentioned reasons is firmly of the opinion that having regard to the activities of the Awami Action Committee (AAC), it is necessary to declare the Awami Action Committee (AAC) as an unlawful association 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 Awami Action Committee (AAC) asan unlawful association;*

The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary todeclare the Awami Action Committee (AAC) as an unlawful association with immediate effect, and accordingly, inexercise 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 notification also enumerates the reasons/circumstances, as contemplated under proviso to Section 3(3) of the Act, for declaring the association 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 AAC advocates 'independence' of Jammu and Kashmir (hereinafter referred to as '**J & K**' for short) from India. In pursuance to its objective, the Association in 1993, joined All Party Hurriyat Conference (hereinafter referred to as '**APHC**' for short) as a founder member and continued separatist activities to fulfill the Pakistani agenda of generating feeling of hatred and disaffection against India and severing J & K from the Union of India (hereinafter referred to as '**UOI**', for short).

6. As per the background note, the activists of AAC have been glorifying terrorists and have often spoken against the Government of J & K and the Central Government as well as Security Forces. The background note gives a brief summary of the association and its activities which has been duly classified/ categorized hereunder:

i. Organisational History

7. The background note states that AAC was formed in 1964 by Late Moulvi Mohammad Farooq for seeking Solution of 'Kashmir issue' through grant of 'right of self-determination' to the people. It is headquartered at Mirwaiz Manzil, Rajouri Kadal, Srinagar, J & K. Mirwaiz Umar Farooq**,** son of Late Moulvi Mohammad Farooq is heading AAC since 1991.

8. This organisation extended complete support to the Pakistani infiltrators in 1965 and in response, the Pakistan authorities made Moulvi Farooq a member of 'Revolutionary Council'. The organisation opposed the 'Indira-Sheikh accord' during 1975. The organization has been maintaining a strong anti-Centre stance and harping on the 'Kashmiri right of self-determination'.

9. For over six decades, AAC has been actively engaged in carrying out secessionist and separatist activities, targeting sovereignty of India. AAC's founder Late Moulvi Mohammad Farooq was at the forefront of fuelling and organizing anti-India protests. He continued to propagate secessionist views to mobilise Kashmiris in favour of the 'right to self-determination'.

ii. Leadership/Office Bearers of AAC

10. As per the background note, office of AAC is headquartered at Mirwaiz Manzil, Rajouri Kadal, Srinagar, J & K. Details of AAC's main leaders and office bearers are as under:-

Sl. No.	Name	Designation
i.	Umar Farooq	Chairman
ii.	Ghulam Nabi Zaki	General Secretary
iii.	Shahid-ul-Islam @ Aftab Hilali Shah	Spokesperson
iv.	Faiz @ Fayaz Naqashbandi @Syed Faiz Naqshbandi	Convenor of APHC/POK
v.	Nazir Ahmed Ronga	Organiser
vi.	Farooq Ahmed Saudagar	Vice President Youth Wing (Shahid-e-Millat Youth Forum)
vii.	Mushtaq Ahmed Sofi	Youth president
viii.	Haji Ghulam Qadir Beigh	Senior Working Committee Member

iii. Minacious Nexus with Cross-border Agencies /Establishments

11. As per the background note, in 2005, Umar Farooq, who had been heading the APHC (Abbas Ansari group) since 1993, attended a summit at an International Forum, and upon his return, he highlighted the summit's importance, noting that the Kashmir issue was prioritised in its ten-year action plan. During the summit, Umar Farooq had also met the then Pakistan President Pervez Musharraf in Mecca, who had assured him of full support for the Hurriyat's United States of Kashmir proposal. Umar Farooq again met Parvez Musharraf in 2007, when he went to Pakistan along with other Hurriyat leaders and held series of meetings with him, ISI Chief, officials and several terrorist leaders.

iv. Terrorist Linkages

12. The background note further mentions that the leaders of AAC have supported terrorists on various occasions. Mirwaiz Umar Farooq paid tributes to Abu Qasim, a Lashkar-e-Taiba (LeT) Commander operating in South Kashmir, who had been killed during a joint operation by J & K Police and Army, and said that it was due to sacrifice of martyrs like him that Kashmir issue had attracted international attention. On another occasion, Mirwaiz Umar Farooq supported the demand for 'martyrs memorial' following the killing of two LeT terrorists by the Security Forces in 2015. He again paid tributes to four terrorists who were killed in encounters with Security Forces in South Kashmir in the year 2016 and declared that the sacrifices of martyrs would not go waste.

13. Supporters of Late Maulvi Mohammad Farooq along with Mushtaq Ahmed Zargar alias Latram, a designated terrorist at serial number 35 in the Fourth Schedule under section 35 of the UAPA, went to Pakistan and received arms training. AAC dominated areas in Srinagar have acted as nerve centers of terrorism and provided 'safe haven' to terrorists in the early stages of terrorism in J & K. Subsequently, youth loyal to Farooq formed 'Al Umar Mujahideen' in December, 1989, which is a listed terrorist organisation in the First Schedule of the UAPA.

14. Umar Farooq while paying tributes to Afzal Guru and Maqbool Butt reiterated the call for shutdown and protests on their death anniversaries. He also asked people to send a strong message to New Delhi that Kashmiris would not be "bullied into submission".

v. Separatist/Anti-National Activities

15. As per the background note, while addressing a congregation on the occasion of *Id-ul-Fitr* at Srinagar in 2002, Mirwaiz Umar Farooq urged the entire Muslim community to pray for the freedom of Kashmir and reiterated his determination to continue the 'struggle' till the goal was achieved. After his address, AAC activists burnt the Indian National Flag and resorted to pro-Pak and anti-India slogans. They also floated Pakistani flags tied with balloons.

16. It is stated that in 2011, after a Friday congregation in J & K, Umar Farooq, along with other separatist leaders, led a protest march of around 250-300 people from Jamia Mosque to Nowhatta Chowk in Srinagar, where pro-azadi slogans were raised and at Nowhatta Chowk, youth pelted stones at the Police.

17. The AAC and its office bearers, it is stated, have used various media outlets to promote anti-India and secessionist propaganda. The association's social media profile advocates for 'Kashmir's freedom' and claims that freedom represents resistance to the 'forcible occupation' of Kashmir. AAC considers the Kashmir issue an unresolved international dispute that threatens the existence of Kashmiris and destabilises South Asia.

18. AAC considers Kashmir as a disputed region and demands secession of J & K from India. The outfit believes that Kashmir issue should be resolved based on the right to 'self-determination'. With active backing of Pakistan, the association promotes secessionist, separatist and terror activities to get 'freedom of Kashmir'. The association does not have any written constitution of its own, however, it abides by the constitution of APHC-A.

vi. Funding

19. As per the background note, Mirwaiz Umar Farooq has received significant finding from Pakistan for increasing activities of secessionist groups and also for distribution of relief among family members of terrorists.

vii. Criminal Cases against AAC activists

20. As per the background note, leaders of AAC have been involved in various serious cases, including, among others, unlawful activities, large-scale protests, criminal conspiracy and sedition. Members of the association have remained involved in supporting terrorist activities and have provided logistical support to terrorists in J & K. Cases have been registered against the AAC and its activists under various provisions of law including the UAPA and other substantive offences which, it is stated, provide clinching evidence regarding their involvement in various unlawful activities. Details of some of the important cases as given in the background note are as follows:-

viii. Case being investigated by NIA, Delhi relating to AAC

21. On January 18, 2018, National Investigation Agency filed charge sheet against Aftab Ahmad Shah @ Shahid-ul-Islam (spokesman and media advisor of AAC) and 11 others in case RC 10/2017 (under sections 120B, 121, 121A and 124A of Indian Penal Code and Sections 13, 16, 17, 18, 20, 39 and 40 of the UAPA) before the NIA Special Court, Patiala House, New Delhi.

ix. Cases being investigated by J & K Police:-

22. In addition to the case registered by NIA, the State Police of J & K have also registered many cases against the AAC activists/ members. Some of the cases are as below:-

Sl. No.	Case Crime No. with section of law	Name of accused in FIR	Brief of the Case Crime No.
1.	Case Crime No. 96/2008 u/s 120B and 153 of Ranbir Penal Code[1], u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered at Nowhatta Police Station, Srinagar against Umar Farooq for delivering a speech against the Government of India and for stressing upon the people for elections boycott etc.
2.	Case Crime No. 83/2010 u/s 147, 148, 336, 427 & 436 of Ranbir Penal Code	Umar Farooq	Registered at Shergrahi Police Station, Srinagar against Umar Farooq, on whose directions a group of miscreants raising anti-national slogans entered into the premises of Chief Engineer office in Srinagar and set it on fire which engulfed the adjacent Crime Headquarter and nearby shops as well as Police /Traffic Booths and caused heavy damage to Government property
3.	Case Crime No. 128/2010 u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered at Safakadal Police Station, Srinagar against Umar Farooq and others for delivering a lecture and provoking the people against the Government and for raising anti-national slogans;
4.	Case Crime No. 60/2010 u/s 436, 153A, 109,147 and 336 of Ranbir Penal Code and u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq, Mushtaq-ul-Islam, Nisar Ahmad Rather and Nisar Ahmad Bhat	Registered at Kothi Bagh Police Station, Srinagar against Umar Farooq, Mushtaq-ul-Islam, Nisar Ahmad Rather and Nisar Ahmad Bhat for shouting slogans against the integrity of India and for delivering a speech stating that they would struggle till J & K is not separated from UOI, and for also pelting stones
5.	Case Crime No. 101/2010 u/s 121A, 153, 153A, 147, 148, 336 & 427of Ranbir Penal Code	Umar Farooq	Registered at Shaheed Gunj, Police Station, Srinagar against Umar Farooq who headed a rally which raised anti-national slogans against the integrity of India and the protesters damaged Govt. property and some vehicles.
6.	Case Crime No. 56/2011 u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered at Kothi Bagh Police Station, Srinagar against Umar Farooq for supporting the Hartal call given by Syed Ali Shah Geelani for 03 August, 2011 and for instigating the general people and the youth of valley for waging war against the sovereignty of India.
7.	Case Crime No. 19/2015 u/s 147, 148, 149, 341, 336, 332, 427&307 of Ranbir Penal Code	Umar Farooq	Registered at Nowhatta Police Station, Srinagar against Umar Farooq who was heading a group which pelted stones upon deployed troops and raised anti-national slogans etc.
8.	Case Crime No. 394/2016 u/s 147, 148, 149, 336, 427 & 153A of Ranbir Penal Code	Gh. Nabi Zaki	Registered at Sopore Police Station, Baramulla against Gh. Nabi Zaki S/o Ab. Rahim R/o Khusal Matoo, Sopore, General Secretary, AAC for anti-national

[1]The Ranbir Penal Code (RPC) was the primary criminal law of the erstwhile Indian state of Jammu and Kashmir. It was introduced in 1932 during the reign of Maharaja Ranbir Singh. In 2019, with the abrogation of Article 370 and the passage of the Jammu and Kashmir Reorganisation Act, the RPC was repealed and replaced by the Indian Penal Code.

			slogans/speech during which militants fired upon police and mob pelted stones upon security forces etc
9.	Case Crime No. 409/2016 u/s 147,148,149, 336,427, & 307of Ranbir Penal Code	Gh. Nabi Zaki	Registered at Sopore Police Station, Baramulla against Gh. Nabi Zaki S/o Ab. Rahim R/o Khusal Matoo, Sopore, General Secretary, AAC for pelting stones upon the Police/CRPF deployed at New Colony with intention to kill them and disrupt the peace and public order.

23. The above facts, circumstances and acts of the AAC, it is stated, lead to the conclusion that this association is vigorously working towards secession and separation of the State of J & K from the UOI. It has actively and continuously encouraged the separatist activities including terrorism in the State aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government and has been indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the Indian Union and therefore, the activities of AAC fall within the purview of unlawful activities.

x. Declaration of AAC as an Unlawful Association

24. The background note states that keeping in view the severity of the situation and the unlawful activities by the association, the Central Government decided to declare AAC as an unlawful association under the provisions of the UAPA.

III. REPLY ON BEHALF OF THE ASSOCIATION

25. AAC has filed a reply to the background note filed by the UOI. The allegations made in the Background Note are denied by the association stating as follows:-

i. Religious background of AAC

26. In the reply, the association has given brief details regarding the religious background of AAC. It is stated that the Institution of Mirwaiz, which Mirwaiz Umar Farooq (Chairman of the AAC) inherited after the death of his father-Mirwaiz Molvi Farooq (Founder of the AAC), came into existence around 17th Century when a family of clerics whose religious preaching had earned a place of distinction, moved to Srinagar and began to deliver religious sermons from the pulpit of the historic Jama Masjid, and that over a period of time, it graduated into an institution of social reforms and empowerment of Muslims, and came to be known as the Institution of Mirwaiz. It is stated that Mirwaiz Rasool Shah established Anjuman Nusrat-e-Islam, the first association of the Muslims of Kashmir and by founding Islamia High School, he laid the first stone towards empowering the disempowered Muslim Society. It is stated that the institution of Mirwaiz played a pivotal role in establishing democratic institutions and safeguarding democratic rights. It is stated that when Mirwaiz Molvi Farooq inherited the mantle of the Mirwaiz, in 1964, he formed the AAC - a socio-political organisation.

ii. Objectives of AAC - Social Reforms, Peace and Harmonious Coexistence

27. It is stated that Mirwaiz Molvi Farooq always stressed upon values of unity, brotherhood, and mutual respect and tolerance among coexisting communities. His religious sermons echoed these beliefs. Education among masses, especially girls, was an area very close to his heart and he made many reforms regarding this. It is stated that being a great advocate of peace, he believed in dialogue and he was a respected and very active member of AIMPLB. He had friends across the political and religious spectrum in India who held him in high regard. He was dedicated to his people through his life and strived for their well-being through his religious, social and educational reforms. It is stated that the Mirwaizeen of Kashmir are known advocates of communal goodwill and harmonious coexistence among various sections of Kashmiri Society.

28. It is stated that Mirwaiz Farooq was opposed to all forms of violence and that is the reason that he strongly advocated to ex. Prime Minister V.P. Singh's government, which was in power in New Delhi at that time, to talk to the young men in Kashmir who had taken up arms and address their aspirations right then. He condemned the abduction of the young Rubiya Syed and asked the abductors to immediately release her.

iii. AAC Advocated for dialogue and resolution.

29. It is stated that AAC has always advocated the politics of outreach, dialogue and resolution, which includes the view of people of J & K. It is stated that as per AAC, dialogue in itself is a process of peace. Mirwaiz Umar Farooq held talks with late ex Prime Minister Vajpayee/Home Minister Advani/ late ex Prime Minister Manmohan Singh. These talks, it is stated, are a testimony to seeking peace and looking for solutions in good faith and sincerity. It is contended that asking for recognition of concerns and aspirations of the people of Jammu and Kashmir and

expressing them with the highest leadership of the land cannot be construed as being "subversive". It is stated that during these talks, Abdul Ghani Lone was assassinated, followed by the assassination of Molvi Mustaq and burning down of Islamia High School and grenade attacks at the house of Mirwaiz Umar Farooq, by those opposed to this peaceful outreach. Despite that, Mirwaiz Umar Farooq and his colleagues kept up their faith in talks.

iv. Social Services being performed by AAC

30. It is stated that AAC is also a grouping of people who double down as volunteers to provide a strong support system in their localities. They provide help and assistance to the needy and destitute in their areas and in times of emergencies, such as accidents, fires or floods, aid and assistance. It is stated that during the floods of 2014, hundreds of its volunteers rescued thousands of people and later as part of the 'Akh Akis' (for one another) initiative, they participated in reconstruction of dozens of homes for the displaced. Medical and blood donation camps are also organized by them round the year.

v. AAC's response to the FIRs referred to in the notification

31. It is stated that in the first FIR (RC 10/2017), one individual who is purportedly the media advisor of the AAC is an accused. It is stated that it is not sufficient to ban the association as the individuals associated with an organisation have personal, professional and other involvements which are not necessarily that of the organisation.

32. With regard to other FIRs, it is stated that all pertain to delivery of speeches and shouting slogans which cannot be the basis for holding the organisation unlawful. It is further stated that most of the relied upon FIRs are between 2008 and 2011 and in none of these cases, proceedings have gone beyond registration of the FIR and no member of the association has ever been interrogated. It is stated the cases are so flimsy that for over fifteen years, they have not even reached the stage of chargesheet. As such the allegations leveled in these FIRs are baseless, manipulated, concocted and frivolous.

IV. STATUTORY PROVISIONS

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

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

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(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".

34. 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.

35. 'Unlawful association' has been defined in Section 2(p) of the Act and consists of two parts; (i) and (ii). Part (i) refers to unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourages or even aids 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.

36. 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 oroffice;*
>
> *(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."*

37. 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 to the association 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.

V. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

38. After interpreting the said provisions of the UAPA in ***Jamaat-e-Islami Hind vs. Union of India, (1995) 1 SCC 428***, 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."

(emphasis supplied)

39. The judgment of the Supreme Court in ***Jamaat-e-Islami Hind, (Supra)***, was rendered in the specific context of the provisions of the UAPA. The proceedings before this Tribunal are governed by the Code of Civil Procedure as set out in Section 9 of UAPA. The standard of proof is the standard prescribed by the Supreme Court in ***Jamaat-e-Islami Hind (Supra)***. This *lis* has to be decided objectively by examining which version 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."*

(Emphasis supplied)

40. With regard to confidentiality and with regard to nature of evidence, reference is apposite to the following observations in ***Jamaat-e-Islami Hind (Supra)***:-

"20. As earlier mentioned, the requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a Tribunal constituted by a sitting High Court Judge, which distinguishes the scheme under this Act with the requirement under the preventive detention laws to justify the anticipatory action of preventive detention based on suspicion reached by a process of subjective satisfaction. The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must be satisfied, to make the adjudication meaningful. ***No doubt, the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lessor interest. This is also evident from the fact that the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts 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****. Thus, subject to the 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. ***Rule 3 also indicates that as far as practicable the rules of evidence laid down in the Indian Evidence Act, 1872 must be followed…….***

(Emphasis supplied)

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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 emphasis 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.".

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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****."*

(Emphasis supplied)

41. On the question of confidential information that is sought to be withheld, the Supreme Court emphasized that the same can be relied upon by the Tribunal. It was observed that in certain situations, source of information or disclosure of full particulars may be against public interest. 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 confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. 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 pending investigation and trial.

42. 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. As regards the evidentiary standard/s applicable to these proceedings, it is instructive to refer to the legal position enunciated in a report under Section 4(3) of the Act authored by Justice Sanjiv Khanna, for the purpose of adjudicating the ban on 'Students Islamic Movement of India' (SIMI) (dated 04.08.2010). The same is as follows:

"62. Section 9 uses the words "so far as may be" The words signify that the Legislature's intent does-not mandate that the Code should be followed in its entirety, section by section, order by order or. Word by word. Use of the words "so far as may be" ensure sufficient flexibility and freedom to the Tribunal to follow and regulate its own procedure which should be in consonance with, the procedure stipulated as per the-Code. The procedure prescribed in the Code can be modified and changed keeping in view the practical requirements, need and necessity. This may be required in view of the object and purpose of the Act and practical problems which may be faced in case the requirements of the Code are strictly and entirely followed, in ***Abdul Haji Mohd. Versus R. R. Naik AIR 1951 Bom, 440****, it was held that the, words "as far as practicable" must be construed to mean to the extent it is practicable. Bombay, High Court in a subsequent decision* ***Keshrimal Jeevli Shah and another versus Bank of Maharashira and others, 2004 (122) Company cases 831*** *has held that whenever words like "as far as possible" or as far as practicable etc. are used, the legislative intent is not to apply all the provisions in their entirety, but the provision have to be applied as far "as possible" and subject to such modifications as the context as well as the object and purpose of the enactment require. The setting in which the words occur, the statute in which they occur, the object and purpose behind the enactment and mischief which is sought to be taken care of and remedy which are relevant in determining to what extent and subject to what modifications the required enactment should be applied.*

63. Section 5(5) of the Act states that the Tribunal shall have power to regulate its procedure in matters' arising out of discharge of its functions including the place/places at which it will hold sittings. Therefore, the aforesaid sub-Section gives flexibility and freedom to the Tribunal to fix and regulate the procedure. to be followed subject of course to the requirement of fair and just hearing. Sub-section (6) to Section 5 further stipulates that the Tribunal while making the enquiry will have the power of a civil court in respect of matters stipulated in clauses (a)to (e). As per Section 4(3) of the Act, the Tribunal has to hold an enquiry within a period of six months from the date of issue of Notification under sub-section (1) of Section 3. There is no provision under which this time can be extended. The use of the expression "as far as may be" in Section 9 of the Act and the power given to the Tribunal to regulate its own procedure in Section 5(5) of the Act indicates that the strict procedure as stipulated and applicable to trial of civil suits is not envisaged or required. One will also have to keep in mind the time limit of six months within which the Tribunal is required to complete the enquiry and answer the reference: A summary procedure or a hybrid procedure which may be akin or similar to and in consonance with the procedure for adjudication of claims in the Code can be followed.

64. The above ratio and reasoning will equally apply to Rule 3(1) which uses the expression "as far as practicable" the rules of evidence, as laid down in the Indian Evidence Act, will apply. ***It may be noticed that Rule 3(1) uses the words "rules of evidence" and does not use the words "provisions of the Indian Evidence Act, 1872 would apply". Therefore general principles or rules of evidence underlying the Evidence Act are applicable to the extent practicable****. In these circumstances, I do not think that the Act or the Rules envisage and require an elaborate, and a detailed procedure for summoning of each and every witness mentioned in the charge-sheets, presence and examination of witnesses present at the time of preparation of panchanama or all police officers who were involved in the investigation. Summoning of record will be counter-productive, cumbersome and time consuming. There will be concerns about safety and security of the persons appearing as well as the records which may have to be summoned or produced. Normally, cases relied upon by the central government will be cases of serious cases and the chargesheet etc. will be voluminous and number of witnesses also substantial. The nature of material in-most-cases where unlawful activity is alleged would include oral evidence, documentary evidence; as well as confidential inputs based on information received from intelligence. These cases can have inter-State or trans-border involvement and a-large number of persons are normally involved in conspiracy.* ***This aspect cannot be ignored as proceedings before the Tribunal have to be pragmatic and the provisions of the Code and the Evidence Act have to be applied to the extent possible and practicable.****"*

(Emphasis supplied)

43. 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.

44. 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 used 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. Stateand 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."

45. 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 *viz*. against use in evidence of statement made before a police officer in the course of investigation, held, the same would not apply where the 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 BaliramTikaram Marathe v. Emperorthat "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 takenthis 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."

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

> *"9.…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 CriminalProcedure, 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 Rajwhere 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 beconsidered by the court in deciding the question at issue between the parties."

47. 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."

48. It is in the light of the aforesaid principles that this Tribunal is to examine whether there is sufficient cause for declaring AAC as an unlawful association. It needs to be borne in mind 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 AAC as an unlawful association.

VI. PROCEEDINGS BEFORE THIS TRIBUNAL

49. Upon due consideration of the aforesaid Notification No. S.O. 1115(E) dated 11.03.2025 and Notification No.S.O. 1579(E) dated 03.04.2025, this Tribunal held a preliminary hearing on 16.04.2025, 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 AAC to show cause, within a period of 30 days, as to why they ought not to be declared as unlawful association. The notices issued were given due publicity as required under Section 3(4) of the Act.

50. The Gazette Notification dated 11.03.2025 was also published in National Newspapers (all India Edition). The said notification was also published in two local newspapers having wide circulation in the Union Territory of J & K where the activities of the AAC 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 address of the AAC along with all their leaders, members, factions, wings and front organisation as well as that of their principal office bearers.

51. The notice issued by the Tribunal along with the Gazette Notification dated 11.03.2025 was displayed on the notice board of the Deputy Commissioner/District Magistrate/Tehsildar in all the district headquarters of the U.T. 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 was also taken. Announcements were made through radio/electronic media at prime time. Notices were also pasted at the prominent places in the U.T. where the activities of the association were or are believed to be carried on.

52. Apart from above, notices were also issued to the Union Territory of J & K through its Chief Secretary.

53. The Registrar attached to the Tribunal was directed to ensure the compliance of the service of notice issued to AAC in the manner indicated. The Registrar was directed to file an independent report in that behalf before the next date of hearing, i.e. 16.05.2025. Accordingly, the Union Territory of J & K filed its affidavit along with supporting documents contained in Envelopes-F1 to F7 containing therein Annexures E1 to E.7, in compliance with the order dated 16.04.2025 affirming that service had been affected as directed by the Tribunal. On 16.05.2025, learned Additional Solicitor General **(ASG)** for the UOI and learned counsel for the Union Territory of J & K were heard and this Tribunal recorded the satisfaction as regards effecting of service in compliance of the order dated 16.04.2025.

54. The Registrar, vide his report dated 15.05.2025, also confirmed service of notice issued by the Tribunal.

55. During the course of hearing on 16.05.2025, Mr. Sparsh Aggarwal, Advocate entered appearance on behalf of AAC and sought time to file his *vakalatnama* and reply on behalf of the association. This Tribunal granted him ten days' time to file the same and listed the matter for directions on 26.05.2025.

56. On 26.05.2025, none appeared for the association. Also, no *vakalatnama* was filed. However, a reply along with covering letter was filed on behalf of the association duly signed by Mr. G.N. Zaki, Acting General Secretary, AAC, the details of which have been discussed above.

57. In the covering letter, it was categorically stated that AAC would not contest the ban in a formal manner before this Tribunal as the ban was allegedly politically motivated and that the accompanying reply may be treated as defense to the ban imposed on the association. An elaborate reply was filed on behalf of the association giving details of the association as to how it came into existence, its activities, its objectives, etc. and also responding to the grounds/FIRs on the basis of which the notification has been issued. Copy of the said reply along with covering letter was duly served upon the UOI. This Tribunal directed learned counsel for UOI and UT of J& K to file their rejoinder within a period of 4 weeks. The Central Government was also directed to file its affidavit/s along with documents in support of the grounds on which the concerned association was declared as unlawful. Learned ASG assured that the affidavits of all the witnesses from the Union Territory of J & K would be filed on or before the next date of hearing covering all the FIRs referred to in the reference/notification. The matter was fixed for further proceedings on 01.07.2025.

58. On 26.05.2025, this Tribunal recorded that the UOI had filed nine (9) affidavit/s of evidence along with documents in support of the grounds on which the association was declared as unlawful. The affidavits of the following officers from the Union Territory of J & K were filed:-

- PW-1 Mr. Adil Rashid, Inspector, SHO, PS Kothibagh, Srinagar.
- PW-2 Mr. Azhar Rashid, SDPO, Khanyar, Srinagar.
- PW-3 Mr. Naseer Ahmad, Inspector, SHO, PS Nowhatta, Srinagar.
- PW-4 DYSP (PROB.) Dr. Barleen Kour, SHO, PS Shergarhi, Kashmir.
- PW-5 Mr. Shiekh Wakeel, Inspector, SHO, PS Safakadal, Kashmir.
- PW-6 Mr. Hilal Ahmad, Inspector, SHO, PS Shaheed Gunj, Kashmir.

- PW-7 Mr. Bashir Ahmad, Sub-Inspector, PS Kothibagh, Srinagar.
- PW-8 Mr. Sarfaraz Bashir, SDPO, Sopore, Kashmir.
- PW-9 Mr. Showkat Hussain, Inspector, SHO, PS Nigeen, Srinagar.

59. The said affidavits were directed to be taken on record. During the course of the proceedings, learned counsel for the UOI handed over a list of 11 witnesses. Learned ASG for the UOI submitted that affidavit of additional witness i.e. an official from the NIA would be filed on or before 12.07.2025 and that the affidavit on behalf of another additional witness i.e. an official from the Ministry of Home Affairs would be filed on or before 19.07.2025. Accordingly, the matter was fixed for directions and fixation of schedule for recording of evidence of the witnesses on behalf of UOI on 21.07.2025.

60. On 21.07.2025, as per the directions, the UOI filed affidavit of one more witness i.e. PW-11 Mr. B.B. Pathak, Additional Superintendent of Police, NIA, along with supporting documents. The same was taken on record.

61. It was submitted by the learned ASG that two more affidavits would be filed on behalf of the UOI. Accordingly, the proceedings were fixed for recording of evidence of the witnesses on behalf of UOI at Srinagar for 01.08.2025 and 02.08.2025. Accordingly, a public notice was issued for the hearing at Srinagar. Thereafter, affidavit of PW-10/Mr. Liyaqat Ali, Inspector, CID, J & K, Srinagar was also filed.

62. On 01.08.2025 statements of the following five (05) witnesses produced by the UOI were recorded:

1.	Mr. Adil Rashid, Inspector, SHO, PS Kothibagh, Srinagar	PW-1
2.	Mr. Azhar Rashid, SDPO, Khanyar, Srinagar	PW-2
3.	Mr. Naseer Ahmad, Inspector, SHO, PS Nowhatta, Srinagar	PW-3
4.	DYSP (PROB.) Dr. Barleen Kour, SHO, PS Shergarhi, Kashmir	PW-4
5.	Mr. Shiekh Wakeel, Inspector, SHO, PS Safakadal, Kashmir	PW-5

The witnesses for the UOI brought the original records pertaining to all cases filed against the association in respect of which the witnesses deposed. The original records were perused. After comparison with the copies filed on record, the same were returned.

63. On the directions of this Tribunal, e-mail and postal address at which any interested party could contact the Tribunal, was published in the public notice with regard to the hearing of the Tribunal on 01.08.2025 and 02.08.2025 at Srinagar. Pursuant thereto, total five (05) emails were received i.e. three (03) emails dated 28.07.2025 from email IDs:

(i)<mgmt@jkpeaceforum.in> (containing 1 affidavit),

(ii)<yasirrouf@gmail.com> (containing 2 affidavits),

(iii)<mohammedtamim2202@gmail.com> (containing 1 affidavit);

one (01) email dated 29.07.2025 from email ID:

(iv) <yasirrouf@gmail.com> (containing 4 affidavits);

and one (01) email dated 29.07.2025 of Mr. Sandeep Pandey from email ID:

(v) <socialistpartyindia@gmail.com>.

Total eight (08) affidavits were filed by the following deponents:-

1. Mr. Satish Mahaldar
2. Mr. Bashir Muzafar Pandit
3. Mr. Sheikh Yasir Rouf
4. Mr. Rameez Raja
5. Mr. Jagmohan Singh Raina
6. Mr. Rouf Ahmed Punjabi
7. Mr. Firdous Ahmed Bazaz
8. Mr. Vikram Malhotra

64. Mr. Sandeep Pandey did not file any affidavit. However, *vide* his email from email ID <socialistpartyindia@gmail.com>, he stated that the ban on the association must be lifted.

65. The Registrar of this Tribunal informed that all the aforesaid emails containing the affidavits had already been forwarded to the learned counsel for the UOI and J & K. A perusal of the affidavits of the aforesaid deponents/public witnesses revealed that each affidavit is a two-page affidavit containing similar averments opposing the notification dated 11.03.2025.

66. On 01.08.2025, following deponents / public witnesses were present before this Tribunal:-

(i)Mr. Bashir Muzafar Pandit

(ii)**Mr. Sheikh Yasir Rouf**

(iii)Mr. Rameez Raja

(iv)Mr. Firdous Ahmed Bazaz

67. The aforesaid four deponents categorically stated that they have not been members of the association. Three of them i.e., Mr. Bashir Muzafar Pandit, Mr. Rameez Raja, Mr. Firdous Ahmed Bazaz stated that their affidavits were prepared by Mr. Sheikh Yasir Rouf, who himself was a public witness, and they signed on the same. Remaining deponents / public witnesses were directed to remain present on 02.08.2025. The UOI was directed to facilitate any interested party who desired to appear physically before the Tribunal. Learned counsel appearing for UOI submitted that the UOI would not cross-examine the aforesaid deponents. However, the UOI sought to reserve its right to make appropriate submissions as regards the relevance of the said affidavits at the time of final arguments. The Registrar of this Tribunal was directed to send a reply to the aforesaid emails of the public witnesses conveying them to appear before the Tribunal on 02.08.2025 at 11.30 A.M. at Srinagar.

68. On 02.08.2025, statements of the following five (5) witnesses produced by the UOI were recorded:

1.	Mr. Hilal Ahmad, Inspector, SHO, PS Shaheed Gunj, Kashmir	PW-6
2.	Mr. Bashir Ahmad, Sub-Inspector, PS Kothibagh, Srinagar	PW-7
3.	Mr. Sarfaraz Bashir, SDPO, Sopore, Kashmir	PW-8
4.	Mr. Showkat Hussain, Inspector, SHO, PS Nigeen, Srinagar	PW-9
5.	Mr. Liyaqat Ali, Inspector, CID, J & K, Srinagar	PW-10

69. In response to the order dated 01.08.2025, an email dated 01.08.2025 was received from one of the public witnesses, namely, Mr. Sandeep Pandey (who did not file any affidavit) requesting the Tribunal to pardon him for being not able to appear before this Tribunal that day. He however stated that he could appear in Delhi at a mutually convenient date. Further, in compliance of the order dated 01.08.2025 the following deponents/public witnesses appeared before the Tribunal on 02.08.2025:-

(i) Mr. Jagmohan Singh Raina

(ii) Mr. Rouf Ahmed Punjabi

(iii) Mr. Vikram Malhotra

The aforesaid public witnesses categorically stated that they are neither the members of the Association nor have they been actively involved in the activities of the Association. However, they were deposing in their capacity as a public-spirited citizen. The affidavits of all the public witnesses were taken on record subject to the objections of learned counsel for the UOI. On perusal of the affidavits of the said public witnesses, it also transpired that the affidavits are identical in nature. The witnesses stated that their affidavits were drafted by one public witness i.e. Mr. Sheikh Yasir Rouf (who is an advocate by profession).

70. The matter was fixed for recording statements of the witnesses from the Ministry of Home Affairs and NIA on 08.08.2025. However, the matter was taken up on 06.08.2025 on being mentioned by the learned ASG for the UOI who submitted that the witness from the National Investigating Agency (NIA) would not be available for deposition on the date already fixed i.e., 08.08.2025 and requested that the date already fixed for the deposition of the witnesses from the Ministry of Home Affairs and NIA be re-scheduled.

71. In view thereof, the date for recording the statements of the witnesses from the Ministry of Home Affairs and NIA was re-scheduled to 11.08.2025 and the date already fixed i.e., 08.08.2025 stood cancelled.

72. On 11.08.2025, statements of the following two (2) witnesses produced by the UOI were recorded:

1.	Mr. B. B. Pathak, Addl. S. P., NIA, New Delhi	PW-11
2.	Mr. Rajeev Kumar, Joint Secretary, (CTCR Division), MHA	PW-12

The matter was listed for Final Arguments on 19.08.2025. However, the said was subsequently cancelled and the matter was fixed for arguments on 27.08.2025. On date, the learned counsel for the UOI was heard at length. The arguments stood concluded with liberty to the UOI to file additional written submissions within a period of 3 days and the order was reserved. Such additional written submissions were filed on behalf of the UOI on 01.09.2025.

VII. (NON) REPRESENTATION OF THE ASSOCIATION IN THESE PROCEEDINGS

73. Mr. Sparsh Aggarwal, Advocate entered appearance on behalf of AAC on 16.05.2025 (first hearing after the notice) and sought time to file his *vakalatnama* and reply on behalf of the association. Though no *vakalatnama* was filed, however, a reply along with covering letter was filed on behalf of the association duly signed by Mr. G.N. Zaki, Acting General Secretary, AAC stating that AAC would not contest the ban in a formal manner before this Tribunal and that the accompanying reply may be treated as defense to the ban imposed on the association.

74. After 16.05.2025, there was no appearance on behalf of the association. However, this Tribunal is conscious that despite non-appearance of the concerned organisation, this Tribunal is required to make an "objective determination" as mandated in the judgment of the Supreme Court in ***Jamaat-e-Islami Hind(Supra)***. The credibility of the material/evidence placed on record by the Central Government is 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".

75. Thus, notwithstanding the non-appearance on behalf of the concerned association, this Tribunal is required to independently assess the credibility of the material / evidence placed on record by the Central Government as also the reply filed by the association, and on that basis, come to a conclusion as to whether or not there is sufficient cause for declaring the association unlawful.

VIII. EVIDENCE ADDUCED BEFORE THE TRIBUNAL

PW-1

76. **Adil Rashid (PW-1)** tendered his affidavit as Ex.PW-1/A and stated that he is posted as a Station House Officer, Police Station Kothibagh, Kashmir and is the Investigating Officer of the FIR Nos. 60/2010 and 46/2014. He stated that FIR No.60/2010 was registered u/s 436/153A/109/147/336 RPC, u/s 13 of the UAPA and u/s 3 of Jammu and Kashmir Public Property (Prevention of Damage) Act at Police Station, Kothibagh on 11.09.2010 when a mob headed by the leader of AAC, Molvi Umar Farooq alongwith other prominent separatist leaders Mustaq-ul-Islam, Advocate Mohammad Yaqoob, Nisar Ahmed Rather and many other activists of hurriyat came from Eid Gah Srinagar towards Lal Chowk Srinagar, and all the people who participated in the said mob, shouted anti national slogans and in favour of freedom of Kashmir. He further stated that the said unruly mob when entered in the jurisdiction of Police Station Kothibagh raised slogans loudly, "***Hum kya Chahatay Azadi, Go India Go Back"***, and also delivered speech for the secession of J & K from the UOI, incited the public to agitate against the sovereignty and integrity of the nation, provoked large number of people and **placed Green Hilali flags on govt as well as Semi Govt. Buildings,** set ablaze a traffic booth situated at Regal Chowk and pelted stones on Ghanta Ghar, damaging it alongwith bulbs placed on electric poles etc.

He further stated that statements of the witnesses were recorded under Section 161 Cr.P.C., which revealed that Molvi Umar Farooq delivered provocative speeches containing anti-national contents and raised slogans like "***Hum ka Chahatay Azadi, Go India Go Back"***, which were against the nation and in favour of Pakistan and which was a direct attack on the sovereignty of the country trying to incite sentiments sympathetic towards Pakistan. He also stated that the speech was clearly intended to incite public sentiment, provoke unrest and undermine the sovereignty of the Indian State. The slogans that came to be raised were clearly seditious in nature, aimed at disturbing public order and provoking separatist sentiments. He further stated that 2 local newspapers, namely, Rozana Roshni and Daily Kashmir Times, reflecting the scene of the crime were also seized by the then I.O of the case.

77. With regard to FIR No. 46/2014, he stated that FIR No. 46/2014 was registered u/s 13 of the UAPA and section 188, 124-A, 147 RPC at Police Station, Kothibagh on 19.06.2014 as on the said date at Residency Road, Activists of AAC, headed by the leader of AAC, Mirwaiz Molvi Umar Farooq alongwith Hilal Ahmad War R/o Maisuma and Shahid ud Islam R/o Dalgate held a vehicular procession from S.K Park to Lal Chowk, Srinagar and raised anti-national slogans like "***Hum ka Chaihtai Azadi etc***",violating section 144 Cr. P.C. imposed in the valley and were marching towards Lal Chowk in shape of unruly mob without obtaining any permission. He further stated that they also delivered speech for the secession of J & K from the UOI, creating fear/ hatred among the general public and incited public to agitate against the sovereignty and integrity of the nation. He further stated that statements of the witnesses were recorded under Section 161/164 Cr.P.C., which revealed that Molvi Umar Farooq Molvi Umar Farooq delivered provocative speeches containing anti-national contents and sentiments sympathetic towards Pakistan. The speech was clearly intended to incite public sentiment, provoke unrest and undermine the sovereignty of the Indian

State. The slogans that came to be raised were clearly seditious in nature, aimed at disturbing public order and provoking separatist sentiments.

78. He relied upon the true copies of FIR Nos. 60/2010 and 46/2014; the statements of the witnesses recorded in the aforesaid cases and also the true copy of Seizure Memo dated 12.09.2010 filed in FIR No. 60/2010 along with their English version of translated copies, which have been exhibited as EX. PW1/1A to PW1/7A in the present proceedings.

79. He stated that the investigations in the aforesaid FIRs 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 organisations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations. It is stated that any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations and that it was only after the reorganization of the State that significant progress could be made in the investigations of both the above stated cases which are now at their fag end and chargesheet is expected to be filed soon.

80. He stated that during his service, he has been posted in various parts of the Kashmir valley and has come across various incidents caused by AAC and the FIRs registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he stated, that it is manifest that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of constitutional authority of the nation. It is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

81. Opportunity for cross-examination was given, but not availed of in view of non-appearance on the part of the association.

PW-2

82. Azhar Rashid **(PW-2)** tendered his affidavit as **Ex.PW-2/A** and stated that he is working as a Sub-Divisional Police Officer, Khanyar, Srinagar, Kashmir and is the investigating officer of the FIR No. 96/2008, which was registered at Police Station, Nowhatta, Srinagar under Section 13 of the UAPA and under Sections 153-A/120-B of RPC on 09.12.2008 based on an information received on the said date that after the EID prayers Mirwaiz Moulvi Umar Farooq, the leader of the AAC, delivered a speech provoking general public for not taking part in the 2008 General Assembly Elections of the State of J & K and against the sovereignty of the nation and also raised slogans for freedom of Kashmir from India. He stated that statements of the witnesses were recorded U/s 161 Cr.P.C. He further stated that the trial in the matter stands concluded and the judgment is pending and he will place on record the judgment before this Tribunal as and when the judgment is pronounced by the concerned trial court.

83. He relied upon the true copies of FIR No.96/2008; the statements of the witnesses recorded in the aforesaid case along with their English version of the translated copies which have been exhibited as EX. PW-2/1 to PW-2/3A in the present proceedings.

84. He stated that the investigations in the aforesaid FIR 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 organisations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations. It is stated that any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations and that it was only after the reorganization of the State that significant progress could be made in the investigation of the above stated case which is now at its fag end and chargesheet is expected to be filed soon.

85. He stated that he has been working in J & K police service since the year 2013 and during this period, he was posted in various parts of the Kashmir Valley. He deposed that during his service, he has come across various incidents caused by AAC and the FIRs registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he stated that it is manifest that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation. It is stated that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

86. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-3

87. Naseer Ahmad (PW-3) tendered his affidavit as Ex.PW-3/A and stated that he is posted as Station House Officer, Police Station Nowhatta, Srinagar and is the Investigating Officer of the FIR No. 19/2015. He stated that FIR No. 19/2015 was registered at PS Nowhatta under Section 13 UAPA and under sections 147/148/341/336/353/332/307/427 of RPC on 17.04.2015 on the basis of a written docket received from SHO Police Station Nowhatta Camp, Nowhatta chowk to the effect that some unknown miscreants nearly about 100 to 200 person headed by Moulvi Umar Farooq (the leader of AAC) came from lines by lane and started Stone Pelting upon deployed Police party and also raising anti national slogans. During the course of recording of his statement, he specifically deposed that the slogans, being raised by the accused person i.e. Molvi Umar Farooq (repeated by a group of persons accompanying him) which led to registration of FIR, were as follows:

i. *Hum Kya Chahtehai, Azaadi;*

ii. *Kashmir Banega Pakistan; and*

iii. *Hindustan Murdabad*.

88. He further stated that statements of the material witnesses were recorded U/s 161 Cr.P.C. which disclose active role that has been played by Moulvi Umar Farooq and his organisation raising anti national slogans, stone pelting and injuring Police forces and damaging vehicles which all points out the secessionist activities of the organisation and its chairman.

89. He relied upon the true copies of FIR No. 19/2015 and the statements recorded in the aforesaid case along with their English version of translated copies which have been exhibited as Ex. PW-3/1 to PW-3/3A.

90. He stated that the investigations 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 organisations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations. It is stated that any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations. It is further stated that reorganization of the erstwhile State of J & K into two separate Union Territories of J & K and Ladakh and Covid 19 has also caused enormous delay. It is also stated that there are certain sympathizers of these separatist organisations within the government and various departments obstructed the timely resolution of these cases. It is stated that the investigation is now at its fag end and chargesheet is expected to be filed soon.

91. He states that he has been working in J & K police since the year 2010 and during this period, he was posted in various parts of the Kashmir Valley. It is stated that during his service, he has come across various incidents caused by AAC and the FIR's registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he stated that it is manifest that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation. It is stated that it is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

92. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-4

93. **Barleen Kour (PW-4)** tendered her affidavit as **Ex.PW-4/A** and stated that she is posted as Station House Officer, Police Station Shergarhi and is the investigating officer of FIR No. 83/2010. She stated that FIR No. 83/2010 was registered at Police Station Shergarhi, Srinagar under Sections 147/148/427/436/153/153-A/121/121-A of RPC when on the occasion of Eid-ul-Fitr, a large congregation assembled at Eidgah, Srinagar, for the purpose of offering Eid prayers. The congregational prayers were led by Molvi Umar Farooq, son of Late Molvi Farooq Ahmad, resident of Nigeen Bagh, Srinagar, who, in his capacity as Imam and as the Chairman of the AAC as well as Hurriyat Conference (faction "A"), delivered a public address to the gathering. She further stated that in the course of his speech, Molvi Umar Farooq made provocative and inflammatory statements exhorting the assembled persons to participate in a protest and to march towards Lal Chowk, Srinagar. As a result of such instigation, a group of approximately 150 to 200 individuals, led by Molvi Umar Farooq and acting in furtherance of a common intent, engaged in unlawful and violent acts. It is stated that the said group proceeded to commit acts of arson, including the

setting ablaze of the Crime Headquarters building, and caused extensive damage to various other Government properties encountered along their route. These acts were carried out in clear violation of law, disturbing public order and peace, and resulting in serious loss to public infrastructure.

94. She relied upon the true copies of FIR No. 83/2010; the statements recorded in the aforesaid case and the Seizure Memo filed in FIR No. 83/2010 along with their English version of translated copies which have been exhibited as Ex. PW-4/1 to PW-4/5A.

95. It is stated that the investigation faced several serious challenges due to the unstable situation in the Kashmir Valley. This unrest was deliberately caused by separatist leaders and their affiliated groups, who were continuously supported by terrorist organisations and received backing from across the border. Because of the fear created by these groups, many individuals were afraid to come forward and given their statements, which slowed down the investigation. Every attempt to investigate these separatists groups or their leaders led to protests, violence, and large-scale disturbances in the region, further delaying the process of the case. In addition, some individuals within the government and various departments acted in support of these groups and created obstacles that prevented the timely conclusion of the investigation.

96. She stated that sufficient material has been brought on record which manifests that AAC and leaders and members of the said organisation who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI. Further, the activities of AAC are aimed at causing disaffection, disloyalty and disharmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI.

97. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-5

98. **Sheikh Wakeel (PW-5)** tendered his affidavit as **Ex.PW-5/A** and stated that he is posted as Station House Officer, Police Station Safakadal, Kashmir and is the Investigating Officer of FIR No. 128/2010. He stated that FIR No. 128/2010 was registered at Police Station Safakadal under Section 13 of the UAPA on 11.09.2010 when an incident was reported by the police officials that the leader of AAC, Molvi Umar Farooq alongwith other prominent separatist leaders Manzoor Ahmad Tota, Altaf Dar and others had gathered at Eidgah ground Srinagar where large number of people were present for offering prayers on the occasion of Eid where during the congregation, a protest was led by Molvi Umar Farooq and had raised anti-national slogans such as "*Ilhagi Hind Tasleem Nai" ("We do not accept accession to India")* and "*Go India Go Back*" and also delivered speech for the secession of J & K from the UOI and incited the public to agitate against the sovereignty and integrity of the nation and provoked large number of people to march towards Lal Chowk as a mark of protest against Indian sovereignty. He further stated that statements of the relevant witnesses were recorded U/s 161 Cr.P.C. which revealed that Molvi Umar Farooq delivered a provocative speech containing anti-national contents and sentiments sympathetic towards Pakistan. The speech was clearly intended to incite public sentiment, provoke unrest and undermine the sovereignty of the Indian State. The slogans that came to be raised were clearly seditious in nature, aimed at disturbing public order and provoking separatist sentiments.

99. During deposition, he specifically deposed that it has not been possible to apprehend the leader of the AAC - Molvi Umar Farooq, who is the prime accused in FIR No.128/2010 on account of the fact that the area, in which he lives, is heavily inhabited by the people who have separatist ideology. Therefore, there has been a genuine apprehension that serious law and order situation would be created in the event of his arrest. He further deposed that investigation is now being carried out in a right earnest and would be completed as expeditiously as possible and it is expected that chargesheet will be filed within a period of 3 months.

100. He relied upon the true copies of FIR No. 128/2010 and the statements of the witnesses recorded in the aforesaid case along with their English version of translated copies which have been exhibited as Ex. PW-5/1 to PW-5/3A.

101. He stated that he is in police service since the year 2011 and has been posted in various parts of the Kashmir Valley. He deposed that during his service, he has come across various incidents caused by AAC and the FIRs registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he deposed that it is manifest that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation and that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

102. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-6

103. **Hilal Ahmad (PW-6)** tendered his affidavit as **Ex.PW- 6/A** and deposed that he is presently working as Station House Officer, Police Station Shaheed Gunj and is the Investigating Officer of the case FIR No. 101/2010. It is stated that FIR No.101 of 2010 was registered at Police Station Shaheed Gunj u/s 153/153-A/121/121-A/147/148/336/427/436 RPC on account of the fact that on 11th September, 2010, the leader of AAC, Mirwaiz Umar Farooq after conclusion of Eid Prayers at Eidgah Srinagar announced Lal Chowk Chalo in response to which a mob proceed towards Lal Chowk, Srinagar. The members of the unlawful assembly were chanting anti-national slogans such as '*Hum Kya Chahtay Azadi*' and demolished the bunker at Jehangir Chowk. The crowd was violent and damaged street lights and vehicles including Police vehicle No.JK-01L-6479 and private vehicles by stone pelting, the crowd also set ablaze Govt. Buildings. The incident of violence and stone pelting by the crowd occurred because of vindication and provocation by Mirwaiz Umar Farooq. The incident was reported by the police officials present there and based on which FIR No.101/2010 was registered.

104. He relied upon the true copies of FIR No 101/2010; the statements recorded in the aforesaid case under Section 162 Cr.P.C. and the Seizure memo along with their English version of translated copies which have been exhibited as Ex. PW-6/1 to PW-6/4A.

105. He further stated that investigations 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 organisations and that this climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations and any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations. Furthermore, certain sympathizers within the government and various departments obstructed the timely resolution of these cases and it was only after the reorganization of the State that significant progress could be made in the investigations which is now at its fag end and chargesheet is expected to be filed soon.

106. He stated that based on the records of the investigation of the aforesaid FIR and based on his knowledge/experience acquired as a police officer in the State of J & K since the last 24 years, he can say that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation. It is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-7

107. **Bashir Ahmad (PW-7)** tendered his affidavit as **Ex.PW-7/A** and deposed that he is presently working as Sub Inspector, Police Station Kothibagh, Srinagar and is the Investigating Officer of FIR No. 46/2010. He stated that FIR No. 46/2010 was registered u/s 341 of RPC at PS Kothibagh on 17.06.2010 when on the said date at about 12:45 hrs., when the informant along with his team was on patrolling duty at R.K. Crossing, they saw a group of Hurriyat Conference leaders (i) Aga Syed Hassan Budgami (ii) Professor Abdul Gani Bhat (iii) Nayeem Ahmad Khan (iv) Bilal Gani Lone (v) Zaffar Akhtar Bhat (vi) Masroor Abbad Ansari who under the command of Moulvi Umar Farooq had stopped their vehicles at R.K. Crossing and sat down on the street and blocked and disrupted the vehicular movement in the said area. The incident was reported by the police officials present there and based on which FIR No. 46/2010 was registered.

108. He relied upon the true copies of FIR No 46/2010 and the statements recorded in the aforesaid case under Section 161 Cr.P.C. along with their English version of translated copies which have been exhibited as Ex. PW-7/1 to PW-7/3A.

109. He further stated that investigations 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 organisations and that this climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations and any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations. Furthermore, certain sympathizers within the government and various departments obstructed the timely resolution of these cases and it was only after the reorganization of the State that significant progress could be made in the investigation which is now at its fag end and chargesheet is expected to be filed soon.

110. He deposed that he has been working in J & K police since the year 1991 and during this period, he was posted in various parts of the Kashmir Valley. He deposed that during his service, he has come across various incidents caused by AAC and the FIRs registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he deposed that it is manifest that AAC, its leaders and members who also had support from across the border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation. It is stated that it is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

111. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-8

112. **Sarfaraz Bashir (PW-8)** tendered his affidavit as **Ex.PW-8/A** and deposed that he is posted as Sub-Divisional Police Officer, Sopore, Kashmir and is the Supervisory officer of the FIR No. 394/2016 and FIR No. 409/2016.

113. He stated that FIR No. 394/2016 was registered at PS Sopore u/s 147/148/149/153-A/336/307/427 RPC, u/s 3 PPD Act and u/s 7/27 of Arms Act on 12.09.2016 when at 1505 hours, Police Station Sopore received a written docket from Constable Ashiq Hussain No. 341/Spr on behalf of the Station House Officer (SHO), Police Station Sopore. The contents of the docket state that while SHO Sopore, along with his team and personnel of CRPF 179 Bn and other officials from DPL and the Police Component Sopore, were performing their duty for maintaining law and order at Khushal Matoo, Sopore, some Hurriyat (G) leaders namely (i) Abdul Gani Bhat @ Gani Guroo, S/o Ghulam Ahmad Bhat, R/o Baba Raza, Sopore (ii) Manzoor Ahmad Kaloo @ Mam Kul, S/o Abdul Kabir, R/o Hanfiya Colony, Sopore (iii) Mohammad Ashraf Malik, S/o Abdullah Malik, R/o Tawheed Bagh, Sopore (iv) Ghulam Muhammad Khan @ Khan Sopore, S/o Mohd. Khan, R/o Shalpora, presently Hamdania Colony, Chanpora, Srinagar (v) Muhammad Shaban Khan, S/o Habibullah Khan, R/o Chinkipora, Sopore (vi) Yadullah Mir, S/o Ghulam Ahmad, R/o Dangerpora (vii) Ghulam Nabi Zaki, S/o Abdul Aziz, R/o Khushal Matoo, Sopore were observed delivering anti-national speeches and provoking local youth to agitate for the secession of J & K from the UOI, thereby attempting to disturb the sovereignty and territorial integrity of the nation.

114. He further stated that while this instigation was ongoing, some unknown terrorists appeared at the scene and opened fire upon the deployed Police and Security Forces (SFs), as a result of which HC Shakeel Ahmad No. 26/Spr sustained injuries. Subsequently, a mob comprising an unlawful assembly emerged from various streets and pelted stones at the deployed police and SF personnel, causing damage to multiple police vehicles. To disperse the violent mob, the Police and SF personnel were compelled to use tear gas shells for crowd control and dispersal. He further stated that as the above information disclosed commission of cognizable offences FIR No. 394/2016 was registered.

115. It is further stated that during the course of investigation, IO of the case visited the crime scene, prepared site plan, recorded statements of the witnesses, prepared recovery memo, seizure memo and filled injury memo of injured Police Personnel who were treated. He further deposed that during investigation sufficient material had been collected to prove the guilt of the accused persons and hence a chargesheet was filed in the case on 18.12.2024 against all the Accused persons U/s 147/148/149/153-A/336/307/427 RPC, U/s 3 PPD Act. It is stated that cognizance on the chargesheet has been taken by the magistrate and the case is at the stage of Prosecution Evidence.

116. With regard to FIR No. 409/2016, it is stated that the same was registered at Police Station Sopore u/s 147, 148, 149, 427, 307, 336, 153A, 34 of Ranbir Penal Code, u/s 3 PPD Act on 18.09.2016 when a mob headed by the General Secretary of AAC, Ghulam Nabi Zaki along with other prominent separatist leaders of the APHC namely, Abdul Ghani Bhatt, Mohammad Shaban Khan, Mohammad Ashraf Beigh and Ghulam Nabi Khan arrived at New Sopore Colony. These individuals raised slogans and incited communal hatred in the mob with the intention to disrupt the peace and tranquility of the area. The mob pelted stones upon the police and security forces with the intention to kill them and caused huge loss to public and private property. Some Police Personnel were severely injured due to pelting of stones and had to resort to the use of tear gas to disperse the mob. The incident was reported by the police officials present at the place of the incident based on which FIR No. 409/2016 was registered.

117. He relied upon the true copies of FIR Nos.394/2016 and 409/2016; the statements of the witnesses recorded in the aforesaid cases; Seizure Memo and the charge-sheets filed in the aforesaid FIRs along with their English version of translated copies which have been exhibited as **Ex. PW-8/1 to PW-8/10A**.

118. During his deposition, he specifically stated that he has mentioned in his affidavit that one of the wings of the association AAC is Al- Umar Mujjahideen which is a notified terrorist organisation under the UAPA and that some of its members are also notified as terrorist under Section 35 (1) of the UAPA.

119. He stated that he has been working in J & K Police since the year 2012 and during this period, he was posted in various parts of the Kashmir Valley. He deposed that during his service, he has come across various incidents caused by AAC and the FIR's registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he deposed that it is manifest that AAC, its leaders and members who also had support from the cross-border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a secession of J & K from the UOI and cession of the constitutional authority of the nation. It is stated that it is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

120. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-9

121. **Showkat Hussain (PW-9)** tendered his affidavit as **PW-9/A** and deposed that he is presently working as Station House Officer, P.S. Nigeen and is the Investigating Officer of the FIR No. 56/2011.

122. He stated that FIR No. 56/2011 was registered at Police Station, Nigeen u/s 13 of the UAPA when on 03.08.2011, a press note was published in various newspapers of Srinagar wherein the Hurriyat Leader Syed Ali Shah Geelani, Chairman, Hurriyat (G) gave call for agitation on 03.08.2011. The said call for agitation was fully supported by Mirwaiz Umer Farooq, Chairman of AAC and warned the government that if bans imposed on Hurriyat leaders are not withdrawn they will start a comprehensive agitation programme against the Government. The press note was published in newspapers wherein general public particularly youth has been instigated to disturb the peaceful atmosphere in the valley and based on the abovementioned incident, FIR No. 56/2011 was registered

123. He relied upon the true copies of FIR No. 56/2011; statements of the witnesses recorded u/s 161 Cr.P.C. in the aforesaid case and the Seizure Memo along with their English version of translated copies which have been exhibited as **Ex. PW-9/1 to PW-9/7A**.

124. It is stated that AAC has supported terrorist organisations Lashkar-e-Taiba (LeT) which have played prominent roles in causing violent disturbance in the erstwhile State of J & K and has also openly paid tributes to the terrorists killed by the Security Forces. It is also stated that AAC and its leaders had also paid tributes to Afzal Guru and Maqbool Bhat and called shutdowns in protest on their death anniversary.

125. It is further stated that one of the wings of AAC is 'Al Umar Mujahideen' which is a listed terrorist organisation in the UAPA and some of its erstwhile members are also listed terrorists which leaves no doubt about the objects and intents of the proclaimed organisation.

126. During the course of deposition, a question was asked by the learned counsel for UOI which was answered by PW-9 as under:

> **Question**: Have you arrested the accused person i.e. Mirwaiz Umer Farooq in FIR No. 56/2011?
>
> **Answer:** No. The reason being that the accused person is staying in an area which is heavily populated by the secessionist elements and their sympathizers, therefore, it is apprehended that there would be a law and order problem in case of arrest of the concerned accused person.

127. It is stated that the investigations 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 organisations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations and any attempt to probe these separatist organisations and their leaders triggered widespread unrest and turmoil in the affected regions, causing delays in concluding the investigations. Furthermore, reorganization of the erstwhile State of J & K into two separate Union Territories of Jammu & Kashmir and Ladakh and occurrence of Covid-19 has caused severe delay apart from that there had been certain sympathizers within the government and various departments for the said separatist organisations which also obstructed timely completion of the investigation against the organisations and their leaders. It was only after the reorganization of the State that significant progress could be made in the investigations which are now at their fag end and chargesheet is expected to be filed soon.

128. He further deposed that he has been working in J & K Police since the year 2011 and during this period, he was posted in various parts of the Kashmir Valley. He deposed that during his service, he has come across various incidents caused by AAC and the FIR's registered against it and its leaders and from the knowledge he has gathered with regard to the said organisation during the course of his service, he deposed that it is manifest that AAC, its leaders and members who also had support from across the border have been actively and continuously supporting the separatist and banned organisations and have been openly advocating and inciting the people to bring about a

secession of J & K from the UOI and cession of the constitutional authority of the nation. It is stated that it is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the UOI and hence the ban imposed upon it was necessary and should be upheld in the larger interest of the nation and its citizens.

129. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-10

LIYAQAT ALI (PW-10) tendered his affidavit as **PW-10/A** and deposed that he is presently posted as Inspector Crime Investigation Department, J & K at Srinagar and he is working as In-charge of Social Media Cell at CID Headquarters and has investigated the activities of AAC.

130. It is stated that AAC has supported terrorist organizations like Lashkar-e-Taiba (LeT) which have played a prominent role in causing violent disturbance in the erstwhile State of J & K and has also openly paid tributes to the terrorists killed by the Security Forces. It is also stated that AAC and its leaders had also paid tributes to Afzal Guru and Maqbool Bhat and called for shutdowns in protest on their death anniversary. It is further stated that one of the wings of AAC is 'Al Umar Mujahideen' which is a listed terrorist organisation in the UAPA and some of its erstwhile members are also listed terrorists which leaves no doubt about the objects and intents of the proclaimed organisation.

131. It is stated that Mirwaiz Umar Farooq, Chairman, AAC has delivered various secessionist speeches for Kashmir at various national and international forums which were uploaded on YouTube Channel maintained in the name of '**Mirwaiz Manzil**' and from a verified page of Mirwaiz Umar Farooq on Facebook and as were obtained by CID, Kashmir from the said Facebook page and YouTube Channel which are preserved in a Compact Disk (CD) and were provided to Central Government before preparing of the brief note. Details of the links of the abovesaid provocative speeches delivered by Mirwaiz Umar Farooq have been given in the affidavit. It is stated that the videos were obtained electronically and requisite certificate u/s 63(4) of the Bhartiya Sakhshya Adhiniyam, 2023 has also been filed alongwith the affidavit which is marked as Ex. PW-10/3.

132. It is stated that from the investigations and input received by him and his team and with his personal experience gained during the course of his service, he can state that it is manifest that AAC and its leaders have been actively and continuously but covertly and discreetly working for secession of J & K from the UOI and Cession of the territory of J & K to Pakistan which is apparent from the speeches filed along with the affidavit and are obviously against the national interest and integrity of the nation and have promoted feelings of enmity and hatred in the masses against the Government of India and hence, are acting in a manner prejudicial to the territorial integrity and sovereignty of the UOI. Hence, the ban imposed upon the organisation is necessary and correct.

133. He relied upon a Compact Disc (CD) and a pen drive containing Nine (9) videos of Mirwaiz Umer Farooq containing secessionist speeches; true transcripts of the speeches of Mirwaiz Umer Farooq which have been exhibited as Ex.PW10/1 to PW10/2.

134. During the course of deposition, a question was asked by learned counsel for UOI which was duly answered by PW-10 as under:

> "**Question:** Are the videos referred to in your affidavit, re-circulated on social media from time to time and/or are currently in circulation?
>
> **Answer:** Yes. The said videos are already uploaded on various social media channels/platforms and there are various anti-national elements who keep proliferating/sending these videos so as to increase their circulation and accessibility. This is done to create an inimical atmosphere.
>
> I state that the videos which have been referred to in paragraph 6 & 7 of my affidavit are between the period 2011-2019."

PW-11

135. **B.B. Pathak (PW-11)** tendered his affidavit as **PW-11/A** and deposed that he is serving as Additional Superintendent of Police in the National Investigation Agency (hereinafter referred to as "NIA"), New Delhi and is fully conversant with the facts of the case based upon his knowledge derived from the relevant records of the case and that he is the Chief Investigation Officer of the NIA in Case No. RC-10/2017/NIA/DLI.

136. He deposed that NIA, being India's Federal Counter Terrorism Investigation Agency has investigated the instant case in which connection of accused Aftab Ahmad Shah @ Shahid-ul-Islam and the organisation sought to be banned i.e. AAC has surfaced.

137. He stated that on 30.05.2017, the Ministry of Home Affairs issued the Order No.11011/2017-IS-IV directing the NIA to register a regular case and take up the investigation of the same as credible information was received by

the Central Government that Hafiz Muhammad Saeed, Amir of Jamat-ud-Dawah and secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with the active militants of proscribed terrorist organisations, *viz.* Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT) and other terrorist organisations/associates/gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in J & K through the funds so collected and as such have entered into a larger criminal conspiracy for causing disruption in the Kashmir Valley by way of pelting stones on the security forces, systematically burning of schools, damage to public property and waging war against India. Accordingly on 30.05.2017, NIA registered a case being No.RC-10/2017/NIA/DLI U/s 120B, 121 & 121A of the IPC and U/s 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA in pursuance of MHA Order No.11011/2017-IS-IV.

138. He further stated that the investigation revealed that various terrorist organisations, viz., Jammu & Kashmir Liberation Front (JKLF), HM, LeT, in connivance with various secessionist groups, particularly the AHPC and its constituents, funded by Pakistan and its agencies and terror groups, have entered into a criminal conspiracy to wage war against the Government of India and that the said Hurriyat Leaders and their supporters are following the ideology of "freedom", i.e., secession of the State of J & K from the UOI. He further stated that the investigation further revealed that APHC was formed as a conglomerate of 26 political/social/religious organisations in 1993 to give a political mask to the secessionist activities and AAC was one of them. It is stated that this alliance has been consistently promoted and supported by Pakistan to fulfill its evil motive and establish its claim over the State of J & K.

139. It is further stated in the affidavit that though APHC poses a political front, however, it is manifest that the agenda of AHPC is to create an atmosphere conducive to the fulfillment of their goal, i.e., secession of J & K from the UOI and that AHPC had entered into a criminal conspiracy and had been engaged in instigating the general public of Kashmir for taking part in violent activities to create a charged atmosphere in the valley, which is conducive for propagation of their secessionist agenda and it has repeatedly asked the people to observe strikes on various non-existent issues and then incited and instigated them to get involved in unlawful activities, such as stone-pelting, burning of public properties etc. The motive behind the disturbances caused by the frequent strikes and the stone-pelting incidents is stated to create such circumstances which will lead to the secession of the State of J & K from the UOI. It is further stated in the affidavit that the said agenda of AHPC is also reflected in its website **www.hurriyatconference.com,** which speaks about "Freedom Struggle" and that the "people of Jammu & Kashmir have been fighting against Indian occupation".

140. It has further been stated in the affidavit that the investigation revealed that Aftab Ahmad Shah @ Shahid-ul-Islam, apart from his involvement in the activities of AAC, was also Spokesman and Media Advisor of APHC (Mirwaiz Umar Farooq Faction) and he was one of its chief architects. Aftab Ahmad Shah@ Aftab Hilai Shah @ Shaid-ul-Islam along with other accused persons, played a key role in building the separatist/militant movement in J & K. It is stated that on 30.06.2017, several premises belonging to the separatists, were searched and during the search conducted in the house of Aftab Ahmad Shah @ Aftab Hilali Shah @ Shahid-ul-Islam certain incriminating documents were seized including the handwritten letters from LeT on the letter head title as "Lashkar-e-Taibah Jammu Kashmir head office Muzaffarabad" in Urdu language. Beside, documents viz. (a) Photograph of Aftab Ahmad Shah holding AK-47 with other cadres, (b) Photograph of Aftab Ahmand Shah with HM Chief Syed Salahuddin, (c) letter head in respect of APHC addressed to Dy. High Commissioner of Pakistan at New Delhi from Media Advisor, APHC, Advocate Aftab Ahmad Shah, (d) Application form for admission in the Institutions of Pakistan, (e) list of active militants (year 2016-17) of different outfits in the valley issued by J & K Police, (f) a handwritten letter in Urdu from the banned terrorist organization LeT letter head asking for financial assistance showing the unlawful and secessionist activities by AAC and APHC were seized and that the accused Aftab Ahmad Shah was arrested on 24.07.2017.

141. It is further stated that the investigation established that Aftab Ahmad Shah was one of the main strategists and planners and publicity managers and propagandists for the Hurriyat Conference. He himself received training in handling weapons in the training camps in PoK and was member of Hizbullah. Aftab Ahmad Shah had nexus with Pakistan based HM Chief Syed Salahuddin and armed militants as photographs proving these facts had been seized during search at his house and the experts from forensic laboratory prove that the photographs are of Aftab Ahmad Shah.

142. It is further stated that during investigation, the accused had disclosed that during 1986-87, he had joined active militancy and got trained for militancy in Pakistan and Muzaffarabad (PoK) and during 1997, he joined AAC and became legal head of Hurriyat and thereafter, after split in Hurriyat, he remained with Mirwaiz faction and looked after the charge of the Media Advisor and spokesperson of APHC (M).

143. It is stated that the investigation of the retrieved data from the seized digital devise has established that the accused Aftab Ahmand Shah and the co-accused person charge-sheeted in the case viz. Altaf Ahmad Shah @ Fantoosh, Nayeem Ahmad Khan, Farooq Ahmad Dar @ Bitta Karate, Yasin Malik, Mohammad Akbar Khanday, Raja Mehrajuddin Kalwal, Bashir Ahmad Bhat @ Peer Saifullah, Zahoor Ahmad Shah Watali and others are a part of a

gang who with the help of Pakistan based accused persons collaborate and co-ordinate with each other to form strategies and action plan to launch massive vigilant protests, hartals, bandhs, strikes, processions, demonstrations during which stone pelting is organized on security forces and government establishments. These clearly indicate an action plan to instigate general public to observe strikes, hold anti-India protests through press releases, social media etc. Technical Analysis report in respect of accused Aftab Ahmand Shah establishes incriminating role of the said accused vis. Pakistan contacts including memberships of several Pakistani groups, several press releases on the letter heads of AAC and APHC related to unrest in Kashmir Valley, protests, oppression on Kashmiri people, incriminating pro-Pakistan and anti-India conversations with convicted co-accused Yasin Malik, issuance of Protests calendars, advocating for shutting down whole Kashmir and establishing Caliphate etc. The said accused had even shared his own resume on mail wherein he mentioned that he has working experience as –(a) Media Advisor/Spokesman of APHC since 1998 and (b) Executive Member of J & K AAC. The Facebook chat between accused Yasin Malik and Aftab Ahmand Shah retrieved from latter's Facebook account also shows that the stone pelting incidents in Kashmir valley were orchestrated as a part of well-planned conspiracy hatched by the accused persons, and that they are in close contact with the Pakistani Embassy at New Delhi for achieving their designs. In a chat dated 05.08.2011, co-accused/convict Yasin Malik told accused Aftab Ahmand Shah, "*today you manage stone-pelting in Jamia*" and further said "*You are a stone pelter from childhood.*" And in chats Aftab Ahmand Shah admits himself to be a stone pelter. The above chats clearly show that Pakistan extends all kind of technical and logistical support for the secessionist and terrorist activities in J & K through organisations such as APHC & AAC.

144. He deposed that during investigation, several witnesses were examined and their statements have been recorded under section 161 and 164 of the Cr.PC; a perusal of which would reveal that the members and leaders of APHC, with the support of agencies of Pakistan as also Pakistan based terrorist organisations and secessionist groups and their alliance partners, have entered into a criminal conspiracy and adopted the strategy of instigating the local public to resort to violence and to create a surcharged atmosphere, which is conducive for the propagation of their secessionist agenda. People were repeatedly asked to observe strikes on various imagined issues and then incited and instigated to be involved in unlawful activities such as stone pelting, attack on security forces, damaging public property, including burning of schools, arson, bank looting, organizing bandhs, forcible closure of roads and the government establishments etc. Members and leaders of APHC and its constituents, including AAC activist Aftab Ahmad Shah have been found to be involved in the abovementioned unlawful activities. Further PW-23 deposed on 08.05.2025 in the Trial Court w.r.t. the seized Photograph of Aftab Ahmand Shah holding AK series assault rifle with other cadres. Statements of protected witnesses **(i.e Alfa and Gama)** in terms of Section 44 of the UAPA, have also been submitted in a sealed cover. He deposed that the statement of the said witnesses have been furnished in a sealed cover in view of the sensitive nature thereof and the necessity to preserve the confidentiality of the same.

145. He stated that pursuant to the investigation carried out by the NIA, chargesheet dated 18.01.2018 was filed before the NIA Special Court, New Delhi in RC-10/2017/NIA/DLI against 12 accused persons, including two designated terrorists, based in Pakistan, namely, Hafiz Muhammad Saeed, who is the Head of banned terrorist organisation 'LeT', Mohd. Yusuf Shah @ Salahuddin, Head of banned terrorist organisation 'HM', as absconders. The said chargesheet also included other arrested accused persons, who are the leaders of APHC, viz., Aftab Ahmad Shah@ Aftab Hilai Shah @ Shahid-ul-Islam (Executive Member of AAC), Altaf Ahmad Shah @ Fantoosh, Nayeem Ahmad Khan, Farooq Ahmad Dar @ Bitta Karate, Mohammad Akbar Khanday, Raja Mehrajuddin Kalwal, Bashir Ahmad Bhat @ Peer Saifullah, Zahoor Ahmad Shah Watali, who were involved in providing funds for terrorists and secessionist activities and others involved in stone pelting in Kashmir Valley, under Sections 120B, 121, 121A & 124A of the Indian Penal Code and Sections 13, 16, 17, 18, 20, 38, 39 & 40 of the UAPA.The case was further being investigated in terms of Section 173 (8) of Cr.PC.

146. It is further stated that the charges were framed against 15 accused in different sections of law including accused Aftab Ahmad Shah for the offences under sections 120-B, 121, 121-A IPC, U/s 13 UAPA r/w Section 120-B IPC, Section 15 of UAPA r/w 120-B IPC and Sections 17r/w 120-B IPC, Sections 18, 20, 40 of UAPA on 16.03.2022.

147. It is further stated in the affidavit that accused Yasin Malik, head of JKLF had pleaded guilty following which he was convicted of all the charges and has been sentenced for life and a fine of Rs.10 lakhs.

148. It is stated that from the cogent and irrefutable evidence which has emerged till now it is manifest that themembersof AAC including Shahid-ul-Islam @ Aftab Hilali Shah @ Aftab Ahmand Shah have been actively and continuously encouraging a veiled armed insurgency and have been openly advocating and inciting the people to bring about a secession of a part of the territory of India from the Union; besides causing disaffection, disloyally and disharmony by promoting feelings of enmity and hatred against the lawful government and its members are indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of India. As such, the decision of the Central Government to declare AAC as an unlawful association is just, proper and bona fide.

149. He relied upon the true copies of FIR No. RC-10/2017/NIA/DLI registered under Sections 120B, 121 & 121A of the Indian Penal Code and Sections 13, 16, 17 18, 20, 38, 39 and 40 of the UAPA; Seizure Memo of Shahid-Ul-Islam Dated 03.06.2017; seized documents of Shahid-Ul-Islam Dated 03.06.2017; Arrest Memo of Shahid-Ul-Islam; photo comparison by CFSL of Shahid-Ul-Islam; Disclosure Memo of Shahid-Ul-Islam; Technical Analysis

Report of Shahid-Ul-Islam; statements of the protected witnesses (in terms of Section 44 of UAPA) code named as Alfa and Gama and PW-23 (examined in the trial court); Charge-Sheet dated 18.01.2018; Charge order dated 16.03.2022 passed by Ld. Special Judge, NIA, New Delhi and Yasin Malik's Conviction Order, which have been exhibited as Ex. PW11/1 to Ex. PW11/11.

150. Opportunity for cross-examination was given, but not availed in view of non-appearance on the part of the association.

PW-12

151. Rajeev Kumar (PW-12) tendered his affidavit as **Ex.PW-12/A**; he stated that he is presently posted as Joint Secretary in the Government of India, Ministry of Home Affairs, New Delhi and specially, in his capacity as Joint Secretary, Counter-Terrorism and Counter Radicalization Division (CTCR Division), he is well versed with the subject matter of the present proceedings in his official capacity and also have access to the relevant record being the official custodian of the record. He stated that the notification No. S.O. 1115(E) dated 11.03.2025 issued by the Central Government is based on the information and material received from the Central Intelligence Agency with regard to the unlawful activities of the AAC and that based on this information, a note along with a draft notification was prepared and sent for the consideration of the Cabinet Committee on Security (CSS) which was approved on 05.03.2025.

152. He stated that in terms thereof and after careful consideration of the offending nature of the activities of the association, the decision to ban the concerned association was taken. Accordingly, the declaration was made and published vide notification dated 11.03.2025, bearing S.O. 1115(E), which is exhibited as Ex.PW-12/1. Accordingly, vide notification dated 03.04.2025 bearing S.O. 1579(E), this Tribunal was constituted. In terms of Rule 5 of the UAP Rules, vide letter dated 08.04.2025, a background note (Ex.PW-12/2) was submitted to the Tribunal based upon the material/information as contained in the concerned file(s).

153. He further stated that various cases registered by the J& K Police and NIA throw light on the unlawful and subversive activities of the Chairman and members of AAC and that the concerned officers of UT of J&K and NIA have filed their affidavits before this Tribunal in respect of cases registered against the Chairman and Members of AAC under various provisions of law including the UAPA and that evidence so adduced clearly established that AAC is continuously indulging in unlawful activities. In addition to the adduced evidence, intelligence reports/inputs clearly bring out the unlawful activities of AAC.

154. He stated that consideration of the relevant material including the intelligence report/ inputs will reveal the offending and unlawful nature of the activities of AAC. He further stated that as per the information received, declaring AAC as unlawful under UAPA is necessary in the interest of national security, sovereignty and territorial integrity of India as its members and activists have been indulging in radicalizing and brainwashing of the minds of the populace, and indoctrinating the youth through provocative speeches and canvassing for separation of Jammu and Kashmir from UOI.

155. He also deposed that the original files (duly indexed) containing various central intelligence reports/inputs were being submitted in a sealed cover only for the perusal of this Tribunal which is exhibited as PW-12/3. The Central Government is seeking privilege/confidentiality for these original files and relies on Section 129 of the Bhartiya Sakshya Adhiniyam, 2023 r/w Rule 3(2) and proviso to Rule 5 of the UAP Rules. Relevant intelligence reports/ inputs have been submitted along with his affidavit under a sealed cover inasmuch as it is necessary to preserve the confidentiality of the same in view of the sensitive nature of the information contained therein. The confidentiality is being claimed since the contents of the same are privileged and confidential in nature and the same cannot be made available to the banned association or to any third party as the Government considers it against the public interest to disclose the same to either the banned association or to any third-party *inter alia* in terms of the provisions of Rule 5 of the UAP Rules.

156. He further deposed that nature of the proceedings and the scope of inquiry before this Tribunal and the treatment which has to be given to the documents in respect of which privilege has been claimed by the Government or its nodal agency has been authoritatively laid down under para 20-22 by the Hon'ble Supreme Court in ***Jamaat-E-Islami (Supra)***. Further, the documents for which claim of privilege is being sought, by their very nature are confidential and sensitive in nature and therefore, cannot be supplied as a public document as dissemination of the same to public at large may impede/impeach the ongoing investigations against the AAC or its members.

157. He also stated that he is submitting from the cogent and irrefutable evidence that AAC is openly advocating and inciting people to bring about a secession of a part of the territory of India from the Union. It is also established that the activities of AAC are aimed at causing disaffection, disloyalty and dis-harmony by promoting feeling of enmity and hatred against the lawful government and the members of AAC are indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of India by inciting and orchestrating violence. He further deposed that if the AAC is not banned, the activists and sympathizers of AAC will continue to pose a serious threat to the sovereignty, communal harmony, internal security and integrity of the country.

158. He relied the following documents with his affidavit:

1. Self attested copy of Notification dated 11.03.2025 declaring AAC as an Unlawful Association which is exhibited as **Ex. PW12/1**.
2. Self attested copy of Background note dated 08.04.2025 submitted before the Unlawful Activities (Prevention) Tribunal, which is exhibited as **Ex.PW12/2**.
3. Sealed envelope submitted before the Tribunal during deposition, exhibited as **Ex.PW12/3**.

Public Witnesses

159. Apart from effecting service on the association and its office bearers in the manner aforesaid, this Tribunal even held public hearing/s in Srinagar to enable members of the concerned association and/ or member of the public, to participate in the proceedings of the Tribunal. In response thereto, eight (08) affidavits have been filed by the following public witnesses/deponents:-

i. Mr. Satish Mahaldar
ii. Mr. Bashir Muzafar Pandit
iii. Mr. Sheikh Yasir Rouf
iv. Mr. Rameez Raja
v. Mr. Jagmohan Singh Raina
vi. Mr. Rouf Ahmed Punjabi
vii. Mr. Firdous Ahmed Bazaz
viii. Mr. Vikram Malhotra

160. A perusal of the affidavits of the aforesaid deponents/public witnesses reveals that each affidavit is a two-page affidavit containing similar averments opposing the notification dated 11.03.2025, which are as under:-

"1. That I am a law-abiding citizen of India and a resident of the Union Territory of Jammu & Kashmir. I am filing this affidavit in my personal capacity in opposition to the Notification issued by the Central Government banning the Awami Action Committee under the Unlawful Activities (Prevention) Act, 1967.

2. That the Awami Action Committee (AAC), historically known and functioning as a sociopolitical platform in Jammu & Kashmir, has a long-standing record of peaceful political activism, public engagement and humanitarian outreach in the Kashmir Valley.

3. That the said organisation has never been involved in any activities that could be classified as unlawful or prejudicial to the sovereignty, integrity or security of India. Rather, it has operated within the democratic and constitutional framework of India, advocating social justice, public welfare and political awareness.

4. That the Awami Action Committee has consistently contributed to the upliftment of the underprivileged and marginalised sections of society. It has played an instrumental role in extending aid to victims of natural disasters such as floods and fires, providing relief and rehabilitation to affected families in various districts of Kashmir

5. That the AAC has also worked extensively like a non-governmental organisation (NGO), especially in supporting education for economically weaker students through scholarship programs, organizing awareness campaigns on social evils including drug abuse and promoting peace, dialogue and communal harmony in the Valley.

6. That banning 'such an organisation not only undermines the legitimate democratic space for peaceful expression and political participation but also weakens civil society efforts in regions where such engagement is most essential.

7. That I oppose the unjustified categorisation of the Awami Action Committee as an 'unlawful association' and urge this Hon'ble Tribunal to consider the bona fide social, educational and political work undertaken by the organisation over decades,

8. That I humbly request this Hon'ble Tribunal to recommend revocation of the said Notification banning the Awami Action Committee, in the interest of justice, fairness and democratic values."

IX. SUBMISSIONS ON BEHALF OF THE UOI

161. Ms. Aishwarya Bhati, Learned ASG of India, appearing on behalf of the Central Government, submitted, at the outset, that the ban imposed by the central government on the instant proscribed association, i.e., AAC is liable to be confirmed for the following reasons:-

(i) The assertions and allegations made by the central government in the 'Background Note' submitted before this Tribunal; the material adduced in support of the said "Background Note" has remained uncontroverted;

(ii) Instead of controverting and disproving the allegations mentioned in the background note, the proscribed association in its reply has expressly admitted that Awami Action Committee (AAC)- a socio-political organization was formed in 1964 by Late Mirwaiz Molvi Farooq.

(iii) **There is no specific denial to the assertion that in 1993 AAC joined All Party Hurriyat Conference (APHC) as a founder member and continued separatist activities.**

(iv) The proscribed association in its response/reply to the express charge of indulging into secessionist activities has not made any positive assertion or statement and has not expressly declared that the proscribed association, i.e., AAC or its members and office bearers honour the Constitution of India, do not advocate separation of territory of Kashmir from the UOI or merger of territory of Kashmir with Pakistan or declaration of it as an Independent State;

(v) There was overwhelming evidence/material with the central government at the time of declaring AAC as proscribed association under the provisions of UAPA;

(vi) The factum of existence and relevancy of the material on the basis of which central government had declared AAC as a proscribed association has not been disproved, repelled or controverted by the proscribed association;

(vii) The afore-referred material which was available with the central government has been duly adduced before this Tribunal, on oath;

(viii) The authenticity, veracity, existence and relevancy of the afore-referred material, which is in the nature of FIRs registered against the members and office bearers of the proscribed association for indulging in secessionist activities in the territory of Kashmir, has been duly testified on oath by the respective competent officers of the various investigating agencies;

(ix) The proscribed association has not been able to disprove the authenticity, veracity, existence and relevancy of respective FIRs which has been relied upon by the Central Government to ban AAC under the provisions of UAPA;

(x) Ample and abundant opportunity was given by this Tribunal to the proscribed association to appear before the Tribunal to argue/ adduce evidence in its favour to prove that AAC has not been indulging into secessionist activities. However, the proscribed association has failed to avail the said opportunity;

(xi) No material or evidence has been adduced by the proscribed association before this Tribunal in support of non-confirmation of ban which can be said to outweigh the material/evidence adduced by the Central Government manifesting sufficient cause to declare AAC as an "Unlawful Association";

(xii) In fact, no cause has been shown by the proscribed association or its members or office bearers as per section 4(3) of UAPA which can be legally adjudicated to decide that there was no sufficient cause for declaring AAC as an unlawful association.

(xiii) The only material adduced by the proscribed association in its favour is the reply which itself smacks of secessionist motives.

162. Learned ASG, therefore, argued that for the aforesaid reasons and grounds, the ban imposed on the instant association i.e. AAC is liable to be confirmed. Besides above, she founded her arguments on the following points:-

(i) Evidence adduced clearly demonstrates indulgence of AAC into secessionist activities

163. It is stated that in order to substantiate the declaration made by the Central Government and to prove that there was not only sufficient but overwhelming cause for declaring AAC to be an 'unlawful association' which required confirmation of the notification dated 11th March, 2025, declaring the AAC as an 'unlawful association', the Central government has adduced evidence of the concerned officers who also deposed before this Tribunal. A list of the cases which were either registered against its Chairman Umar Farooq or his associates, as deposed before the Tribunal, is given which is as under: -

A. Jammu And Kashmir.

Sr. No.	Prosecution Witnesses	Details of FIRs Lodged
1.	**PW-1** **Mr. Adil Rashid,** Station House Officer (SHO), PS Kothibagh Srinagar	**FIR No. 60/2010 dated 11.09.2010** u/s 13 of the Unlawful Activities (Prevention) Act and section 436, 153A, 109, 147, 336 RPC.

		FIR No. 46/2014 dated 19.06.2014 u/s 13 of the Unlawful Activities (Prevention) Act and section 188, 124-A, 147 RPC
2.	**PW-2** **Mr. Azhar Rashid,** Sub-Divisional Police officer **(**SDPO), Khanyar, Srinagar	**FIR No. 96/2008 dated 09.12.2008** u/s 13 of the Unlawful Activities (Prevention) Act and section 153-A, 120-B RPC.
3.	**PW-3** **Mr. Naseer Ahmad,** Station House Officer (SHO), PS Nowhatta, Srinagar	**FIR No. 19/2015 dated 17.04.2015 u/s** 13 of the Unlawful Activities (Prevention) Act and section 147,148,149,341,336,353,307.427 of RPC
4.	**PW-4** **DYSP (PROB.) Dr. Barleen Kour,** Station House Officer (SHO), PS Shergarhi, Kashmir	**FIR No. 83/2010 dated 11.09.2010** **u/s** 147,148, 436,427, 153,153-A,121,121-A of RPC
5.	**PW 5** **Mr Sheik Wakeel,** Inspector SHO PS Safakadal , Kashmir	**FIR No. 128/2010 dated 11.09.2010** **u/s** 13 Unlawful Activities (Prevention) Act 1967.
6.	**PW 6** **Mr Hilal Ahmad,** Inspector ,SHO PS Shaheed Gunj, Kashmir	**FIR No. 101/2010 dated 11.09.2010** **u/s** 147,148, 336, 436,427, 153,153-A,121,121-A of RPC
7.	**PW 7** **Mr Bashir Ahmad** Sub inspector PS Kothibagh, Srinagar	**FIR No. 46/2010 dated 17.06.2010** **u/s** 341 of RPC
8.	**PW 8** **Mr Sarfaraz Bashir** SDPO, Sopore, Kashmir	**FIR No. 394/2016** u/s 147/148/149/153/153A/336/307/427 RPC, u/s 3 PPD and u/s 7/27/Arms Act . FIR No 409/2016 u/s 147,148,149,427,307 Ranbir Penal Code.
9.	**PW 9** **Mr. Showkat Hussain,** SHO PS Nigeen, Srinagar	**FIR No 56/2011** P.S. Nigeen, Srinagar u/s 13 of Unlawful Activities (Prevention) Act, 1967
10.	**PW 10** **Mr. Liyaqat Ali,** Inspector, Crime Investigation Department, J&K Police	PW-10 (Inspector Liyaqat Ali, CID J&K, Srinagar) is in-charge of the Social Media Cell. He downloaded videos of Mirwaiz Umar Farooq from: a. YouTube channel maintained under the name "**Mirwaiz Manzil**". b. Verified Facebook account of Mirwaiz Umar Farooq.

B. Criminal Case registered against the member of AAC by National Investigation Agency.

164. Attention is invited to the order dated 30.05.2017 issued by the Ministry of Home Affairs vide No.11011/2017-IS-IV, in exercise of its powers conferred under section 6 (5) read with Section 8 of the NIA Act, 2008, whereby the National Investigation Agency was directed to register a Regular Case and take up the investigation. Details of the case registered by the NIA are given in the table as under:

Sr. No.	FIR Details	Brief incident Lodged In FIR
1.	RC 10/2017/NIA/DLI U/S 120B, 121 & 121A of the IPC and S. 13, 16, 17, 18, 20, 38, 39 & 40 of UAPA, 1967.	Upon receiving credible information that Hafiz Muhammad Saeed, Amir of Jammat-ud-Dawah and the secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with active militants of proscribed terrorist organizations viz. Hizb-ul-Mujahideen(hereinafter referred to as "HM"), Dukhtaran-e-Millat, Lashkar-e-Taiba (hereinafter referred to as "LeT"), and other terrorist organizations/associations/gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir through the funds so collected and as such have entered into a larger criminal conspiracy for causing disruption in the Kashmir valley by way of pelting stones on the security forces, systematically burning of schools, causing damage to public property and waging war against India.

ii. Full opportunity given by this Tribunal to AAC and its members to show cause why the association should not be declared unlawful:-

165. Learned ASG stated that ample opportunity was given to the concerned Association to appear before this Tribunal to argue and to adduce evidence to prove that AAC has not been indulging into secessionist activities. However, the proscribed association has failed to avail the said opportunity. Attention is invited to the several orders of this Tribunal to substantiate the argument that the association was duly served with the notice and sufficient opportunity was given to the association. It is stated that though on 16.05.2025, an advocate had entered appearance on behalf of the association and filed reply on behalf of the association, however, thereafter there was no appearance on behalf of the association.

166. Even hearings were fixed at Srinagar and a direction was given to issue public notice notifying the time, date, and venue of the sitting of the Tribunal calling upon all those persons interested/willing to participate in the inquiry. Despite that, there was no appearance. Opportunity was also given to cross-examine the witnesses produced by UOI, but none availed by the association.

iii. The relevance of the public witnesses who are not part of the proscribed organisation.

167. It is submitted that vide order dated 16.04.2025, this Tribunal, directed the issuance of a public notice calling upon persons interested / willing to participate in the inquiry, to file their affidavits with the Registrar of this Tribunal before the next date of hearing which was to be held in Srinagar on 01.08.2025 and 02.08.2025. The relevant portion of the said order is as under:

> "...
>
> *Let a public notice be issued notifying the dates, time and venue of the sitting of the Tribunal on the aforementioned dates at Srinagar, and calling upon all those persons interested / willing to participate in the inquiry, to file their affidavits with the Registrar of the Tribunal at least three days before the next date of hearing of the Tribunal in Srinagar."*

168. It is submitted that the above direction called upon interested/ willing persons to participate in the inquiry being held by this Tribunal by way of the present reference under Section 4(1) of UAPA which reads as under:

> *"4. Reference to Tribunal – (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful."*

169. It is stated that thus, the scope of inquiry before this Tribunal under the above provision is only to adjudicate

whether there is 'sufficient cause' for declaring AAC an unlawful association under Section 3 UAPA.

170. In furtherance of order dated 16.04.2025, 08 individuals have filed affidavits in support of the association before this Tribunal. It is stated that none of these 08 individuals is a member of the association or has provided any other details of the association/ affiliation with AAC; that all 08 affidavits are almost identical in their content and appear to be planted testimonies which merely give vague statements in support of the association; further, the affidavits do not explain the locus of the individuals in filing affidavits in support of the association.

iv. <u>Rule of ex-parte proceedings before the tribunal following the civil procedure code, 1908</u>

171. Learned ASG stated that a reading of Order IX of Civil Procedure Code, 1908 (CPC) with the UAPA infers that the Tribunal may proceed with ex-parte proceedings if full and complete opportunity of hearing has been provided to both the parties. In the present case, the association in its written reply to the notification of the UOI filed before the Tribunal has given a sketchy written response but at the same time has also '*refused its participation in the legal proceedings before this Tribunal'* as per its own will. Therefore, it is respectfully submitted that it would be fair and just to proceed ex-parte in the present matter keeping in view the acceptance and admission of the AAC in its reply for non-participation in the legal proceedings before this Tribunal. Attention is invited to Order IX and Order XVII of CPC which are as under:

<u>Order IX CPC</u>

"Appearance of parties and consequence of non-appearance

1. *Parties to appear on day fixed in summons for defendant to appear and answer.—On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.*

xxx *xxx* *xxx*

6. Procedure when only plaintiff appears.—(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then

[(a) When summons duly served.—if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;]

(b) When summons not duly served.—if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time.—if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

. . . . .

12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.—Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all provisions of the foregoing rules applicable to plaintiffs and defendants, respectively who do not appear.

13. Setting aside decree ex parte against defendant.—In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the

appeal has been disposed of an any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]

Order XVII CPC

"Adjournments

1. Court may grant time and adjourn hearing.—[(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.]

(2) Costs of adjournment.—In every such case the Court shall fix a day for the further hearing of the suit, and [shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:]

[Provided that,—

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another

Court, is put forward as a ground for adjournment, the Court shall not grant the. adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]

2. Procedure if parties fail to appear on day fixed.—Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

[Explanation.—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.]

3. Court may proceed notwithstanding either party fails to produce evidence, etc.—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed [the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or (b) if the parties are, or any of them is, absent, proceed under rule 2].

172. Reference was also made to Section 9 of UAPA and Rule 15 of UAP Rules, which are as under:

"*Section 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."*

"Rule 15. Other provisions of the Civil Procedure Code, 1908, to apply- the provisions of the Civil Procedure Code, 1908 (5 of 1908) shall , insofar as they relate to any other matter with regard to the service of summons, shall, as far as may be, apply to the service of summons issued by the Tribunal or District Judge under the Act."

173. Reference was also made to the judgment of the Supreme Court in ***Vijay Singh v. Shanti Devi and Another, 2017 8 SCC 837*** with regard to the validity of the ex-parte proceedings, relevant portion of which is as under:

> *"12. We are only concerned with Clause (a), which provides that if summons are duly served and the Defendant does not put in appearance, the court may make an order that the suit would be heard ex parte. In this case, this was the procedure followed and an ex parte decree was passed. There is no manner of doubt that an ex parte decree is also a valid decree. It has the same force as a decree which is passed on contest. As long as the ex parte decree is not recalled or set aside, it is legal and binding upon the parties.*
>
> *Order IX Rule 13, Code of Civil Procedure reads as follows:*
>
> *"ORDER IX-APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE*
>
> *xxx xxx xxx*
>
> *13. Setting aside decree ex parte against Defendants-- In any case in which a decree is passed ex parte against a Defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;*
>
> *Provided that where the decree is of such a nature that it cannot be set aside as against such Defendant only it may be set aside as against all or any of the other Defendants also:*
>
> *Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the Defendant had notice of the date of hearing and had sufficient time to appear and answer the Plaintiff's claim.*
>
> *Explanation.--Where there has been an appeal against a decree passed ex-parte under this rule, and the appeal has been disposed of on any ground other than the ground that the Appellant has withdrawn the appeal, no application shall lie under this Rule for setting aside the ex-parte decree.*
>
> *14. The aforesaid provision lays down the procedure for setting aside a decree passed ex-parte. The court can set aside an ex parte decree only on two grounds-firstly, that the summons was not duly served; and secondly, that the Defendant was prevented by sufficient cause from appearing when the suit was called out. Once an ex-parte decree is set aside, it basically means that the parties are relegated to the same position on which they stood before the passing of the ex-parte decree."*

v. <u>Summary of evidence/reply placed before the tribunal during the course of hearing</u>

174. It is stated that after detailed hearings, the Central Government has adduced the following evidence before this Tribunal as there is overwhelming evidence available against the proscribed organization which has not been disproved by it. A chart containing details of all the PWs who have deposed before the Tribunal against the proscribed organization is annexed with the written submission as **Appendix A**.

175. A chart containing the FIRs/RPCs where secessionist speeches and slogans were raised by the office bearers and members of proscribed organization and recovery of incriminating material made in various FIRs registered is also annexed as **Appendix B**.

176. It is stated that cogent and irrefutable evidences have been produced by national intelligence agency against the member of AAC being involved in secessionist and cessionist activities against the sovereignty and integrity of the country. Reference is made to the evidence of PW-11 and reliance is placed on the following portion of the evidence:-

> ***"PW-11** B.B Pathak, Deputy Superintendent of Police in the NIA, New Delhi has deposed about the factum of **RC-10/2017/NIA/DLI** registered on 30.05.2017. It was stated that investigation of the same revealed that various terrorist organizations such as JKLF, HM, LeT, in connivance with other secessionist groups including constituents of APHC/Hurriyat conference including APHC (Umar Faction) which are funded by Pakistan have entered into criminal conspiracy to wage war against GoI. The said organizations were following the ideology of 'freedom'. It was stated that APHC is a conglomerate if 26 different political / social / religious organizations. Investigation revealed that APHC was instigating the general public of Kashmir for taking arms in hand and to take part in violent activities in the valley."*

177. A chart showing the evidences found against the AAC member in RC-10/2017/NIA/DLI during the course of investigation and filed in chargesheet is annexed as **Appendix C.**

178. It is stated that in the testimony of NIA witness and the exhibits marked therein, links of Shabir Ahmed Shah with other co-accused namely, Zahoor Ahmad Shah Watali has irrefutably emerged. It is further stated that in this regard that so far as case of Zahoor Ahmad Shah Watali is concerned, the Hon'ble Supreme Court in its judgment

titled as ***NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1*** was pleased to cancel the bail granted to Zahoor Ahmad Shah Watali granted by the High Court. Relevant portion is as under:

> ***"34.*** *After having analysed the documents and the statements forming part of the charge-sheet as well as the redacted statements now taken on record, we disagree with the conclusion recorded by the High Court. In our opinion, taking into account the totality of the report made under Section 173 of the Code and the accompanying documents and the evidence/material already presented to the Court, including the redacted statements of the protected witnesses recorded under Section 164 of the Code, there are reasonable grounds to believe that the accusations made against the respondent are prima facie true. Be it noted, further investigation is in progress."*
>
> **(Emphasis Supplied)**

179. It is stated that the aforesaid judgment of the Hon'ble Supreme Court manifests that the accusation and the allegation against the other co-accused who have been named to have been involved in cross-border terror funding offence are *prima facie* true. The said finding is binding on this Tribunal and justifies the ban imposed on AAC.

180. Furthermore, it is also stated that charges in the said case have already been framed and one of the co-accused i.e. Yaseen Malik has already pleaded guilty before the court. Thus, in this view of the matter and on the basis of testimony of the NIA witness, the ban on AAC warrants confirmation.

vi. Reply filed by the Proscribed Organization before the Tribunal

181. It is submitted that the Organization in their reply filed through its acting General Secretary, have not been able to refute any cogent reasons as to why AAC should not be banned by the Central Government. No evidence has been placed on record by the Organization to deny the contents of FIRs placed in the notification of the Central Government; moreover, the reasons for delay in filing of Chargesheet or non-arrest of the Chairman of AAC and its members have already been duly informed to the Tribunal by the Prosecution Witnesses in their respective depositions. The Reply of the Banned Organization only highlights the so called social work undertaken by AAC through its chairman but does not respond to the cogent material that has been adduced in evidence before the Tribunal via contents of Government notification banning the Organization. The said reply also does not deny to Altaf Ahmad Shah having been the member of AAC who is charged under NIA registered case with other proscribed terrorists for doing secessionist and anti-national activities in the valley of Kashmir. It is further submitted that the banned Organization has 'chosen to' stay away from participating in the proceedings before the Tribunal and therefore the reply filed by the Organisation does not serve any purpose in refuting the cogent grounds and reasons for banning AAC by the Central Government.

182. It is further stated that out of 26 parties forming the conglomerate of APHC, 12 member organisations have been banned by the Central Government vide separate notifications under UAPA, 1967 which has already been upheld by the respective Tribunals notified from time to time. It is stated that the main objective of several member organisations joining APHC was to further the separatist approach and to fulfil the agenda of generating hatred and disaffection against India and to severe Jammu & Kashmir from the UOI. Therefore, it shall be correct to submit that AAC originated with the above said ideology and continued to hold the same till its ban on 11.03.2025 by the Central Government and should also be banned under UAPA for advocating cessionist and secessionist activities in the Kashmir Valley.

vii. Other Anti National Activities

183. It is stated that the Sealed Cover Documents produced as Exhibit PW-12/4 before the Tribunal establishes the fact that AAC through its Chairman and other members have been indulging in radicalizing and brainwashing the minds, indoctrinating the people of Jammu & Kashmir through provocative speeches for separation of Jammu and Kashmir from UOI. The inputs received from various intel reports will prove that the stand of AAC has always been secessionist since inception and continues to carry forward its anti-India ideology through its varied activities throughout all these years in the valley of Kashmir. The Intel report will further establish that AAC has always been advocating for the establishment of 'Independent Kashmir" which has also been established through the deposition of other PWs before the Ld. Tribunal.

184. It is also submitted that the witness of the Central Government authorized to depose on behalf of the Ministry of Home Affairs (PW-12) which has notified the banning of the said Organization is a competent officer who has been involved in the drafting of the said notification no. S.O. 1115 E dated 11.03.2025 based on the various Intel inputs received to the Central Government from time to time and was personally involved in the making and movement of the draft notification and the background note for the Cabinet Security meeting on the said issue.

185. It is submitted that AAC is continuously encouraging a veiled armed insurgency and is openly advocating for secession and, therefore banning of AAC is necessary in the interest of national security, sovereignty and territorial integrity of India. It is therefore submitted that all the aforesaid witnesses have deposed before this Tribunal in their respective testimonies that the ban imposed by the Central Government under the provisions of UAPA is justified and that not only from the official record but also on the basis of their personal experience gathered during the course of

discharge of their duties as police officers posted in the erstwhile State of Jammu and Kashmir, the concerned officer from J&K, the officer deposing from National Investigation Agency and Ministry of Home Affairs have deposed that Umar Farooq and members of AAC have been incessantly involved in secessionist and cessionist activities against the sovereignty and integrity of the country and have been vociferously advocating and assisting the claim of sovereignty of state and non-state actors of Pakistan and POK.

viii. The Definition of Unlawful Activity Under UAPA

186. It is stated that the objective behind the enactment of UAPA is as under:

> *"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations, [and for dealing with terrorist activities,] and for matters connected therewith."*

187. It is submitted that the provisions of the aforesaid act came for consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court in judgment rendered in the case of ***Arup Bhuyan v. State of Assam, (2023) 8 SCC 745*** has held as under:

> ***"86. Now let us consider the Preamble to the UAPA, 1967. As per Preamble, the UAPA has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. Therefore the aim and object of enactment of the UAPA is also to provide for more effective prevention of certain unlawful activities. That is why and to achieve the said object and purpose of effective prevention of certain unlawful activities Parliament in its wisdom has provided that where an association is declared unlawful by a notification issued under Section 3,*** *a person, who is and continues to be a member of such association shall be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine. Therefore, Parliament in its wisdom had thought it fit that once an association is declared unlawful after following due procedure as required under Section 3 and subject to the approval by the Tribunal still a person continues to be a member of such association is liable to be punished/penalise."*
>
> **(Emphasis supplied)**

188. It is submitted that the definitions contemplated under UAPA which are relevant for the purpose of present proceedings are as under:-

> *"Definitions.—(1) In this Act, unless the context otherwise requires,—*
>
> *(a) "association" means any combination or body of individuals;*
>
> *(b)* ***"cession*** *of a part of the territory of India" includes admission of the claim of any foreign country to any such part;*
>
> ***"secession*** *of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;*
>
> *xxx xxx xxx*
>
> *(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 153A (45 of 1860)*
>
> *or section 153B of the Indian Penal Code, 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;"*

*"3. **Declaration of an association as unlawful**. —(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.*

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary: Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette……"

189. It is further submitted that the Declaration of an association to be 'unlawful' by the Central Government under Section 3 of the said Act is after forming of the opinion that the said association is, or has become unlawful. Such a declaration can be issued in respect of an association which is already unlawful or in respect of an association which, initially being lawful, has become unlawful.

190. It is stated that the definition of an 'unlawful association' in section 2(1)(p) of the UAPA is in two parts – viz. an association being involved in 'unlawful activity' and / or an association involved in activity / offences punishable under section 153A or section 153B of the IPC. It is submitted that either of the situations comprises of three categories i.e.

i. where the association has for its object any such activities,

ii. or the association encourages or aids persons to undertake any of such activities or

iii. where the members of such association undertake such activities.

Therefore, if the activities of any association fall in any of the aforesaid three categories, such an association will be liable to be declared as an unlawful association.

191. It is submitted that there are substantial evidences on record as per the investigation carried out by different investigating agencies (NIA/JKP) to provide that the activities undertaken by AAC under the leadership of Umar Farooq "Mirwaiz" were secessionist and cessionist in nature and are accordingly covered under the definition of 'unlawful activity' in Section 2(o) of UAPA.

ix. Nature of proceedings and standard of proof before the UAPA Tribunal for declaring an association as unlawful

192. In this regard, it is submitted that the standard of proof in civil and criminal proceedings is entirely different, i.e. of the preponderance of the probability and proof beyond reasonable doubt, respectively. Reference is made to the case of ***Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370*** wherein it was *inter alia* held as under:

"32.Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

193. It is submitted that the nature of the present proceedings and the scope of inquiry in the present proceedings have been laid down by the Hon'ble Supreme Court in ***Jamaat-E-Islami Hind (Supra)*** in the specific context of the provisions of the UAPA.

194. It is submitted that the Hon'ble Supreme Court emphasized that Section 4 (1) uses the expression "*adjudicating whether or not there is sufficient cause for declaring the association unlawful*". Reference was made to Section 4 (2) which requires issue of notice in writing to show cause to the association and sub-section (3) which mandates 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 Act, it was held by the Hon'ble Supreme Court in ***Jamaat-E-Islami Hind (Supra)***:-

"11…. The entire procedure contemplates an objective determination made on the basis of material placed before the Hon'ble 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 Hon'ble Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Hon'ble 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 application in the context."

195. It is submitted that the aforesaid ratio was affirmed after making reference to Section 5, which stipulates that the Tribunal shall be headed by a Judge of the High Court and proceedings will be deemed to be judicial proceedings and the Tribunal shall be deemed to be a civil court for the purpose specified. It was accordingly held that the opinion given by the Tribunal under Section 5 has binding effect and has been given a characteristic of judicial determination as distinguished from an opinion of an Advisory Board under the preventive detention laws. Section 4 of the Act requires issue of notice by giving opportunity to show cause to the association. Accordingly, the Supreme Court held that the objective findings by the Tribunal must be based upon materials required to support the judicial determination. It is submitted that while deciding the reference, the Tribunal does not act or exercise power of judicial review under Article 226 of the Constitution of India on whether or not declaration under Section 3(1) should have been made but goes into the factual existence of the grounds by objective determination of the *lis* between the Government and the association.

196. It is stated that referring to the nature of evidence and the procedure which a Tribunal should adopt, it was held that the minimum requirements of natural justice must be satisfied to ensure that there is meaningful adjudication. However, the requirements of natural justice have to be tailored to safeguard public interest which must outweigh every lesser interest. In this connection, reference was made to Section 3 (2) of the Act and Rule 3 (2) and proviso to Rule 5 of Rules for withholding and non-disclosure of facts which the Central Government considers against public interest and disclosure and non-disclosure of confidential documents and information which the Government considers against public interest to disclose.

197. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3(1) which 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. Thus, the rules of evidence as far as possible as laid down in the Evidence Act, should be followed. 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 Hon'ble 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 to its content and the decision ultimately rendered by the Hon'ble 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. Morrisey 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 : Led 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 fact finders as to the evidence relied on and reasons for revoking parole. We emphasize 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 n adversary criminal trial".

24xxxxx

25xxxx

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 Hon'ble Tribunal is its own opinion,

formed on the entire available material, and not a mere imprimatur of the Hon'ble 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 Hon'ble Tribunal can assess its true worth.This has to be determined by the Hon'ble 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 Hon'ble 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."

(Emphasis Supplied)

198. It is submitted that a reading of Section 9 of the Act read with Section 3(1) of the UAPA makes it clear that the Tribunal shall follow the procedure laid down in the Code of Civil Procedure for investigations of the claims before it. The opinion formed by the Tribunal will be governed by the principles applicable to Civil Law and accordingly, the principles of preponderance of probabilities apply and not proof beyond reasonable doubt. In ***Jamaat-E-Islami Hind (Supra)***, the Hon'ble Supreme Court has also observed that the test of greater probability will apply to -

i) the proceedings before the Tribunal is in the nature of *lis* between two parties;

ii) the proceedings are governed by the Code of Civil Procedure and the principles are applicable to civil in law.

iii) the Tribunal is to adopt a procedure conforming to minimum requirement of natural justice.

iv) the Tribunal shall follow as far as practicable the rules laid down in the Evidence Act. However, the material need not be confined to legal evidence in strict sense.

199. It is submitted that the ingredients of 'unlawful activity' as defined under Section 2(o) of the said Act requires the objective consideration of the Tribunal to reach on the conclusion of declaring an association as "unlawful' under the UAPA Act. The Hon'ble Supreme Court in ***Jamaat-E-Islami Hind (Supra)*** at page 441 has held as under**:**

"9. *Clauses (f) and (g) of Section 2 contain definitions of "unlawful activity" and "unlawful association" respectively. An "unlawful activity", defined in clause (f), means "any action taken" of the kind specified therein and having the consequence mentioned. In other words, "any action taken" by such individual or association constituting an "unlawful activity" must have the potential specified in the definition. Determination of these facts constitutes the foundation for declaring an association to be unlawful under sub-section (1) of Section 3 of the Act. Clause (g) defines "unlawful association" with reference to "unlawful activity" in sub-clause (i) thereof, and in sub-clause (ii) the reference is to the offences punishable under Section 153-A or Section 153-B of the Penal Code, 1860. In sub-clause (ii), the objective determination is with reference to the offences punishable under Section 153-A or Section 153-B of the IPC while in sub-clause (i) it is with reference to "unlawful activity" as defined in clause (f).* ***These definitions make it clear that the determination of the question whether any association is, or has become, an unlawful association to justify such declaration under sub-section (1) of Section 3 must be based on an objective decision; and the determination should be that "any action taken" by such association constitutes an "unlawful activity" which is the object of the association or the object is any activity punishable under Section 153-A or Section 153-B IPC. It is only on the conclusion so reached in an objective determination that a declaration can be made by the Central Government under sub-section (1) of Section 3."***

(Emphasis supplied)

200. Accordingly, the decision of the Central Government to declare AAC as 'unlawful association' is entirely on the documentary evidences and testimonies of the witnesses/protected witnesses filed during the course of investigation by different Investigating Agencies as stated in the above paragraphs.

x. Requisite evidence has come on record to confirm the notification declaring AAC as an unlawful association to justify ''sufficient cause'' under Section 4 of UAPA.

201. It is 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. It is submitted that this Tribunal cannot enter into the arena of the discussion that whether the documents produced can stand judicial scrutiny during the trial or not. Any procedural irregularities or defects in material adduced before this Tribunal are to be tested by the concerned learned Trial Court within the parameters of the Indian Evidence Act, 1872 and other relevant laws.

202. It is 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.

203. In the submission of the Central Government for the purpose of assessing the sufficiency of the cause, this Tribunal has to holistically look into the entire materials / incidents. If the material/incidents are relatable acts of commission of unlawful activity, 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.

204. It is submitted that the Central Government has led sufficient and cogent material and evidences to demonstrate that there was sufficient material available with the central government to come to form an opinion that AAC and its associates were indulging in unlawful activities. It is submitted that the said material clearly satisfies the test of subjective satisfaction arrived on objective consideration of the material.

205. It is further respectfully submitted that the law does not require that the cases which should form the basis of opinion formed by the central government should not be proximate to the date of the decision or there should be 'X' number of cases to prove and association to be an unlawful association. It is submitted that even one case may be sufficient. It is submitted that there have been large number of cases, as enumerated above, in which AAC and the other associations have been found indulging in unlawful activities which have been mentioned in the Background Note and evidence pertaining to the same has already been adduced before this Tribunal.

206. In this view of the matter, it is the submission of the central government that more than sufficient material/cause has come on record for justifying confirmation of the ban**.** It is submitted that 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.

207. Furthermore, it is also submitted that the evidence adduced by the Central Government has not been refuted on any ground whatsoever. As such, in view of non-rebuttal of the evidence adduced by the Central Government by any member/erstwhile member of AAC opposing the ban, the Notification No. S.O.1115(E) published in the Gazette of India, Extraordinary, dated 11th March, 2025, declaring the Awami Action Committee (**AAC**) as an 'unlawful association' under Sub-section (1) of Section 3 of the UAPA is liable to be confirmed.

xi.Claim of privilege for producing documents in sealed cover

208. The Central Government places its claim of privilege for the documents filed in sealed cover under Section 123 of Evidence Act read with Section 3(2) of the UAP Rules, which are reproduced as under:-

EVIDENCE ACT, 1872

*"**S.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."*

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"Section 129. **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.]"

xxx xxx xxx

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 mod e undr 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 rue shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose."

(Emphasis Supplied)

209. It is submitted that from a bare reading of the aforesaid provisions, the following propositions emerge:-

(i) Rule 3(2) read with Rule 5 provides that the tribunal **shall** not make the documents etc. part of the proceedings or allow inspection if the said documents are **claimed** to be of confidential nature; this Tribunal being a creature of statute would therefore be bound by the mandate of Rule 3(2) which are expressly tailormade for the purpose of functioning of the Tribunal;

(ii) Rule is silent as to in what manner and format or content, said claim of confidentiality is to be made;

(iii) In absence of any format prescribed under the UAP Act and the Rules framed thereunder, reference will have to be made to the general civil law;

(iv) Claim of privilege under the general civil law is provided under S. 123 of the Evidence Act.

(v) S. 123 of the Evidence Act provides that claim of privilege i.r.o unpublished official records relating to any affairs of State has to be made with the **permission** of the officer at the head of the department concerned.

(vi) Rule 3(1) provides that the tribunal shall follow the rules of evidence laid down in the Indian Evidence Act, 1872 **as far as practicable**;

(vii) Thus, the procedural vigour of form and content of Evidence Act will not be applicable in the proceedings before the tribunal – The principles analogous to the Evidence Act or for that matter CPC will be applicable;

(viii) Analogical principle underlining section 123 of the Evidence Act is that the claim of privilege should be made with the permission of the head of the department. The head of the department should examine the document, apply his mind and then mark the documents disclosure of which would not be in public interest;

(ix) Once the evidence comes on record that the head of the department has examined the document, applied his mind and then has marked the documents for claiming privilege, any direction issued by him to any officer subordinate to him to move the claim of privilege will be sufficient compliance of Section 123 r/w Rule 3 (1) & (2).

210. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in ***Jamaat-E-Islami Hind (Supra)*** wherein it has been held as under:

"21...the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure off 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." [Para 19] "

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.

24. *In Paul Ivan Birzonv.Edward S. King[469 F 2d 1241, 1244-45 (1972)] placing reliance on Morrissey [408 US 471 : 33 L Ed 2d 484 (1972)] , 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."*

211. A bare perusal of the aforesaid judgment which has interpreted the provisions of UAPA manifests that there is neither any form nor content for claiming privilege. The said judgment instead provides for a modified procedure and holds that in cases of privilege the Tribunal has to itself look into the content and satisfy itself that that non-disclosure of such information to the association or its office-bearers is in public interest. The said judgment further mandates that for this purpose 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."*

212. Thus, it is the submission of the UOI as per the provisions of UAPA and the Rules framed thereunder, there is no set format in which claim of privilege is to made and further as per ***Jamaat-E-Islami Hind (Supra)***, this Tribunal can device its own procedure to look into the documents on which privilege is claimed and adjudicate whether it falls within a class of documents disclosure of which will not be in public interest.

213. It is submitted that the claim of privilege by the UOI for the documents placed is made as the documents are also of such a nature that the non-disclosure of which are in public interest. In ***State of U.P. v. Raj Narain, (1975) 4 SCC 428***, the Constitutional Bench of the Hon'ble Supreme Court had upheld the claim of privilege by the Government while holding as under:

> ***"41.*** *The several decisions to which reference has already been made establish that the foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English law. <u>It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The Court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a</u>*

consideration to bear in mind. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of class which demand protection. (See Rogers v. Home Secretary at p. 405). To illustrate the class of documents would embrace Cabinet papers, Foreign Office despatches, papers regarding the security of the State and high level inter-departmental minutes. In the ultimate analysis the contents of the document are so described that it could be seen at once that in the public interest the documents are to be withheld. (See Merricks v. Nott Bower [(1964) 1 AER 717]).”

(Emphasis Supplied)

214. It is stated 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.

215. It is further stated, in the cases concerning national security, sovereignty and integrity, the tribunal has to interpret and analyze the material differently. It must also take into account the fact that the decisions taken by the Central Government in such manner are based on highly sensitive information and inputs. The effects of such decisions are not confined to the boundaries of the nation. In fact, in the present scenario when the terrorist activities and national insurgency is on rise, the global boundaries have become meaningless. The insurgency in a State or activities of any association which is suspected to be unlawful has bearing effect on the credibility of the nation itself. Referene is made to ***Raj Kumar Singh v. State of Bihar, (1986) 4 SCC 407*** in a case of preventive detention, relevant portion is 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 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 the 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.”

216. Reliance has also been placed upon ***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.

217. It is stated that the Hon’ble Supreme Court in ***Digi Cable Network (India) (P) Ltd. v. Union of India, (2019) 4 SCC 451*** had also strongly relied upon ***Ex-Armymen’s (Supra)***, relevant portion is as under:

“15. In somewhat similar circumstances, this Court while repelling this submission laid down the following principles of law in Ex-Armymen's Protection Services (P) Ltd. v. Union of India [Ex-Armymen's Protection Services (P) Ltd. v. Union of India, (2014) 5 SCC 409] in paras 16 and 17 which read as under: (SCC p. 416)

“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. To quote Lord Hoffman in Secy. of State for Home Deptt. v. Rehman [Secy. of State for Home Deptt. v. Rehman, (2003) 1 AC 153 : (2001) 3 WLR 877 (HL)] : (AC p. 192C)

‘50. ... [in the matter] of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive.’

17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases, it is the duty of the court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will

however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party."

218. In the present case, it is respectfully submitted that the documents for which claim of privilege, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

219. It is submitted that the document forms part of the evidence collected by the intelligence agencies which pertains to secessionist and unlawful activities of the Banned Organizations and those associated with it. The said documents are confidential and secret in nature and the same can be verified by the Tribunal only.

220. It is submitted that the rigors of ***Madhayamam Broadcasting Ltd. Union of India, 2023 SCC Online 366*** cannot be strictly applied in the present case as the facts and circumstances for the constitution of the present Tribunal is different from the issue that emerged in aforesaid cases; therefore the claim of privilege sought by the Union in the present case cannot be denied keeping in view the nature of sensitive information contained in the intel reports, the disclosure of which could affect the larger public interest of the nation by jeopardizing the safety and sovereignty of the country.

221. Reliance is placed on para 84 of ***Madhayamam (Supra)*** to state that while balancing the right of the execution claiming privileged of sealed documents on one hand and the principle of natural justice on the other, the Supreme Court held as under:

" 84. The contention of the respondent that the judgment of this Court in Ex-Armymen's Protection Services (supra) held that the principles of natural justice shall be excluded when concerns of national security are involved is erroneous.The principle that was expounded in that case was that the principles of natural justice may be excluded when on the facts of the case, national security concerns outweigh the duty of fairness. Thus, national security is one of the few grounds on which the right to a reasonable procedural guarantee may be restricted. The mere involvement of issues concerning national security would not preclude the state's duty to act fairly. If the State discards its duty to act fairly, then it must be justified before the court on the facts of the case. Firstly, the State must satisfy the Court that national security concerns are involved. Secondly, the State must satisfy the court that an abrogation of the principle(s) of natural justice is justified. These two standards that have emerged from the jurisprudence abroad resemble the proportionality standard. The first test resembles the legitimate aim prong, and the second test of justification resembles the necessity and the balancing prongs."

222. It is submitted that decision of the previous Tribunals constituted under section 4 of the UAPA in which the claim of privilege by the Central Govt had been allowed holding that the same satisfied the requirement of Section 123 of the Evidence Act have persuasive precedential value before this Tribunal in view of the provisions of Section 5(7) of the UAPA which provide that the proceedings before this Tribunal are judicial proceedings. The UOI therefore places reliance on the following:-

1. Part-VIII of Judgment of Hon'ble Justice Mukta Gupta Para No. 8.1 to 8.12 (*Internal Page Nos. 55 to 58) in SIMI MATTER*.
2. Paragraphs no. 326 to 330 of Judgment of Hon'ble Justice Dinesh Kumar Sharma in PFI MATTER.
3. Paragraphs no. 325 of Judgment of in MLJK MATTER.

xii. Hostile environment prevailing in territory of J & K creating hurdles in conclusion of cases against the separatist and militants

223. It is submitted that as it has been stated in the testimonies of various witnesses, the delay which has occurred in investigation and trial of the offences, committed in the erstwhile state of Jammu and Kashmir, due to extremely hostile environment which prevailed therein. It is submitted that it is matter of public knowledge that since last more than 3 decades, the erstwhile State of Jammu & Kashmir has been adversely affected by the acts and deeds of the Separatist groups and its leaders.

224. It is submitted that from 1989 to 2016, the situation in the erstwhile State of Jammu & Kashmir remained volatile and disturbed due to the circumstances created by terrorist groups camouflaged as Separatist Groups/ Political Parties or self-styled political leaders who instigated and provoked the general public at large against the lawfully established governments with the help of foreign state and non-state actors having interests inimical to the interest of the country.

225. It is submitted that such acts, at times, were direct acts of external aggression; and at times, were acts committed to create armed rebellion within the territory of erstwhile state of Jammu and Kashmir.

226. It is submitted that all the aforesaid facts have been referred to in the concurring opinion of Hon'ble Mr. Justice Sanjay Kishan Kaul in ***para 31*** and the ***Epilogue*** recorded in ***para 113-135*** in the judgment rendered by the Hon'ble Supreme Court in ***In Re: Article 370 of The Constitution, 2023 INSC 1058/ 2023 SCC OnLine SC 1647***.

227. It is 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. The general public even feared to depose or give evidence against the said separatist leaders and hence led to a non-cooperative atmosphere for the police investigating agencies in the cases registered against the said separatist organizations or its leaders.

228. It is submitted that the situation was particularly bad from the Law-and-Order point of view in the years 2008, 2009, 2010, 2016 during which years, the cross-border terrorist organisations in connivance with the separatist leaders and their activists instigated and led the general masses into mass rioting leading to un-favorable situations.

229. It is submitted that for around a decade, due to some socio-political reasons which had larger implications, the investigation in the FIRs against the separatist organizations and its leaders could not proceed, moreover the witnesses deterred to deposed against the said leaders and organizations.

230. It is submitted that post re-organization of the erstwhile J&K State, security restrictions had to be imposed for some duration to ensure peace and maintain public order and to restrict the adverse influence of these separatist leaders on the common masses, which also slowed down the pace of investigation of the cases registered against the separatists.

231. It is submitted that the investigation was further slowed thereafter by the covid pandemic, which had brought to a standstill all the routine activities. A complete lockdown in the entire nation was imposed and hence the investigation in the cases registered against AAC with its chairman and members in the state of Jammu & Kashmir could not be processed in the pace, it should have been.

232. It is submitted that the following timelines and the averments made will manifest the *bonafide* reasons for delay which have accrued till date in the ongoing cases registered against AAC and its leaders:

233. It is submitted that the situation in territory of Jammu and Kashmir was so adverse, that from 1990, it led to loss of thousands of lives and injuries to several civilians and security forces personnel. As per MHA annual report of 2016-17; around 13936 civilians and 5043 security forces personnel have lost their lives up to 31.12.2016. The following is a table of the said data:

YEAR	INCIDENTS OF TERRORIST VIOLENCE	CIVILIANS KILLED	SECURITY FORCES KILLED	TERRORISTS KILLED
2010	488	47	69	232
2011	340	31	33	100
2012	220	15	15	72
2013	170	15	53	67
2014	222	28	47	110
2015	208	17	39	108
2016	322	15	82	150
2017	172	12	38	95

It is submitted that this chart forms part of record in the NIA Chargesheet at para 17.2.1 @ Pg. 362.

234. It is submitted that the NIA in its Chargesheet filed on 18.01.2018 in RC-10/2017/NIA/DLI vide paragraphs 17.2-17.2.5 has highlighted the magnitude of Secessionist and Terrorist Activities in the Kashmir Valley and nexus of AAC members and cross border terrorist organization in the Kashmir Valley. The investigation carried out by NIA therefore corroborates the hostile environment in the State of Jammu and Kashmir for a long period of time which could not let the Investigating Agency to complete the investigations in respective FIRs.

235. It is stated that the above facts depict ground level situation along with the timeline (1990-2021), efforts taken by the govt. in the State of Jammu & Kashmir indicating that there has been continuous violence by the secessionists. The separatist leaders who had staunch support from cross border and some terrorist organizations had created such an adverse situation in the valley that despite efforts, investigation of the cases could not be concluded in a time bound manner.

236. Moreover, PW-05 and PW-9 in the present proceedings before the Tribunal had clarified during their deposition that the reason Mirwaiz Umar Farooq was not arrested in connection with **FIR No. 128/2010** and FIR No 56/2011 respectively ***was on account of the fact that he resided in an area which was a stronghold of secessionist leaders and their sympathizers. Effecting arrest in such an area would have led to a law-and-order situation.*** Also, PW-08 asserted in his deposition that one of the wings of the association Awami Action Committee is **Al –Umar Mujjahideen** which is a **notified terrorist organization** under the UAPA. Some of its members are also notified as terrorists under Section 35(1) of the UAPA.

237. It is submitted from a bare perusal of the facts stated in the NIA Chargesheet read with the facts stated in the judgment of the Hon'ble supreme court rendered in ***Re: Article 370 of The Constitution (Supra)***, it can be clearly inferred that prior to coming into force the Jammu and Kashmir Re-Organization Act, 2019, the various successive governments/authorities from 2004 -2019 for the reasons recorded in the judgment of the Hon'ble Supreme Court did not take any stern actions against the separatist. The said authorities rather than concentrating on prosecuting the criminal acts of separatist and secessionist forces and indulged in dialogue. It is submitted that it appears that due to such non-conducive and hostile environment, the investigations/prosecutions could not reach to its logical conclusions, which are now taken up with a sense of urgency and seriousness post coming into force Jammu and Kashmir Re-Organization Act, 2019.

238. It is therefore submitted that despite several FIRs being lodged against the chairman and other members of AAC, its members/activists/sympathizers are still active and are indulging in unlawful activities as defined in the UAPA. They are indulging in anti-national activities posing a serious threat to the sovereignty and integrity of India, peace, communal harmony, internal Security and maintenance of secular fabric of the Indian Society. If the AAC is not banned again, the activists and sympathizers of AAC will again pose a serious threat to the communal harmony, internal security & integrity of the country.

239. In view of the aforesaid facts and circumstances it is submitted that the notification No. S.O. 1115 (E); dated March 11th, 2025, issued by the Central Government declaring AAC as an unlawful association is liable to be confirmed as there is sufficient evidence on record justifying the ban on AAC.

240. It is submitted that the assertions and averments of 08 pubic witnesses even otherwise specifically state that they are not and never had been members of the association. It is stated that in that view of the matter, their knowledge of the functioning and ideology of the association can at best be a truncated outside view bereft of any comprehensive knowledge and the affinity and motive of so-called public witnesses also has not been established before the Ld. tribunal and therefore, their affidavits have no relevance to the determination of sufficient cause as to the unlawful activity of the Organisation.

X. DELIBERATION ON UOI's CLAIM FOR PRIVILEGE

241. On 11.08.2025, when Mr. Rajeev Kumar, Joint Secretary (Counter Terrorism and Counter Radicalization), MHA (PW-12) was examined on behalf of the UOI, the said witness produced original files containing the central intelligence reports/inputs pertaining to the concerned Association, in a **sealed cover** for the perusal of this Tribunal (**Ex.PW-12/3**). Learned counsel for the UOI, advanced arguments for claiming privilege in respect of the documents produced in sealed cover.

242. The claim of privilege / confidentiality in respect of the documents disclosure whereof is injurious to public interest is specifically envisaged in the UAP Rules. Rule 3 of the said UAP Rules, is in the following terms:-

> ***"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."*

243. 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.

244. Rule 5 of the UAP Rules provides for the documents which should accompany a reference to the Tribunal *viz*. a copy of the notification and all facts on which grounds specified in the notification are based. It 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."*

245. 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 fact finders 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 Barzun 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."

246. The High Court of Andhra Pradesh in ***Deendar Anjuman vs. Government of India, 2001 SCC OnLine AP 663*** after applying the test laid down in ***Jamaat-e-Islami Hind (Supra)*** 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[2] 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 nondisclosure 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."*
>
> **(Emphasis supplied)**

247. The legal position, that 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 maintaining 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.

248. Further, the rigors prescribed by the Supreme Court in the case of ***S.P. Gupta vs. UOI And Anr., 1981 SCC OnLine SC 494***, 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 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 129 of the Bhartiya Sakshya Adhiniyam, 2023[2] (which is *pari materia* to the erstwhile 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).

249. Considering the dicta 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 in consonance with the principles of natural justice. The Tribunal would be mandated to grant privilege from disclosure where it finds that the disclosure would be against/injurious to public interest, given the nature of the documents. Thus, the nature of the concerned documents has to be assessed by the Tribunal to see whether it contains any sensitive information, disclosure of which would be against public interest.

250. 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 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 association and its office-bearers and linkage of the association and its office-bearers with organisations and individuals outside of India.

251. 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 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.

252. The above is also applicable to the testimony of protected witnesses Alfa and Gama in NIA Case No. RC-10/2017/NIA/DLI. The deposition of the said protected witnesses is confidential and sensitive, and it would be against public interest to disclose the same.

253. It is also to be noted that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW-12) to be based on a specific approval/direction of the Union Home Secretary (The head of the Department). The said position is also borne out from the relevant official/noting files shared with this Tribunal.

254. In these 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 (PW-12). The identity of the protected witnesses referred to by the concerned witness from the NIA (PW-11), and their deposition/s must also be necessarily withheld for the aforesaid reasons. 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.

XI. FINDINGS AND CONCLUSION

255. At the outset, it is noticed that in the cover letter accompanying the reply filed on behalf of the association, it has been categorically stated that AAC would not contest the ban in a formal manner before this Tribunal as the ban was allegedly 'politically motivated' and that the accompanying reply may be treated as defense to the ban imposed on the association. This itself, *prima facie*, betrays scant regard for the due process established under the law, to

[2] A reference to the Evidence Act in the UAPA must be necessarily construed as a reference to the Bhartiya Sakshya Adhiniyam, 2023 as well.

contest the ban. Be that as it may, this Tribunal is still duty bound to ascertain from the material available on record as to whether there is sufficient cause for declaring the association unlawful or otherwise. The same has to be done as per guiding principles already delineated in the foregoing paras.

256. It has also been averred in the reply of the association as under:

> *"It is stated that in the first FIR (RC 10/2017), one individual who is purportedly the media advisor of the AAC is an accused. It is stated that it is not sufficient to ban the association as the individuals associated with an organisation have personal, professional and other involvements which are not necessarily that of the organisation.*
>
> *With regard to other FIRs, it is stated that all pertain to delivery of speeches and shouting slogans which cannot be the basis for holding the organisation unlawful. It is further stated that these FIRs are from between 2008 and 2011 and in none of these cases, proceedings have gone beyond registration of the FIR and no member of the association has ever been interrogated. It is stated the cases are so flimsy that for over fifteen years, they have not even reached the stage of chargesheet. As such the allegations leveled in these FIRs are baseless, manipulated, concocted and frivolous"*

257. Thus, apart from alluding to its alleged religious and philanthropic activities, the limited case of the association discernible from the reply is that:

(i) the association cannot be held responsible for the actions of the accused named in the NIA case who is purportedly the media advisor of AAC (the association has noticeably refrained away from categorically denying this fact);

(ii) as per the association, the other FIRs pertain to delivery of speeches and shouting slogans which, according to the association, cannot be the basis for holding the organisation unlawful. It is stated that these FIRs are from between 2008 and 2011 and in none of these cases, proceedings have gone beyond registration of the FIR and no member of the association has ever been interrogated. It is stated the cases are so flimsy that for over fifteen years, they have not even reached the stage of chargesheet.

(iii) Lastly, it is stated that the **allegations leveled** in these FIRs are baseless, manipulated, concocted and frivolous.

258. A perusal of the statutory definition of the "unlawful association" under Section 2(p) of UAPA reveals that it includes any association which (i) has for its object any "unlawful activity" or which encourages or aids person to undertake "unlawful activity", or of which the members undertake such activities.

259. "Unlawful activity", as statutorily defined under Section 2(o) refers to any action: (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; (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.

260. It can be seen that by statutory definition itself any action by any association, which questions/disrupts or is intending to disrupt the sovereignty and integrity of India, amounts to an "unlawful activity". Any association which has for its object any unlawful activity is an unlawful association under Section 2(p) of the UAPA.

i. Speeches against sovereignty and Integrity of India and FIRs as the basis for the Ban

261. The attempt on the part of the Association to trivialize speeches which contain anti-national content and which exhort the people of Jammu & Kashmir to strive for "azadi", cannot be countenanced. In this regard, it is notable that the UAPA was enacted pursuant to the Constitution (Sixteenth Amendment) Act, 1963 which itself was enacted to impose, by law, reasonable restrictions on the rights mention in clauses (2), (3) and (4) of Article 19 of the Constitution of India, in the interest of sovereignty and integrity of India. It was noticed by Delhi High Court in ***Union of India vs. Satnam Singh***, ***AIR 2018 Del 72*** that the said Constitution (Sixteenth Amendment) Act was brought about in order to combat secessionist agitations by organizations with the purpose to guard against the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union. Thus, sloganeering and giving speeches purportedly advocating 'azadi' for an integral part of India squarely falls under the definition of 'unlawful activity' within the meaning of Section 2(o) of the UAPA and any material which seeks to prove occurrence of such speeches or sloganeering becomes relevant to decide whether the association whose members are stated to have committed such unlawful activities ought to be declared an unlawful association.

262. The Introduction and the Statement of Objects and Reasons of UAPA specifically states as under:-

> *"Introduction:*
>
> *The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of*

India. Pursuant to the acceptance of recommendations of the Committee the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India. In order to implement the provisions of 1963 Act the Unlawful Activities (Prevention) Bill was introduced in the Parliament.

Statement of Objects and Reasons.—Pursuant to the acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixth Amendment) Act, 1963, was enacted empowering Parliament to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India, on the—

(i) freedom of speech and expression;

(ii) right to assemble peaceably and without arms; and

(iii) right to form associations or unions.

2. The object of this Bill is to make powers available for dealing with activities directed against the integrity and sovereignty of India."

263. In ***Satnam Singh (Supra)***, it has been observed as under:-

"14. It thus becomes crucial to determine the meaning of the phrase 'prejudicial to the sovereignty and integrity of India' used in the Act. Apart from the Act, the phrase finds mention in clauses (2), (3), and (4) of Article 19 of the Constitution of India, where it was added as a ground for restriction on the freedom of expression. This was inserted by the Constitution (Sixteenth Amendment) Act, 1963, in order to combat secessionist agitation and conduct from organizations such as DMK in the South and Plebiscite Front in Kashmir, and activities in pursuance thereof which might not possibly be brought within the purview of the expression 'security of the State'. It was made to guard the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union.

15. It was pointed out that any legislation that is undertaken in this behalf, ought to be comprehensive and effective enough to check indirect devices to carry on such movements, such as the burning of the Constitution of India or the refusal to take the oath of allegiance, or the raising of flags in any way simulating the flag of a foreign State with a view to encouraging feelings of allegiance to such State and gathering people having such allegiance. [Vide Question in Parliament re. hoisting of the Plebiscite Front Flag in Kashmir (Statements, 11.12.64)]. It is to curb the same menace that the Unlawful Activities (Prevention) Act, 1967 was subsequently enacted which under Section 2(o) provides as follows:

"(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;""

264. Each and every case involving a situation where public speech/es are given, which undermine the territorial integrity of India and which seek to glorify the so called idea of "azadi", is an attack on the sovereignty of India and such conduct clearly falls within the scope of unlawful activity as defined in the UAPA. There is no gainsaying that sovereignty and territorial integrity of India is sacrosanct and even the slightest insinuation against it ought to be viewed seriously.

265. It has been judicially recognized that the sovereignty, unity and territorial integrity of India is inviolable and is a basic feature of Indian Constitution. In the celebrated judgment of the Supreme Court in the case of ***Kesavananda Bharati vs. State of Kerala***, ***(1973) 4 SCC 225*** it has been expressly recognized in one of the majority judgments, rendered by J.M. Shelat and A.N. Grover, JJ., that "the unity and the integrity of the nation" (which includes territorial integrity) is a basic feature of the Indian constitution. The relevant extracts from the said judgment are as under:-

"582. The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are

unfounded. If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution.

(2) Republican and Democratic form of government and sovereignty of the country.

(3) Secular and federal character of the Constitution.

(4) Demarcation of power between the Legislature, the executive and the judiciary.

(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation."

266. In ***Arup Bhuyan vs. State of Assam***, ***(2023) 8 SCC 745***, the Supreme Court has also taken note of the fact that the UAPA was enacted pursuant to the amendment brought about in Articles 19(2), (3) and (4) vide the Constitution (Sixteenth Amendment) Act, 1963. It has been noticed therein that the main objective of UAPA is to make powers available for dealing with activities directed against the integrity and sovereignty of India. The relevant observations in the said judgment are as under:-

"80. Thus, the rights guaranteed under Article 19(1)(a) (right to freedom of speech and expression) and under Article 19(1)(c) (Right to form association or unions) are not absolute rights, but are subject to reasonable restrictions as per Articles 19(2) and 19(4) of the Constitution of India. Articles 19(2), (3) and (4) have been amended vide the Constitution (Sixteenth Amendment) Act, 1963 and the words "sovereignty and integrity of India" have been inserted.

81. Therefore, as per Articles 19(2), (3) and (4) nothing in sub-clauses (a), (b) and (c) of clause (1) of Article 19 shall affect the operation of any existing law or prevent the State from making any law insofar as such law imposes reasonable restrictions on the exercises of the right conferred by the said sub-clauses in the interests of sovereignty and integrity of India, the security of State ... . As per Article 19(4) nothing in sub-clause (c) (Right to form Associations or Unions) shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, in the interests of sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

82. At this stage the Statement of Objects and Reasons for amending Articles 19(2), (3) and (4) are required to be referred to and considered.

83. The Statements of Objects and Reasons appended to the Constitution (Sixteenth Amendment) Bill, 1963 which was enacted as the Constitution (Sixteenth Amendment) Act, 1963 reads as under:

"Statement of Objects and Reasons

The Committee on National Integration and Regionalism appointed by the National Integration Council recommended that Article 19 of the Constitution be so amended that adequate powers become available for the preservation and maintenance of the integrity, and sovereignty of the Union. The Committee were further of the view that every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of, public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and that forms of oath in the Third Schedule to the Constitution should be suitably amended for the purpose. It is proposed to give effect to these recommendations by amending clauses (2), (3) and (4) of Article 19 for enabling the State to make any law imposing reasonable restrictions on the exercise of the rights conferred by sub-clauses (a), (b) and (c) of clause (1) of that article in the interests of the sovereignty and integrity of India."

84. The UAPA, 1967 has been enacted in exercise of powers conferred under Articles 19(2) and (4) of the Constitution of India. At this stage, it is required to be noted that exceptions to the freedom to form associations under Article 19(1) was inserted in the form of sovereignty and integrity of India under Article 19(4), after the National Integration Council ("NIC") appointed a Committee on National Integration and Regionalisation. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of the recommendations of the said Committee, the Constitution (Sixteenth Amendment) Act, 1963 came to be enacted to impose by law, reasonable restrictions in the interests of sovereignty and integrity of India. In order to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in Parliament.

85. The main objective of the UAPA is to make powers available for dealing with activities directed against the integrity and sovereignty of India. It is also required to be noted that pursuant to the recommendation of the Committee on National Integration and Regionalisation appointed by the National Integration Council Act on whose recommendation the Constitution (Sixteenth Amendment) Act, 1963 was enacted, UAPA has been enacted. It appears that the National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of sovereignty and integrity of India and thereafter the UAPA has been enacted. Therefore, the UAPA has been enacted to make powers available for dealing with the activities directed against integrity and sovereignty of India."

267. ***In Re: Article 370 of the Constitution*, *2023 SCC OnLine SC 1647***, it has been specifically noted that on 26 January 1950, when the Constitution was adopted, the State of J & K became an integral part of the territory of India. The said judgment also clearly noted that any modification in the relationship of the State of J & K with the UOI would have to be brought about within the framework of the Constitution of India and that Constitution alone. It has been noted as under:-

"164. This is a reiteration of the understanding of the members of the Constituent Assembly of Jammu and Kashmir that accession to India was complete and that sovereignty was surrendered.

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172. These provisions are significant. The power of amending the State Constitution which was entrusted to the Legislative Assembly (subject to the assent of the Governor) had thus three major qualifications : firstly, the position that the State of Jammu and Kashmir is and shall be an integral part of the Union of India was unamendable; secondly, the executive and legislative domain of the State which depended upon the domain entrusted to Parliament under the provisions of the Constitution of India over which it would make laws for the State of Jammu and Kashmir was unamendable by the State Legislative Assembly; and thirdly, the provisions of the Constitution of India as applicable in relation to the State of Jammu and Kashmir were unamendable by the State Legislative Assembly. <u>These restraints which were imposed on the amending power of the State Legislative Assembly made it abundantly clear that Jammu and Kashmir being an integral part of the Union of India was a matter of permanence and unalterable.</u> Moreover, any modification in the relationship of the State of Jammu and Kashmir with the Union of India would have to be brought about within the framework of the Constitution of India and that Constitution alone.

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339. <u>On 26 January 1950, when the Constitution was adopted, the State of Jammu and Kashmir became an integral part of the territory of India. The mandate of Article 1 is that "India that is Bharat shall be a Union of States". The States and their territories would be those specified in Parts A, B and C of the First Schedule. The State of Jammu and Kashmir was a Part B State on the date of the adoption of the Constitution. With the adoption of the Seventh Amendment to the Constitution which obliterated the distinction between Parts A, B and C States, Jammu and Kashmir became a State in the Union of States. In other words, Article 370 of the Constitution read together with Article 1 leaves no manner of doubt that the integration of Jammu and Kashmir as a part of the nation, which in itself was a Union of States was complete. Any interpretation of Article 370 cannot postulate that the integration of Jammu and Kashmir with India was temporary</u>.

268. The tacit support of the Organisation to those who have "taken up arms" (as is evident from the certain averment/s in the reply filed on behalf of the association[3]) and to those who indulge in sloganeering/giving of speeches which undermines the sovereignty and integrity of India, lends credence to the assertion of the Central Government that the association has been acting in a manner which falls within the sweep of 'unlawful activities'. This is also evident from the nature of propaganda/slogans indulged in by members of the association; the same is also evident from the incidents of inciting violence against security forces, who are operating in J & K in extremely trying and challenging circumstances as detailed in the background note.

<u>ii. Material in the form of evidence led by UOI regarding cases registered by the J & K Police</u>

269. Voluminous evidence has been adduced by the Central Government to demonstrate the nature of the activities of the association. Evidence has been adduced to place on record the said activities which are subject matter of the following FIRs registered against proscribed association registered by the J&K Police as mentioned in the background note

[3] "Mirwaiz Farooq was opposed to all forms of violence and that is the reason that he strongly advocated to ex. Prime Minister V.P. Singh's government in power in New Delhi at that time to talk to the 'young men in Kashmir who had taken up arms' and addres their aspirations right then".

Sl. No.	PW	Case Particulars	Name of accused in FIR	Allegations in Brief	Documents Filed (Exhibits)	161/164 Cr.P.C Statements
1.	**Inspector Adil Rashid,** **(PW-1)** SHO, Police Station Kothibagh, Kashmir	FIR No. 60/2010 PS Kothi Bagh u/s 436, 153A, 109, 147 and 336 of Ranbir Penal Code and u/s 13 of the Unlawful Activities (Prevention) Act, 1967 and u/s 3 of Jammu and Kashmir Public Property (Prevention of Damage) Act	(i) Umar Farooq (ii) Mushtaq-ul-Islam (iii) Nisar Ahmad Rather (iv) Nisar Ahmad Bhat	Registered for shouting slogans against the integrity of India and for delivering a speech stating that they would struggle till J & K is not separated from UOI, and for also pelting stones	PW-1/1 to PW1/7A – Copy of FIRs, and copies of statements of witnesses recorded u/s 161/164Cr.P.C, Copy of seizure memo filed in FIR 60/2010	Both 161 and 164 statements.
2.		FIR No. 46/2014 PS Kothi Bagh u/s 13 of the UAPA and section 188, 124-A, 147 Ranbir Penal Code	(i) Umar Farooq (ii) Hilal Ahmad War (iii) Shahid ud Islam	Registered on 19.06.2014 as on the said date at Residency Road, Activists of AAC, headed by the leader of AAC, Mirwaiz Molvi Umar Farooq alongwithothers held a vehicular procession from S.K Park to Lal Chowk, Srinagar and raised anti-national slogans like "***Hum kya Chaihtai Azadi etc***",violating section 144 Cr. P.C. imposed in the valley and were marching towards Lal Chowk in shape of unruly mob		Both 161 and 164 statements.
3.	**Mr. Azhar Rashid,** **(PW-2)**, SDPO, Khanyar, Srinagar	FIR No. 96/2008 PS Nowhatta/s 120B and 153A of Ranbir Penal Code[4], u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered for delivering a speech against the Government of India and for stressing upon the people for elections boycott etc.	PW-2/1 to PW2/3A – Copy of FIR, and copies of statements of witnesses recorded u/s 161Cr.P.C.	161 statement
4	**Inspector Naseer Ahmad,** **(PW-3)** SHO, PS Nowhatta, Srinagar	FIR No. 19/2015 PS Nowhatta u/s 147, 148, , 341, 336, 353, 332, 427 & 307 of Ranbir Penal Code and u/s 13 of the Unlawful Activities (Prevention)	Umar Farooq	Registered against Umar Farooq who was heading a group which pelted stones upon deployed troops and raised anti-national slogans etc.	PW-3/1 to PW3/3A – Copy of FIR, and copies of statements of witnesses recorded u/s 161Cr.P.C.	161 statement

[4]The Ranbir Penal Code (RPC) was the primary criminal law of the erstwhile Indian state of Jammu and Kashmir. It was introduced in 1932 during the reign of Maharaja Ranbir Singh. In 2019, with the abrogation of Article 370 and the passage of the Jammu and Kashmir Reorganisation Act, the RPC was repealed and replaced by the Indian Penal Code.

		Act, 1967				
5.	**DYSP (PROB.) Dr. Barleen Kour,** **(PW-4)** SHO, PS Shergarhi, Kashmir	FIR No.83/2010 PS Shergarhi u/s 147, 148, , 427, 436, 153, 153-A, 121 & 121-A of Ranbir Penal Code	Umar Farooq	Registered against Umar Farooq, on whose directions a group of miscreants raising anti-national slogans pelted stones upon Govt. Vehicles/buildings, etc. and set ablaze the Crime Office, Chief Engineer PDD Office and shops Headquarter and nearby shops as well as Police /Traffic Booths and caused heavy damage to Government property	PW-4/1 to PW4/5A – Copy of FIR, copies of statements of witnesses recorded u/s 161Cr.P.C. and Copy of Seizure Memo of decomposed charcoal & wood	161 statement
6.	**Inspector Shiekh Wakeel,** **(PW-5)** SHO, PS Safakadal, Kashmir	FIR No. 128/2010 PS Safakadal u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered against Umar Farooq and others for delivering a lecture and provoking the people against the Government and for raising anti-national slogans;	PW-5/1 to PW5/3A – Copy of FIR, and copies of statements of witnesses recorded u/s 161Cr.P.C.	161 statement
7.	**Inspector Hilal Ahmad,** **(PW-6)** SHO, PS Shaheed Gunj, Kashmir	FIR No. 101/2010 PS Shaheed Gunj u/s 121, 121A, 153, 153A, 147, 148, 336, 436 & 427 of Ranbir Penal Code	Umar Farooq	Registered against Umar Farooq who headed a rally which raised anti-national slogans against the integrity of India and the protesters damaged Govt. property and some vehicles.	PW-6/1 to PW6/4A – Copy of FIR, copies of statements of witnesses recorded u/s 162Cr.P.C. and Copy of Seizure Memo of stones, mirror, iron window and iron door of police banker at Jahangir Chowk	162 statement
8.	**SI Bashir Ahmad,** **(PW-7)** PS Kothibagh, Srinagar.	FIR No. 46/2010 PS Kothi Bagh u/s 341 of Ranbir Penal Code	(i) Aga Syed Hassan Budgami (ii) Professor Abdul Gani Bhat (iii) Nayeem Ahmad Khan (iv) Bilal Gani Lone (v) Zaffar Akhtar Bhat (vi) Masroor Abbas Ansari (vii) Umar Farooq	Registered as accused persons had stopped police vehicles at R.K. Crossing and sat down on the street and blocked and disrupted the vehicular movement in the said area	PW-7/1 to PW7/3A – Copy of FIR, and copies of statements of witnesses recorded u/s 161Cr.P.C.	161 statement
9.	**Mr. Sarfaraz Bashir,** **(PW-8)**	FIR No. 394/2016 PS Sopore, u/s 147, 148, 149, 336, 307 427 &	(i) Abdul Gani Bhat @ Gani Guroo, (ii) Manzoor Ahmad Kaloo	Registered against **Gh. Nabi Zaki, General** Secretary, AAC for anti-national slogans/speech during which militants	PW-8/1 to PW8/10A – Copy of FIR No.	161 statement

	SDPO, Sopore, Kashmir.	153A of Ranbir Penal Code, u/s 3 PPD Act and u/s 7/27 of Arms Act	@ Mam Kul (iii) Mohammad Ashraf Malik, (iv) Ghulam Muhammad Khan @ Khan Sopore, (v) Muhammad Shaban Khan (vi) Yadullah Mir (vii) Ghulam Nabi Zaki	fired upon police and mob pelted stones upon security forces etc	394/2016, copies of statements of witnesses recorded u/s 161Cr.P.C., Copy of Seizure Memo of stones/bricks and Copy of Chargesheet Copy of FIR No. 409/2016, copies of	
10.		FIR No. 409/2016 PS Sopore, u/s 147, 148, 149, 336, 427, 34, 153-A & 307 of Ranbir Penal Code	(i) Abdul Gani Bhat @ Gani Guroo, (ii) Muhammad Shaban Khan (iii) Mohammad Ashraf Beigh, (v) (iv) Ghulam Nabi Zaki (v) Ghulam Nabi Khan	Registered against Gh. Nabi Zaki, General Secretary, AAC for pelting stone upon the Police/CRPF deployed at New Colony wi th intention to kill them and disrupt the peace and public order.	statements of witnesses recorded u/s 161Cr.P.C. Copy of Seizure Memo of stones/ broken vehicle glass and copy of chargesheet	161 statement
11.	**Inspector Showkat Hussain,** **(PW-9)** SHO, PS Nigeen, Srinagar.	FIR No. 56/2011 PS Kothi Bagh u/s 13 of the Unlawful Activities (Prevention) Act, 1967	Umar Farooq	Registered for supporting the Hartal call given by Syed Ali Shah Geelani for 03 August, 2011 and for instigating the general people and the youth of valley for waging war against the sovereignty of India.	PW-9/1 to PW9/7A – Copy of FIR, copies of statements of witnesses recorded u/s 161Cr.P.C. and Copy of Seizure Memo of news paper	161 statement

270. It can be seen that Umar Farooq, the chief protagonist of the association in question, is accused in most of these FIRs and in some FIRs there are other accused as well, including Gh. Nabi Zaki, the General Secretary of the Association. Gist of the slogans/speeches which are subject matter of some of the FIRs is as under:-

S. No.	FIR	SLOGANS/SPEECHES	Evidence of PW
1.	FIR NO. 60/2010 dated 11.09.2010.	"*Hum ka Chahatay Azadi"* *"Go India Go Back"*	PW-1
2.	FIR NO. 46/2014 dated 19.06.2014	"*Hum ka Chahatay Azadi"*	PW-1
3.	FIR NO. 19/2015 dated 17.04.2015	*"Hum Kya Chahtehai, Azaadi"* *"Kashmir Banega Pakistan"* *"Hindustan Murdabad*"	PW-3
4.	FIR NO. 128/2010	"*Ilhagi Hind Tasleem Nai" ("We do not accept accession to India")* "*Go India Go Back*"	PW-5

	dated 11.09.2010		
5.	FIR NO. 101/2010 dated 11.09.2010	'*Hum Kya Chahtay Azadi*'	PW-6

271. From the various FIRs and the charge-sheets which have been filed therein, it is evident that the concerned association, through its chief protagonist has been propagating secessionism/disaffection against the Indian State.

iii. Attribution to the association of acts of its members

272. It is undisputed that Umar Farooq is the chief protagonist of the concerned association and is authorized to act on behalf of the association and Gh. Nabi Zaki is the General Secretary of the Association.

273. While in the reply filed through Gh. Nabi Zaki, the association has tried to distance itself from the activities of individual members, it is quite evident from the material on record that Umar Farooq is but an alter ego of the association, and Gh. Nabi Zaki is the General Secretary of the association whose cover letter accompanies the reply.

274. Section 2(p)(i) of the UAPA enlarges the scope of the definition of 'unlawful association' to specifically include an association 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.*** Thus, the law, as it stands, provides for declaration of an association as unlawful if its members are indulging in unlawful activities. Hence, the acts of Mirwaiz Umar Farooq, the Chairperson of the association, Gh. Nabi Zaki, the General Secretary of the Association and Aftab Ahmad Shah @ Shahid-ul-Islam, the spokesperson (as elaborated hereinbelow) can be squarely attributed to the association and such activities have to be considered to ascertain if there is sufficient cause to declare it unlawful.

iv. Public Witnesses

275. *Vide* order dated 21.07.2025, e-mail and postal address at which any interested party could contact the Tribunal, was directed to be published. Pursuant thereto, total five (05) emails were received i.e. three (03) emails dated 28.07.2025 from email IDs <mgmt@jkpeaceforum.in> (containing 1 affidavit), <yasirrouf@gmail.com> (containing 2 affidavits), <mohammedtamim2202@gmail.com> (containing 1 affidavit); one (01) email dated 29.07.2025 from email ID <yasirrouf@gmail.com> (containing 4 affidavits) and one (01) email dated 29.07.2025 of Mr. Sandeep Pandey from email ID <socialistpartyindia@gmail.com>. Total eight (08) affidavits were filed. Details of the deponents are as follows:-

(i) Mr. Satish Mahaldar

(ii) Mr. Bashir Muzafar Pandit

(iii) Mr. Sheikh Yasir Rouf

(iv) Mr. Rameez Raja

(v) Mr. Jagmohan Singh Raina

(vi) Mr. Rouf Ahmed Punjabi

(vii) Mr. Firdous Ahmed Bazaz

(viii) Mr. Vikram Malhotra

276. Mr. Sandeep Pandey did not file any affidavit. However, *vide* his email, he stated that the ban on the association must be lifted.

277. A perusal of the affidavits of the aforesaid deponents/public witnesses reveals that each affidavit is a two-page affidavit containing similar averments opposing the notification dated 11.03.2025.

278. The following deponents / public witnesses were present before this Tribunal on 01.08.2025:-

(i) Mr. Bashir Muzafar Pandit

(ii) Mr. Sheikh Yasir Rouf

(iii) Mr. Rameez Raja

(iv) Mr. Firdous Ahmed Bazaz

279. The aforesaid four deponents stated that they have not been the members of the association. Three of them

i.e., Mr. Bashir Muzafar Pandit, Mr. Rameez Raja, Mr. Firdous Ahmed Bazaz stated that their affidavits had been prepared by Mr. Sheikh Yasir Rouf and they signed on the same. Remaining deponents / public witnesses were directed to remain present during the proceedings on 02.08.2025. The Registrar of this Tribunal was directed to send a reply to the aforesaid emails of the public witnesses conveying these directions.

280. Pursuant thereto, an email dated 01.08.2025 was received from one of the public witnesses, namely, Mr. Sandeep Pandey (who has not filed any affidavit) explaining that he had been unable to appear before this Tribunal.

281. The following deponents were present before this Tribunal on 02.08.2025:-

(i) Mr. Jagmohan Singh Raina

(ii) Mr. Rouf Ahmed Punjabi

(iii) Mr. Vikram Malhotra

282. It was stated by the aforesaid public witnesses that they were neither the members of the Association nor had been involved in the activities of the Association. However, they were deposing in their capacity as "public-spirited" citizen.

283. On perusal of the affidavits of the said public witnesses, it also transpires that the affidavits are identical in nature. Moreover, as per thereown statement, all the affidavits have been drafted by the same person i.e. Mr. Sheikh Yasir Rouf (who was personally present before the Tribunal on 02.08.2025) who is an advocate by profession.

284. The said public witnesses, admittedly, have no direct connection with the association, much less do they have any knowledge about the inner workings / activities of the association. As such, no inference can be derived from these affidavit/s of "public witnesses", for the purpose of these proceedings.

v. Credibility of material produced before the Tribunal

285. The material produced by the Central Government to seek to justify the ban comprises (i) FIRs registered in Jammu & Kashmir, including between the period 2014 - 2015, (ii) the material in the form of intelligence inputs/report of intelligence agencies – both Central and State, (iii) material in the form of investigation conducted by NIA in RC No. 10/2017, and (iv) "unlawful activities of the association" as evident from the social media accounts/posts of the association and/or its members. A conjoint consideration of the entire material lends credence to the case made out by the Central Government.

286. The attempt on the part of the association to seek to decry the relevance of the various FIRs registered between 2008 - 2011, does not appeal to this Tribunal. If the said FIRs reveal a systematic pattern of conduct on the part of the association in seeking to forment antagonistic sentiments towards the Indian states and attacking the sovereignty/territorial integrity of India, the same certainly bears relevance. The fact that some of these FIRs may have not reached the stage of filing of charge sheets despite passage of a sufficient period of time does not, by itself, undermine the pattern of conduct. Moreover, the peculiar reasons as to the slow progress of these cases have been explained by the officers/witnesses from the State of Jammu & Kashmir. As such, this tribunal is not inclined to accept that these FIRs are altoghether irrelevant.

287. The evidence that is required to be adduced by the Central Government in these proceedings is not intended to establish the guilt or otherwise of the accused in the various FIRs which have been referred to in the affidavits filed on behalf of the Central Government. The limited purpose is to place on record the documents/material which is relevant for the purpose of considering whether or not there is sufficient cause for declaring the association to be unlawful as defined in the Section 2(p) of the UAPA.

288. In these proceedings, the entire record pertaining to the relevant FIRs have been considered not in insolation but in juxtaposition with other material/evidence placed on record by the Central Government. It has also been vehemently contended on behalf of the Central Government that the purport of the depositions of the various police officers is to place on record the relevant material to enable the proscribed association to cross-examine the concerned witnesses who have deposed with regard thereto, and to enable the concerned association to refute the relevancy of the material sought to be relied upon for the purpose of these proceedings. The association has chosen not to avail this opportunity by dismissing the ban as being 'politically motivated'. While perusing the relevant material, this Tribunal is also conscious of the fact that these proceedings are not akin to conducting a mini-trial as regards the sufficiency of the material/evidence for the purpose of establishing the guilt or otherwise of the accused in the concerned FIRs. In this backdrop, any alleged or perceived infirmities/shortcomings in the case as set up by the prosecution in those FIRs cannot be dealt with or pronounced upon in these proceedings. The same would necessarily be gone into by the concerned Trial Court. Suffice it to say, the purport of placing on record the aforesaid FIRs is to show, for the purpose of these proceedings, the nature of the activities of the association.

289. In the above conspectus and keeping in mind the nature of the present proceedings, I am unable to accept the contention of the association in its reply, that the allegations made in the FIRs relied upon by the government are concocted or irrelevant. I have already observed above that the strict rules of evidence do not apply to the proceedings

before this Tribunal. Furthermore, the scope of scrutiny of the material relied upon by the Central Government is not akin to a criminal trial as held in para 26 of ***Jamaat-e-Islami Hind (Supra)***. For the purpose of these proceedings, even statements recorded under Section 161 Cr.P.C is in the nature of relevant material and liable to be considered, in terms of the dicta laid down by the Supreme Court in ***Khatri (Supra)***, ***Vinay D. Nagar (Supra)*** and ***Jamaat-e-Islami Hind (Supra)***.

290. In the totatlity of circumstances, I find that the evidence adduced by the various officers of J & K is relevant for the purpose of these proceedings; the same clearly brings out the nature of the activities of the concerned association. The various FIRs and the chargesheets filed therein bring out that the association in question, through its chief protagonist, Umar Farooq and other office bearers, have been indulging in secessionist activities, preaching disaffection against the Indian state, openly organising protest/s, raising slogans in which the status of J & K as integral part of India is disputed. The incidents with regard to which voluminous evidence have been adduced, *inter alia* involves:-

i. Raising Anti-India and Pro-Pakistan slogans (evidences of PW- 1, PW-3, Pw-4, PW-5, PW- 6);

ii. Delivering of provocative speeches to general public instigating the public to stand against the sovereignty of India and preaching disaffection against India (evidences of PW- 1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-8, PW-10);

iii. Delivering of provocative speeches to general public to wage war against India and to cede J & K from India (evidence of PW-5);

iv. Attacking police personnel / security forces and instigating the general public to pelt stones on the police personnel / security forces (evidences of PW-1, PW-3, PW-4, PW-6, PW-8,);

v. Damaging public property (evidences of PW-1, PW-4, PW-6, PW-8

vi. Agitating against the Govt./Blocking streets (Evidences of PW-7, PW-9

vii. Encouraging boycott of elections (evidences of PW- 2).

vi. Material in the form of investigation conducted by NIA and subsequent developments

291. Quite independent of the above, the nature of the activities of the concerned association also becomes clear from the details brought out in the investigation conducted by NIA in NIA Case no. RC-10/2017/NIA/DLI. As per Exhibit PW 11/9 i.e. the Chargesheet filed in the matter, this case pertains to the terrorist and secessionist activities that have plagued J & K since late 1980's and early 1990's. The same brings out the spate of violence unleashed in the valley involving attack on civilians and security forces alike since the last many decades, with the Inter-Services Intelligence (ISI) of Pakistan actively supporting numerous terrorist organisations such as Lashkar-e-Toiba (LeT), Hizub-ul-Mujahideen (HM), Jammu & Kashmir Liberation Front (JKLF), Harkat-ul-Jihad-al-Islami, Jaish-e-Mohammad (JeM) etc. which are involved in conducting the same. Pakistan has not only been training the terror groups but also supporting them financially and diplomatically. Amidst the violent activities of the terrorists and mass exodus of the minority community from J & K, the All Parties Hurriyat Conference (APHC) was formed as a conglomerate of 26 political/social/religious organisations in the year 1993 which gave a political front to the secessionist activities.

292. The investigation in the NIA case uncovered a conspiracy involving various terrorist organisations, such as JKLF, HM, and LeT, in collusion with secessionist groups comprising the APHC, funded by Pakistan and its agencies. The aim was to wage war against the Indian Government and advocating for the secession of J & K from India. APHC, initially formed as a political front, was found to be actively involved in inciting violence and unrest in Kashmir to further their secessionist agenda. Pursuant to the investigation, a chargesheet dated 18.01.2018 was filed before the NIA Special Court, New Delhi - against 12 accused persons), including two designated terrorists, based in Pakistan, as absconders. Out of these 12, Accused no. 3 to Accused No. 10 were found to be associated with APHC either as a member, office bearer or by way of being an active participant/ worker. **Notably, Accused no. 3 Aftab Ahmad Shah @ Shahid-ul-Islam is referred to as Spokesman and Media Advisor of the APHC (Mirwaiz Umar Farooq Faction) in the Chargesheet and as a Spokesperson of the AAC in the Background Note**. This fact has not been denied by the association in its reply. Excerpts of the aforesaid Chargesheet detail the split of the APHC into factions and how these factions have connived with terrorist organizations to espouse their separatist agendas. The relevant excerpts are reproduced below:

> *"17.2.5In the year 2008, the APHC split into three factions. One faction was headed by Mirwaiz and is called APH (M), the other is led by Syed Ali Shah Geelani and is called APHC (G) and the third faction is led by Yasin Malik and is called. JKLF. Accused A-3 is associated with APHC (M) whereas accused A-4 to A.-9 are associated with APHC (G). Accused A-4 to A-9 are a part of Syed Ali Shah Getlani's Tehreeke Hurriyat. Syed Ali Shah Geelani, Mirwaiz Umer Farooq and Yasin Malik together form the Joint Resistance Leadership which espouses the cause of secession of Jammu & Kashmir from the Union of India"*

"17.3 Hurriyat conspiracy and secessionist agenda.

17.3.1 During the course of investigation, it has come on record that the secessionists including the All Parties Hurrivat Conference has entered into a criminal conspiracy and adopted the strategy of instigating the general public to resort to violence and to create a surcharged atmosphere which is conducive for the propagation of their secessionist agenda. People are repeatedly asked to observe strikes on various nonexistent issues and then incited and instigated to get involved in unlawful activities especially stone-pelting, which throws the normal life out of gear. The disturbances caused by the frequent strikes and the stone-pelting incidents are to be understood in 4 broader perspective which is to create such circumstances which will lead to the secession of the State of Jammu & Kashmir from the Union of India, an ideology which the APHC and other secessionists staunchly uphold."

[....]

"17.5 Hurriyat-Terror Nexus

The investigation has established that the separatist leaders are the political face of the terrorist activities in the State of Jammu & Kashmir. There is an ample evidence pointing to the nexus between the terrorists and the separatist leaders led by the All Parties Hurviyat Conference, who share the common ideology of secession and have jointly devised strategies as & part of their larger plot to break Jammu & Kashmir away from India, The investigation has revealed many videos in the open source which establish a close Hurriyat - Terror link and that they are a "gang of conspirators" waging a war against the Government of India to achieve their ultimate objective i.¢. secession of the State of Jammu & Kashmir from the Union of India"

293. The Role of Accused no. 3 in the NIA Case Aftab Ahmad Shah@Shahid-ul-Islam is also clearly culled out in the chargesheet. The relevant excerpts are reproduced below:

"17.5.4 The Hurriyat leaders viz. accused A-3Shahid-ul-Islam, accused A-6 Farooq Ahmad Dar @ Bitta Karate, accused A-8 Raja Mehrajuddin Kalwal and accused A-9 Bashir Ahmad Bhat @ Peer Saifulla were themselves ***members of various terrorist/militant organizations and had also received training in handling weapons in the training camps in Pok.Accused A-3 Shahid-ul-Islam was a member of Muslim Janbaaz Force*** *and also Hizbullah, A-6 Farooq Ahmad Dar @ Bitta Karate was a member of Jammu Kashmir Liberation Front (JKLF), A-8 Raja Mehrajuddin Kalwal was a member of Jamaat-e-Islami and A-9 Bashir Ahmad Bhat @ Peer Saifulla was a member of Hizb-Ul-Mujahideen (HM)."*

(Emphasis supplied)

17.5.5 Another testimony of the close relations between the Hurriyat leaders and the terrorist organisationsis the photograph of accused (A-3) Shahid-ul-Islam with (A-2) Syed Slahuddin, Commander of Hizb-Ul-Mujahideen; ***another photograph of him holding AK-47 assault weapon*** *along with other armed associates; a list of active militants of different terrorist organisations issued by J&K Police; a handwritten letter in Urdu from the banned terrorist organization Lashker-e-Toiba on LeT letter-head asking for financial assistance,* ***all seized from the house of accused A-3 Shahid-ul-Islam."***

(Emphasis supplied)

294. Charges have been framed against Shahid-Ul- Islam for the offences under sections 120B IPC, 121 IPC, 121A IPC, 13 UAPA r/w 120B IPC, 15 UAPA r/w 120B IPC, 17 UAPA r/w 120B IPC, sections 18, & 40 of UAPA on 16.03.2022. The relevant extracts from the order dated 16.03.2022 passed by Special Judge (NIA), Addl. Sessions Judge, Patiala House Courts, New Delhi whereby charges have been framed, are as under:-

"6. 10 In the present case, there appears to be a third kind of conspiracy which has emerged and ***I call it the orchestra conspiracy. As in an orchestra, each player has its own instrument to play but sharing the same stage, every player or member of the orchestra knows the other player and the role the other person has to play****. It is the conductor of the orchestra holding the baton in his hand who with the raising of bis baton directs which player has to play when and what part. In this conspiracy, the baton was held by conductor sitting across the border in the form of Pakistani agencies such as ISI etc. and each of the conspirators knowing every other conspirator was playing his own role as per the directions of the conductor in order to create a symphony of bloodshed, violence, mayhem and destruction with the ultimate object of secession of J&K from UOI. Thus, at this stage, the argument that each of these conspirators were acting independently*

towards the object of secession of J&K cannot be accepted.

6.11 Thus prima facie ***a grave suspicion arises of the accused no. 1 to 10, 13 to 16 and accused no. 18 entering into a criminal conspiracy as punishable under Section 120B IPC****.*

6.12 As discussed above the object of conspiracy fall within the definition of unlawful activity as defined under UAPA. Therefore, I find that prima fade ***there is sufficient evidence against accused no. 1 to 10, accused no. 13 to 16 and accused no.18 to frame a charge U/s 13 UAPA read with section 120B of lPC****.*

xxx xxx xxx

7.22 As already discussed, ***the intent of these acts was the same as required u/s 15(1) UAPA. Prima facie they were committed to overawe the police and security forces especially the security forces when they were committed during ongoing encounters in order to dissuade the security forces from continuing with their operations or in order to facilitate the escape of the terrorists****. While committing these acts, criminal force as defined u/s 350 IPC by way of stone pelting was used and illustration (e.) to section 3 50 IPC clearly covers the acts of stone pelting within the definition of criminal force. Thus, these acts were also terrorist acts within the definition of section 15 (1)(b) of UAPA.*

7 .23 However, no evidence against any of the accused, except accused 11 and 12, has been presented to reflect the accused had personally indulged in these activities. With regard to accused no 11 and 12, I have already found that evidence pressed in service is not sufficient to raise a grave suspicion. As already discussed, accused no 17 has not been found to be a part of this conspiracy. ***There is however evidence which raises a grave suspicion that accused no. l to 10, 13 to 16 and 18 had entered in to a conspiracy to commit these acts. Thus, I find that accused no, 1 to 10, B to 16 and accused no. 18 are liable to be charged for the offence U/s 15 UAPA read with and Sec.120B IPC****.*

8.0 As it has already been found that ***a criminal conspiracy was hatched with a final object of secession of State of J&K from UOI*** *and within that conspiracy, a conspiracy was hatched for committing certain acts to achieve the object of original conspiracy and* ***those acts, as discussed above, have been found to be terrorist acts****.* ***I therefore find that there is evidence to prima facie establish that accused no. 1 to 10, 13 to 16 and accused no. 18 had conspired for the commission of terrorist acts and thus had committed offence punishable u/s 18 UAPA****.*

8.1 ***At this juncture it has been prima facie found that there existed a criminal conspiracy pursuant to which large scale protests; resulting in violence and arson at massive scale, were orchestrated: The object, as discussed earlier, was secession of J&K from the Union by overawing the government.*** *It has been argued these were intended to be peaceful non-violent protests following the Gandhian path. However, the evidence prima facie speaks otherwise.* ***Not only were the protests violent, they were intended to be violent****.*

[....]

The object was to overawe the government by the sheer scale of violence and was nothing less than a plan for insurrection. Thus, I find that prima fade ***there is sufficient evidence that this was also a conspiracy as is punishable u/s 121A IPC. I accordingly find that accused no. 1 to 10, 14 to 16 and accused no. 18 are liable to be charged for the offence u/s 121A IPC.***

xxx xxx xxx

9. 7 As already discussed, ***the protests which were planned and executed by enforcing the protest calendars were with the intent to raise insurrection against the government of India and the large scale violence which erupted, considering its severity, geographical extent and the fact that it was directed against government forces and properties, is an evidence that it was an attempt to raise insurrection****. Such an attempt in itself is an offence of waging war against the government of India. Therefore, when the accused conspired to raise insurrection, took steps to bring it afoot, aided it by funding monetary and logistic support, they had abetted the waging of war against government of India. Hence, only on this account, I find that prima facie* ***there is sufficient evidence to charge accused no. 1 to 10, accused no. 14 to 16 and accused no. 18 for offence 11/s 121 IPC.***

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13.6 ***With regard to accused Aftab Ahmad Shah (A-3)****, evidence which has been pressed into service in order to prima facie show that this accused had committed offences u/s 39 and 40 UAPA, are* ***certain documents recovered from the house of this accused*** *have been relied upon to establish this offence.*

13.6.1 D-173 which is the confessional statement of accused.

13.6.2 At the outset, l have to observe that D-173 which is a disclosure statement of A-3 has to be disregarded as inadmissible, it being a confession made to the police.

*13.6.3 Documents D-9/8, D-919 and D-9G: D-9/9 is a part of seizure memo where at sl. no. 25 is reflected a document titled "**List of active militants of different outfits operating in valley**". This document is D-9G. On being inquired, it was submitted that this list was prepared by the government and there is no explanation why the accused was in possession of this list of active militants of LeT and HM. As there is no explanation for the _possession of this document, it has to be taken that this document was obtained in order to further the activities of terrorist organizations.*

*13.6.4 Then comes the **letter of LeT which is D-9a: It is on the letterhead of LeT** and the writer of the letter stated that he had tried many times to contact the addressee but could not contact him and therefore, he was forced to \write this letter. It is further stated that a friend of the writer is ill and desperately needs Rs.5,000/- and if the recipient is not able to do so as an assistance, then he may give it as a loan. lt is signed as Gaznavi and the phone number of the said person is available at the end of the letter.*

*13.6.5 Then there are **two photographs** D-9b and D-9c: In one of the photograph, **A-3 is being seen with accused Syed Salahuddin and in another, he is being seen holding AK-47 rifle. As per the report of the FSL, these photographs are neither doctored nor morphed**.*

13.6.6 Then there is an e-mail D-180/2: However, a plain reading of this mail shows that it does not pertain to this accused and itis neither CC or BCC to this accused.

xxx xxx xxx

*13.7.9 **Similarly, photographs D-9b and D-9c can show his association with designated terrorist A-1 or that he was engaged in terrorist activities** but by virtue of these photographs, it cannot be said that he had invited support for any terrorist organization. Furthermore, it is the case of the prosecution itself that this accused is an ex-terrorist. Therefore, it was imperative for the prosecution to also bring before the court the period during which these photographs were taken. If these photographs were taken during the period when the accused was an active terrorist then for the purposes of the present case, they cannot be used as an evidence even for showing him to be a member of the terrorist organization.*

13.7.10 Reference was also made to D-75/5 which is a dossier prepared by J&K Police. 1t has contended that this dossier shows that A-3 was involved in furthering the activities of HM and LeT. However, I find that a dossier is only a compilation of alleged previous activities and at the most can be of corroborative value but it cannot be used as a stand alone evidence to prima facie establish charges u/s 39 UAPA.

13.8 Then there is charge of section 40 UAPA which is based on document D-9a, contents of which have been reproduced above.

*13.8.l This D-9a was recovered from the possession of this accused and through this letter; financial help has been sought by a terrorist of LeT, which is a banned terrorist organization. A question may be raised that mere receipt of the letter may not prove that he had financially helped pursuant to this letter. **However, this letter· was recovered from the possession of this accused and the explanation of the same is to come up during the course of trial and it has to be within the knowledge of the accused only.***

*13.8.2 I accordingly find that prima facie the prosecution has failed to establish that accused no. 3 had committed offence u/s 39 UAPA. However, **there is prima facie evidence for framing of charge u/s 40 UAPA against this accused**."*

(Emphasis supplied)

295. Reference to these excerpts from the Trial Court order shows that there is sufficient material to, prima facie, establish that Shahid-Ul-Islam is involved in activities which can be termed as 'unlawful' within the ambit of UAPA. Obviously, the Trial Court discarded the disclosure statement of Shahid-Ul-Islam. However, the same is of some relevance for the purpose of these proceedings. The said disclosure memo Ex PW 11/6 contains a specific averment that the concerned person had joined the AAC (a fact which the association has not denied) and is closely associated with separatist leaders.

296. Likewise, the photograph of Shahid-Ul-Islam holding a Rifle has been discarded by the Trial Court from consideration for framing charges specifically under Section 39 UAPA but not on account of any doubt regarding its veracity. However, the same is of relevance for the purpose of these proceedings as the said photograph (which has neither tampered nor morphed as per the concerned FSL report Ex.11/5) serves as a glaring example of the "unlawful activities" of Shahid-Ul-Islam, who is a media advisor and spokesperson for the APHC (Mirwaiz), and an active participant and proponent of the activities of AAC (headed by Mirwaiz Umar Farooq). Notably, the statement of PW-23 examined as a witness in Court in the NIA Case and is annexed as part of Ex. PW11/8 shows that the weapon in the photograph is an AK 47 Rifle with an underbarrel grenade launcher.

297. Moreover, apart from Shaid-Ul-Islam, though not being chargesheeted by the NIA, Mirwaiz Umar Farooq who heads the AAC is also extensively referred to in both the Chargesheets and the order on Charge passed by the Trial Court while adverting to activities of separatist organizations.

298. PW 11 has also relied upon testimony of protected witnesses 'Alfa and 'Gama'. The Trial Court while framing charges in the NIA case has also relied upon these testimonies.

299. The testimony of Alfa states that he had been associated with APHC. He names leaders of Hurriyat Conference. Amongst them he names Yasin Malik, Umar Farooq, Nayeem Khan, Aiaz Akbar, Peer Saifullah, Mehrajuddin and Bitta Karate. This witness had attended 40-50 meetings of Hurriyat conference which were held at the house of SAS Geelani. In these meetings, directions were given to organize rallies, anti India demonstrations and it was instructed in those meetings that anti India and anti national speeches should be made and slogans should be raised. He revealed the real nature of those protest calendars when he stated that they were peaceful only on papers but in speeches, exhortation were made to break India, wage war against India in the name of freedom. This witness has himself heard said speeches of Yasin Malik, Nayeem Khan, Aiaz Akbar Khandey. This witness states about how funds would also be obtained from LOC trade, from Pakistan embassy and ISI and by facilitating admissions for professional courses in Pakistan which were given at the recommendations of Hurriyat leaders and that these funds were used for organizing stone pelting, for school burning and other anti national activities. He himself has heard the names of some Pakistani operatives and officers who were helping the Hurriyat. He himself has met some of them. He has named some. Amongst them are Muddasir Cheema of ISI and Javed Mir Rathor of ISI. The association of hurriyat with stone pelters and property burners is further stated by this witness when he states that there was a Whatsapp group where stone pelters and photos of injured would be shared through electronic media and thereafter, directions were issued to provide funds for them. Notably, he has named Mirwaiz Umar Farooq as one of the Hurriyat leaders who was involved in the above mentioned activities.

300. Witness Gamma had deposed that he was involved with Hurriyat leaders such as Shahid-Ul-Islam and used to devise plans to protest against security forces, pelt stones against encounters and indulge in other activities for separation of J & K from the UOI. He joined Hurriyat and was a part of many anti India protests and demonstrations alongwith various leaders of Hurriyat including Yaseen Malik, Peer Saifulla, Mehrazuddin, Bitta Karate, Aiaz Akbar Khandey. He states that he has many photographs with these people in those protests. He stated that leaders of Hurriyat namely SAS Geelani, Nayeem Khan, Peer Saifulla, Yasin Malik etc. would instigate them to organize protests and demonstrations against India as well as security forces and ask them to instigate people to burn government properties and damage properties and during encounters, encouraged people to pelt stones upon the security forces to help the terrorists and directions were issued about how these acts were to be done. This witness further states that after the killing of terrorist Burhan Wani in the year 2016, this leadership of Hurriyat / JRL had asked for protests in entire Kashmir, for arson, for targeting security forces and for pelting stones. The execution of this scheme was assigned to Mehrazuddin (Kalwal). He states that he is an eye witness to it. This witness further states that funds were collected by Hurriyat and JRL and these funds were used to organize stone pelting, to damage property, to organize assaults on security forces and for funding families of slain terrorists. He also refers to Umar Farooq as being involved in these activities with SAS Geelani and Yasin Malik.

301. Also, notably, the Accused Yaseen Malik in NIA Case No. RC-10/2017/NIA/DLI stands convicted vide judgment dated 19.05.2022 passed by the Special Judge, NIA and sentenced vide order dated 25.05.2022. The order on sentence has been filed as Ex.PW 11/11 in these proceedings. The conviction of one of the co-accused adds weight to the version of the government.

vii. Social Media activities of the Association

302. Apart from the evidence led with regard to cases registered by the J & K Police and the NIA, the government has also produced evidence regarding the social media activities of the association and videos of speeches delivered by its leaders. PW-10 Inspector Liyaqat Ali, who is the Incharge of the social media cell at CID Headquarters has specifically been examined in this regard. The witness deposed that AAC has supported terrorist organisations like Lashkar-e-Taiba (LeT) which have played a prominent role in causing violent disturbance in the erstwhile State of J & K and has also openly paid tributes to the terrorists killed by the Security Forces. It is also stated that AAC and its leaders had also paid tributes to Afzal Guru and Maqbool Bhat and called for shutdowns in protest on their death anniversary. It is further stated that one of the wings of AAC is 'Al Umar Mujahideen' which is a listed terrorist organisation in the UAPA and some of its erstwhile members are also listed terrorists which leaves no doubt about the objects and intents of the proclaimed organisation.

303. It is stated that Mirwaiz Umar Farooq, Chairman, AAC has delivered various secessionist speeches for Kashmir at various national and international forums which were uploaded on YouTube Channel maintained in the name of '**Mirwaiz Manzil**' and from a verified page of Mirwaiz Umar Farooq on Facebook and as were obtained by CID, Kashmir from the said Facebook page and YouTube Channel which are preserved in a Compact Disk (CD) and were provided to Central Government before preparing of the brief note. Details of the links of the abovesaid provocative speeches delivered by Mirwaiz Umar Farooq have been given in the affidavit. It is stated that the videos were obtained electronically and requisite certificate u/s 63(4) of the Bhartiya Sakhshiya Adhiniyam, 2023 has also

been filed alongwith the affidavit which is marked as Ex. PW-10/3.

304. It is stated that from the investigations and input received by him and his team and with his personal experience gained during the course of his service, he can state that it is manifest that AAC and its leaders have been actively and continuously but covertly and discreetly working for secession of J & K from the UOI and Cession of the territory of J & K to Pakistan which is apparent from the speeches filed along with the affidavit and are obviously against the national interest and integrity of the nation and have promoted feelings of enmity and hatred in the masses against the Government of India and hence, are acting in a manner prejudicial to the territorial integrity and sovereignty of the UOI. Hence, the ban imposed upon the organisation is necessary and correct.

305. PW-10 relied upon a Compact Disc (CD) and a pen drive containing Nine (9) videos of Mirwaiz Umer Farooq containing secessionist speeches; true transcripts of the speeches of Mirwaiz Umer Farooq which have been exhibited as Ex.PW10/1 to PW10/2.

306. During the course of deposition, the witness categorically stated that the said videos are already uploaded on various social media channels/platforms and there are various anti-national elements who keep proliferating/ sending these videos so as to increase their circulation and accessibility. This is done to create an inimical atmosphere. He also stated that the videos which have been referred to in paragraph 6 & 7 of his affidavit are of the period 2011-2019.

307. The nature of the activities of the concerned association becomes clear from the perusal of the said speeches. The relevant extracts/abstracts of the videos, which are also pointed out by PW-10, are as under:-

S. No.	**Name of document & Original Exhibit No.**	**Particulars**		**Period**
		Video Description	**Transcripts (Translated to English when required)**	
1.	One CD and Pendrive containing 9 videos downloaded from social media including Facebook and YouTube channels of the AAC called 'Mirwaiz Manzil'.	1_Mirwaiz Umar Farooq advocating for plebiscite/ self determination in Kashmir	*"Dear friends I would like to thank Havard Pakistan forum for giving me the opportunity to speak to you. I would have very much like to be amongst you to interact and share my views and concern. As I speak to you, I have once again been placed under house arrest for the past one month. Arbitrary curbs and restrictions are regular feature of state against me. During the past 27 years at whim and will of the state.... in defiance of all international laws and violation of basic human rights. I am repeatedly arrested and detained and even prevented from offering Friday prayers. For the past 6 years I have not been allowed to offer Eid prayers. My passport stands impounded for many years now to prevent me for reaching out to the world community. Same treatment is meted out to all leadership and political activists in Kashmir by the Indian state who challenges the status quo on Kashmir and strive for the resolution of this long-standing dispute of Kashmir in UNSC in accordance with the promise made by council that of* ***giving the people of Kashmir basic right, the right to self-determination to decide their destiny.*** ***[….]*** *The best way to address our political aspirations is that the UN be pro-active and honour its commitments made to the people of J&K through various resolutions of* ***holding the referendum of self-determination or to get the issue on the table for imaginative solutions. Among the three stakeholders namely India, Pakistan***	*Between 2011 to 2019 as deposed by the witness*

			and the representative of people of J&K."	
2.		On removal of Article 370 (In Kashmiri language)	*"…Whether we talk about Article 370 or Section 35A the issue and aim are that the government wants to transform demography of the state, which the Indian government is trying to dilute and scrap away since 1947. The government is denying the reality that it is the foundation of Kashmir's association with India. It is the duty and responsibility of the leadership who have accorded with the India to protect the demography and the constitutional rights of the state. This is the article of the faith for such leaders, insinuating towards mainstream leaders. He in his speech has said that a number of writ petitions have been put before the Supreme Court of India and it is the duty and responsibility of the mainstream leaders to defend tooth and nail to protect the existing stand.* ***Our stance is clear whatever steps India takes, military or otherwise won't affect disputed nature of Kashmir as recognized by the world…***	
3.		Mourning terrorists	*"…Kashmiris are being brutallykilled, youth are being massacred. and the entire community is being held hostage by might of state forces. Its shameful that the government and the army are dubbing them as terrorists, OGWs or sympathizers of terrorists. [Amid the speech, the public were shouting slogans that state-sponsored terrorism be stopped, be stopped, this is not acceptable. Mazloom ka qatil-aam band karo (stop innocent killings; Shuhda ke waris zinda hai (the heirs of martyrs are alive);* ***Hum kya chahta Azaadi*** *(We want freedom; Allah-u-Akbar (Allah is great) and stop genocide of Kashmiris; killing of vouth Ya tamasha nahi hai ya matam sahi hai (this is not drama this mourning is justified)]…".*	
4.		Call for strike.	*"****…the leadership is extremely concerned about the prevailing scenario in valley and we are hear (sic) to apprise the general public that our freedom struggle will continue and we have given a call to observe strike (Band call) for tomorrow and the ensuing July 13th*** ***anniversary day of 1931 martyrs…"***	
5.		Freedom Struggle (Flanked by Yasin Malik).	*[…]* *He said they are not scared of jail/arrests and under no duress can be suppressed from their goal of resolution of Kashmir issue. They claim the Kashmiri movement indigenous and not sponsored, driven by the people's desire for justice and*	

			resolution to the Kashmir dispute. They reject the idea that they're fighting for money, pointing to the sacrifices made by Kashmiris, including those jailed, injured, or killed. ***They said that we are determined to continue our freedom struggle***.	
6.		Call to intensify anti-national activities.	*"We Are witnessing how in Kashmir, bullets are being fired on unarmed civilians, tear gas and pellets are being used. That's why we've given a call for a program that will continue until the oppression and atrocities stop, until the rights of Kashmiris are addressed, and until the Kashmir issue is resolved according to the will and consent of the local people.* ***The struggle of the people of Jammu Kashmir will not only continue but will intensify***. *We also appeal to the public."*	
7.		Announcing Rally in support of self-determination (partially in Kashmiri language)	*Kounayakounayasherayasheraya (who has come, the lion has come), Pakistan se rishta kia Lai-ilahi-illa-la(what relations we owe to Pakistan, is religious as we supplicate to one God) Amid the slogans, Mirwaiz Umar Farooq highlighted sacrifices and the struggles of the Kashmiri people and their desire for self-determination.* ***He said after Eid, AAC is going to organize a big rally in support of our birth right i.e right to self-determination***. *He said and requested all the people to participate and support the movement. He in his speech said that their freedom struggle is a pious mission and their end goal is nothing less than Azadi. He hailed and prayed for the sacrifices rendered by the people (Jawans) and the repressions and suppressions endured by the public. He underscored the mission and asked the people to remain stead-fast with unflinching determination in their freedom struggle. He said how innocent people are being killed in South Kashmir and reminded them that this movement has been nurtured with the blood of these innocent people."*	
8.		Spreading disaffection against India	*Amid un-deciphered slogans, Mirwaiz Umar Farooq in the vicinity of Jamia Masjid Srinagar during a gathering said, the state has orchestrated a strategic crackdown against students irrespective of gender or age.* ***In a state sponsored terrorism, teargas shells, bullets are pierced to unarmed and innocent people***. *The cities, towns and villages have been cracked-down and not scores but thousands of forces and police have been deployed. The state has been transferred into police state and all rights whether religious, political or human rights have been*	

			subjugated. Le also said that the Jamia Masjid Srinagar has been continuously put under siege and I have been house arrested and released just 15 minutes before the prayer time. All roads leading to Jamia Masjid have been blocked. ***[….]***	
9.		Glorifying slain terrorists as Martyrs	*[….]* *Today 4th generation of the Kashmir is on streets and government is thinking that by force they can suppress the aspirations of the people. Government is completely responsible for these killings as they are compelling youth to take the path of armed resistance.* ***By citing the example of Shaheed Burhan Muzaffar Wani (killed terrorist) Mirwaiz Umar Frooq said that you can see the individuals who have joined armed resistance were subjected to police/army atrocities which compelled them to*** *join the armed struggle.* *[….]*	

(Emphasis supplied)

308. The aforesaid videos recovered by Social Media cell of the CID, were also submitted to this Tribunal in a CD and a pen drive alongwith transcripts. The speeches of Mirwaiz Umar Farooq, the chief protagonist of the proscribed association, vociferously advocates and endorses the separation of J & K from territory of India and its secession from the UOI, and further instigate/provoke youth and groups to take actions towards this object. In the said speeches the sovereignty and territorial unity of India has been sought to be seriously undermined, feelings of discontent/disaffection towards India have been sought to be provoked.

viii. Authenticity of Electronic Evidence

309. The videos on the social media handles of the association/ its leader are quite relevant as they give an insight into the activities of the association.

310. The Union Witness, PW 10 has filed his own affidavit under **Section 63 of the Bhartiya Sakshya Adhiniyam, 2023**. Even otherwise, this Tribunal has already opined based on the judgment of the Supreme Court in ***Jamaat-e-Islami*** (**supra**) that the rigours of the Evidence Act, and by necessary implication, the Adhiniyam of 2023 cannot apply *in toto* to these proceedings and the provisions have to be taken recourse to only as far as practicable.

311. Also, during the course of arguments, the videos were played before this Tribunal from their original URLs/links on the World Wide Web (internet) and the contents of the same were displayed / viewed first hand by the Tribunal from the social media handles attributed to the association/ its leader, Mirwaiz Umar Farooq on YouTube and Facebook. It is noted that the said Facebook page operated in the name of Mirwaiz Ummar Farooq, is a verified page with more than 1.4 lakh followers. As such, the 'primary evidence' has been perused by this Tribunal.

312. In this regard, it is noteworthy that **Section 57**[5] **of the Adhiniyam** provides for what is 'Primary Evidence'.

313. **Section 63 (1) of the Adhiniyam** which is substantially in *pari materia* in principle with **Section 65B of the**

[5] ***Primary evidence***.

Primary evidence means the document itself produced for the inspection of the Court.

[….]

Explanation 4.--Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

Explanation 5.--Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

Explanation 6.--Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

Explanation 7.--Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

Indian Evidence Act (though providing for additional requirements) provides that:

> *"notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible."*

314. This is an enabling provision rather than a restrictive one. It allows for admissibility in evidence of any information which may have been stored in a computer or other device but is produced before a Court in electronic media such as a CD or Pen Drive for the sheer convenience in production of such media and sheer inconvenience in production of the actual computer or device. The Hon'ble Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** has held as under*:*

> *"**73.2.** The clarification referred to above is that **the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced.** This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4)."*

315. The existence of the speeches/videos (as referred to in the deposition of PW-10, and as perused by this Tribunal), have not been controverted or denied by the association. The implications flowing therefrom as regards the activities of the association, have been rightly set out in the deposition of PW-10.

ix. Foreign funding

316. As per the background note, Mirwaiz Umar Farooq has received significant fund from Pakistan for increasing activities of secessionist groups and also for distribution of relief among family members of terrorists. This allegation has not been denied by the association in its reply. The first chargesheet filed in NIA No. RC-10/2017/NIA/DLI also mentions that Hurriyat Conference, have been acting in connivance with the active militants of proscribed terrorist organisations, viz. Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT) and other terrorist organisations/ associates/ gangs for raising, receiving and collecting funds domestically and abroad through various illegal channels, including hawala, for funding separatist and terrorist activities in J & K through the funds so collected and as such have entered into a larger criminal conspiracy for causing disruption in the Kashmir Valley by way of pelting stones on the security forces, systematically burning of schools, damage to public property and waging war against India. Mirwaiz Umar Farooq, the head of AAC is the leader of one of the constituents of the APHC. Shahid-Ul-Islam, who is involved in the activities of AAC has been chargesheeted in the aforesaid case and charges have also been framed against him. The above given facts give an insight as to the activities of AAC/ its members, the nexus thereof with nefarious elements from across the border, and substantiates the conclusions drawn in the notification dated 11.03.2025 issued under Section 3(1) of the UAPA.

317. This Tribunal is conscious that the veracity of the contents of the aforesaid chargesheet/s filed by NIA and J & K Police, is required to be established at trial in the said cases. However, for the purpose of these proceedings, the said evidence is in the nature of relevant material and liable to be considered, in terms of the dicta laid down by the Supreme Court in ***Jamaat-e-Islami Hind (Supra)***.

318. 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" for the purpose of these proceedings and to assess whether the same supports the declaration made under Section 3(1) of UAPA vide the notification dated 11.03.2025.

x. Intelligence reports as regards activities of the Association

319. Further, I have also perused the intelligence/confidential reports which are part of the sealed envelope submitted by PW-12 alongwith his evidence. As noted aforesaid, the disclosure thereof would be detrimental to the larger public interest and security of the State. In the circumstances, this Tribunal has allowed submitting of the said documents in a sealed cover. These documents give comprehensive insights and details as to the unlawful activities and separatist endeavours of AAC, carried out in intimate collaboration with anti-India factions in Pakistan. The efforts to foster the separation of J & K from India, to subvert the sovereignty of India, to inflame local sentiments, and to propagate violence are elucidated in the said materials/documents.

320. Thus, the Central Government has been able to make out a cogent case in support of impugned notification dated 11.03.2025 for declaring the association i.e. AAC, as a banned association. As noted hereinabove, the evidence adduced by the Central Government *inter alia* comprises (i) evidence of 10 officers from the Police Department of the UT of J&K, who have deposed in respect of 11 FIRs against the chief protagonist of the association and other members, on account of his various incidents/actions as referred to hereinabove; (ii) evidence in the form of investigation conducted in NIA No. RC-10/2017/NIA/DLI which has been set out in the detailed chargesheet filed by the NIA. Charges have also been framed by the concerned NIA Court pursuant to the said chargesheet vide order dated 16.03.2022; (iii) evidence in the form of affidavit filed on behalf of the NIA in support of the documents and photographs seized from Shahid-Ul-Islam; (iv) evidence in the form of videos containing speeches rendered by Mirwaiz Umar Farooq, the chief protagonist of the association which brings out the secessionist agenda of the association and the fact that the association has sought to seriously undermine the sovereignty and integrity of India. (v) Evidence in the form of intelligence reports/memo furnished by the security agencies regarding the activities of the association, with precise details as to the inimical and unlawful activities.

321. As opposed to this, the association has miserably failed to adduce any evidence to rebut the voluminous evidence/material placed on record by the Central Government despite elaborate opportunities afforded to it. I have already noted the relevant factual background regarding the failure on the part of the association to adduce any material to show cause against the declaration, and instead consciously refrain from participating in these proceedings.

322. The alleged religious and philanthropic activities of the Association (which have not been proved in these proceedings) would not undermine or condone/cancel the highly objectionable "unlawful activities of the Association". As noticed in ***Jamat-E-Islami Hind*** (supra), in the very nature of things, such "unlawful activities" are carried out in a clandestine manner and very often under the camouflage of the so called religious and philanthropic endeavours. As such, the reference in the reply filed on behalf of the Association to such activities, has no bearing on the finding rendered hereinabove, especially, since the Association has chosen not to appear/participate in these proceedings despite having entered appearance initially and filing its reply. The evidence adduced by the Central Government overwhelmingly corroborates/justifies the basis and rationale of the action taken against the Association.

323. So far as the 'public wtinesses' who have submitted their affidavits in favour of the association are concerned, none of these individuals has provided any details of their association with AAC and no material has been placed by these individuals to counter the voluminous evidence produced on behalf of the Union of India regarding the "unlawful activities" being carried out by the members of the association. In these circumstances, the affidavits, being identically worded, do not deserve any consideration by this Tribunal and ought to be disregarded.

CONCLUSION

324. From the elaborate material/evidence placed on record in these proceedings, this Tribunal finds that there is ample justification to declare AAC as an unlawful association under the UAPA. Moreover, given the nature of activities of the association, the Central Government was justified in taking recourse to the proviso to Section 3 (3) of the UAPA.

325. Thus, this Tribunal having followed the procedure laid down in the UAPA 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 AAC as an unlawful association under Section 3(1) of the UAPA, vide the notification dated 11.03.2025. Thus, an order is passed under Section 4 (3) of the UAPA confirming the declaration made in the notification bearing no. S.O. 1115(E) published in the official gazette on 11.03.2025 issued under Section 3(1) of the UAPA, 1967.

(JUSTICE SACHIN DATTA)

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

SEPTEMBER 03, 2025 "

[F. No. 14017/13/2025-NI-MFO]

RAJEEV KUMAR, Jt. Secy.

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.