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असाधारण
EXTRAORDINARY

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

प्राधिकार से प्रकाशित
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नई दिल्ली, बृहस्पतिवार, अक्टूबर 3, 2024/आश्विन 11, 1946

No. 3965]

NEW DELHI, THURSDAY, OCTOBER 3, 2024/ASVINA 11, 1946

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 30 सितम्बर, 2024

का.आ. 4324(अ).—केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 15 मार्च, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1416(अ), तारीख 15 मार्च, 2024 (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) द्वारा जम्मू और कश्मीर लिबरेशन फ्रन्ट (मो० यासीन मलिक गुट) (जेकेएलएफ-वाई) को विधिविरुद्ध संगम के रूप में घोषित किया था;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 5 अप्रैल, 2024 में प्रकाशित अधिसूचना संख्यांक का.आ. 1627(अ), तारीख 5 अप्रैल, 2024 द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय की न्यायाधीश न्यायमूर्ति नीना बंसल कृष्णा थीं;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या जम्मू और कश्मीर लिबरेशन फ्रन्ट (मो० यासीन मलिक गुट) (जेकेएलएफ-वाई) को विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 9 अप्रैल, 2024 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए तारीख 12 सितंबर, 2024 को एक आदेश पारित किया था।

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

“

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

(न्यायमूर्ति नीना बंसल कृष्णा)

विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण”

[फा. सं. 14017/57/2024/एन.आई.-एम.एफ.ओ.]

अभिजीत सिन्हा, संयुक्त सचिव

**MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 30th September, 2024

S.O. 4324(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 Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) (JKLF-Y) as an unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1416(E), dated the 15th March, 2024 (hereinafter referred to as the said notification) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 15th March, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 read with sub-section (1) of section 4 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Justice Neena Bansal Krishna, Judge, High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs, number S.O. 1627(E), dated the 5th April, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 5th April, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on 9th April, 2024 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) (JKLF-Y) 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 12th September, 2024, confirming the declaration made in the said notification.

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

**“UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL,
HIGH COURT OF DELHI, NEW DELHI**

Date of Decision: 12th September 2024

IN THE MATTER OF:

Gazette Notification no. S.O. 1416 (E) dated 15th March 2024 declaring the *Jammu and Kashmir Liberation Front – Md. Yasin Malik faction (JKLF - Y)*, as an unlawful association under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF:

Reference under Section 4 of the Unlawful Activities (Prevention) Act, 1967 made to this Tribunal by the Government of India through Ministry of Home Affairs *vide* Gazette Notification no. S.O. 1627 (E) dated 5th April 2024.

Present : Dr. Ajay Gulati, Registrar, Unlawful Activities (Prevention) Tribunal.
 Ms. Aishwarya Bhati (Addl. SG) along with Mr. Amit Prasad, Mr. Rajat Nair, Ms. Poornima Singh, Ms. Manisha Chava and Mr. Abhijeet Singh, Id. Advocates for the Union of India.
 Mr. Parth Awasthi, and Ms. Deepika Gupta Id. Advocates for Union Territory of Jammu & Kashmir.
 Mr. Sameer Shukla, Asstt. Section Officer, Ministry of Home Affairs.
 Mr. Arjun Chopra, Law Researcher.

CORAM:

HON'BLE Ms. JUSTICE NEENA BANSAL KRISHNA

ORDER

1. This order answers Reference under Section 4(3) read with Section 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'Act' or 'UA(P)A', for short) made to this Tribunal which has been constituted by the Central Government *vide* Gazette Notification no. S.O. 1627 (E) dated 5th April, 2024 under Section 5(1) of the 'Act', for adjudicating whether or not there is sufficient cause for declaring the Jammu & Kashmir Liberation Front – Md. Yasin Malik faction ('JKLF - Y' in short), as an 'unlawful association'.

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) no. S.O. 1416 (E) dated 15th March 2024 in exercise of the powers conferred under Section 3(1) of the Act and declared JKLF-Y 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 ("UA(P) Rules" in short). The said notification dt. 15th March 2024 reads as under:

S.O. 1416(E).—Whereas the Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) (hereinafter referred to as the JKLF-Y) has been indulging in activities, which are prejudicial to security and public order and have the potential of disrupting the unity and integrity of the country;

And whereas, 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 declared the JKLF-Y as an unlawful association, vide, notification number S.O. 1403(E), dated the 22nd March, 2019;

And whereas, the Unlawful Activities (Prevention) Tribunal, constituted under section 5 of the Unlawful Activities (Prevention) Act, 1967 for the purpose of adjudicating whether or not there is sufficient cause for declaring the JKLF-Y as an unlawful association, by its order published, vide, notification number S.O. 3460 (E), dated 25th September, 2019 has confirmed the declaration so made;

And whereas, the declaration of ban under sub-section (1) of section 6 of the Unlawful Activities (Prevention) Act, 1967, ceases on the 21st day of March, 2024;

And whereas, the Central Government is of the opinion that JKLF-Y is indulging in the activities which are prejudicial to the integrity and security of the country, inter alia, on the following grounds, namely:-

1. *The Directorate of Enforcement (ED) has registered FIR No. ECIR/03/DLZO-11/2017 dated 14.06.2017 under the Prevention of Money Laundering Act (PMLA). After Investigation, main prosecution complaint in the case was filed on 24.08.2020. Further, supplementary Prosecution Complaint was filed on 09.01.2023, arraigning Yasin Malik as accused and cognizance of which was taken on 10.01.2023. Matter is under trial before the court;*
2. *Case Crime No. 23/2023 has been registered at Kothibagh Police Station under section 121 A of the Indian Penal Code and section 10 and 13 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activists for organizing meeting by Mohd. Yaseen Bhat, JKLF-Y activist in Habib Restaurant, Srinagar alongwith other JKLF-Y activists for undertaking separatist activities in Jammu and Kashmir. Chargesheet filed in the matter before the court;*
3. *Case Crime No. 44/2019 has been registered at Pulwama Police Station under section 10, 11 and 13 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activist for use*

of offices of JKLF-Y to provide financial support to the elements inimical to the sovereignty and integrity of the nation. The case is under investigation;

4. *Case Crime No. 42/2019 has been registered at Handwara Police Station under section 10 and 13 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activists for subversive activities causing threat to the sovereignty and integrity of the nation. The case is under investigation;*
5. *Case Crime No. 51/2019 has been registered at Ganderbal Police Station under section 10 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activists for planning of successful call given for hartal by the JKLF-Y after its declaration as an unlawful association. The case is under trial before the court.*
6. *Case Crime No. 61/2019 has been registered at Budgam Police Station under section 10, 11 and 13 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activists for their illegal activities in order to vitiate the peace of the State and to cause threat to the sovereignty and integrity of the nation. The case is under trial before the court.*
7. *Case Crime No. 11/2019 has been registered at Hajin Police Station under section 10 and 13 of the Unlawful Activities (Prevention) Act 1967 against JKLF-Y activist after declaration of JKLF-Y as an unlawful association. The case is under trial before the court.*
8. *Mohd. Yasin Malik, Chairman, JKLF-Y has been sentenced with rigorous imprisonment for life and fine of rupees ten lakh by the Special NIA Court, New Delhi vide order dated the 25th May, 2022 in Case Crime No. RC-10/2017/NIA/DLI dated 30th May, 2017 registered under sections 120B, 121, 121A of Indian Penal Code and section 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act 1967 for involvement of JKLF-Y leader Yasini Malik 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 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 Government;*

And, whereas, on the basis of above grounds the Central Government is of the opinion that –

- (i) *JKLF-Y is involved in anti-national and subversive activities intended to disrupt the sovereignty and territorial integrity of India;*
- (ii) *JKLF-Y is in close touch with militant outfits and is supporting extremism and militancy in Jammu and Kashmir and elsewhere;*
- (iii) *JKLF-Y is supporting and inciting claims for secession of a part of the Indian territory from the Union and supporting terrorist and separatist groups fighting for this purpose by indulging in activities and articulations intended to disrupt the territorial integrity of India ;*

And, whereas, the Central Government is of the opinion that if the unlawful activities of the JKLF-Y are not curbed and controlled immediately, it will take the opportunity to –

- (i) *escalate its subversive activities including attempt to carve out a separate State out of the territory of Union of India by destabilising the Government established by law;*
- (ii) *continue advocating the secession of Jammu and Kashmir from the Union of India while disputing the accession of State of Jammu and Kashmir with the Union ;*
- (iii) *propagate anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country; 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 JKLF-Y, it is necessary to declare the Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) 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 Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) as an unlawful association.

The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) as an 'unlawful association' with immediate effect, and accordingly in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the said Act, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette.

3. As can be seen, the aforesaid notification enumerates the reasons/ circumstances, as contemplated under proviso to section 3(3) of the Act, for declaring the JKLF-Y as unlawful with immediate effect.

II. THE BACKGROUND NOTE

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

5. The Background Note states that The Jammu and Kashmir National Liberation Front (JKNLFF) formed in Pakistan in 1964, was re-christened as Jammu and Kashmir Liberation Front (JKLF) in 1971. The Jammu and Kashmir Liberation Front (Mohd. Yasin Malik faction) (JKLF-Y) was established in Kashmir valley in February, 1988 by Mohd. Yasin Malik (currently lodged in Tihar Jail, Delhi) with the objective of separation from India and re-unification of Jammu and Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin, through an armed struggle. With the inception of terrorism in the erstwhile state of Jammu and Kashmir, JKLF-Y became the first and the largest terrorist organization in the late 1980's.

6. The Note further states that JKLF-Y has been maintaining that the organization is fighting for separation of the erstwhile State of Jammu and Kashmir from India and its leadership has all along been challenging the accession of State of Jammu and Kashmir with the Union of India and to this end, the leadership of the organization has been issuing press reports, addressing public gatherings and organizing protest rallies against the nation.

7. It has further been stated in the Note that Chief Commander of JKLF-Y, Mohd. Yasin Malik was arrested by security forces in 1992 and after his release in 1994, he distanced himself from armed resistance but did not restrain from supporting terrorism and sustaining the same. He used his new facade to become one of the most important channels of financial resources for the violent campaign. JKLF-Y continued its anti-national activities and propaganda by organizing protests, strikes and motivating youth to join terrorist cadres. It played a vital role in the riots which broke out during the years 2008, 2010 and 2016.

8. JKLF-Y is providing support to the terrorists and proscribed terrorist organizations in Jammu and Kashmir and is constantly fueling extremism to create a tacit acceptance for terror activities and terrorists' operations in Jammu and Kashmir.

9. The activists associated with JKLF-Y are involved in a number of cases including the sensational killing of Air-force personnel at Rawalpora, Srinagar and kidnapping of Dr. Rubaiya Syed, daughter of then Union Home Minister Mufti Mohammad Syed.

10. On account of unlawful activities of JKLF-Y, the Central Government had declared the JKLF-Y as an 'unlawful association' vide Gazette of India Notification no. S.O. 1403(E) dt. 22nd March, 2019 for a period of five years under the Unlawful Activities (Prevention) Act, 1967.

11. After the declaration of JKLF-Y as an unlawful association, the Unlawful Activities (Prevention) Tribunal which was constituted to adjudicate whether or not there was a sufficient cause for declaring JKLF-Y as an *unlawful association*, had also confirmed the notification of declaration no. 1403(E) vide order dated 20th September 2019 which was published in the Gazette of India Notification bearing no. S.O. 3460(E) dated 25th September 2019.

12. In spite of the ban imposed on JKLF-Y in 2019, the activists of this organization are still engaged in activities prejudicial to the integrity and security of the Union of India and thus the outfit poses a potential threat to the same. The ideology of the organization and the activities of its members are aimed at undermining the secular fabric of the nation as well as to promote separatism and terrorism which go against the principles that binds the diverse society of the country together.

13. JKLF-Y has been organizing, coordinating, participating, arranging and addressing conference, symposia and unlawful assemblies to propagate their ideology and to spread hatred and disaffection against the nation by openly challenging the sovereignty and territorial integrity of the nation. JKLF-Y is covertly, overtly, explicitly and implicitly providing support to terrorists and the proscribed terrorist organizations active in Jammu and Kashmir, aimed at promoting separatism, thus posing a potential threat to the national integrity. It is in close touch with terrorist outfits and is constantly fueling extremism in Jammu and Kashmir.

Criminal Cases against JKLF - Y activists

14. The complicity of JKLF–Y cadres in criminal and anti-national activities is evident from the series of criminal cases that stand registered against them under various provisions of law including the Unlawful Activities (Prevention) Act and other substantive offences. The cases registered against the JKLF-Y activists/ members provide clinching evidence regarding their involvement in various unlawful activities. A list of cases registered by the National Investigation Agency (NIA), Directorate of Enforcement and Government of Jammu & Kashmir is given as under:

Sl. No.	FIR No. & Police Station	Brief of Investigation	Details of accused persons
1.	NIA Delhi. RC-10/2017/NIA/DLI dt. 30.05.2017 u/s 120B, 121, 121A & 124A of the IPC, and u/s 13, 16, 17, 18, 20, 38, 39 and 40 of the UA(P)A.	Regarding involvement of JKLF-Y leader Yasin Malik 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 has entered into 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 Government and towards this criminal conspiracy, engaged and instigated the general public of Kashmir for taking part in violent activities to make the atmosphere in the valley, which may be helpful for propagating their secessionist agenda. In the present case, accused Yasin Malik has been sentenced with rigorous imprisonment for life and fine of rupees ten lac vide order dated the 25 th May, 2022 has been imposed.	Mohd. Yasin Malik & others
2.	Enforcement Directorate, Delhi Zonal Office-II ECIR/03/DLZ-II/2017 dated 14.06.2017 u/s 3 of PMLA	The Directorate of Enforcement (ED) has registered this case under the Prevention of Money Laundering Act (PMLA). After Investigation, main prosecution complaint in the case was filed on 24.08.2020. Further, supplementary Prosecution Complaint was filed on 09.01.2023, arraigning Yasin Malik as an accused and cognizance of which was taken on 10.01.2023.	Mohd. Yasin Malik & others
3.	P.S. Kothibagh, Srinagar FIR no. 23/2023 u/s 121A IPC and section 10 & 13 of the UA(P)A, 1967	Case registered against JKLF-Y activists for organizing meeting by Mohd. Yasin Bhat, a JKLF-Y activist in Habib Restaurant, Srinagar along with other JKLF-Y activists for undertaking separatist activities in Jammu and Kashmir.	Mohd. Yasin Bhat & others
4.	P.S. Pulwama FIR no. 44/2019 u/s 10, 11 and 13 of the UA(P)A, 1967	Information was received against JKLF-Y activist for use of offices of JKLF-Y to provide financial support to the elements inimical to the sovereignty and integrity of the nation.	JKLF–Y activists
5.	P.S. Handwara, Srinagar FIR no. 42/2019 u/s 10 and 13 of the UA(P)A, 1967	Against JKLF-Y activists for subversive activities causing threat to the sovereignty and integrity of the nation.	JKLF–Y activists

6.	P.S. Ganderbal FIR no. 51/2019 u/s 10 of the UA (P)A, 1967	Against two JKLF-Y activists for planning of successful call given for <i>hartal</i> by the JKLF-Y after its declaration as an unlawful association.	JKLF-Y activists
7.	P.S. Budgam FIR no. 61/2019 u/s 10, 11, and 13 of the UA(P)A, 1967	Against JKLF-Y activists for their illegal activities in order to vitiate the peace of the State and to cause threat to the sovereignty and integrity of the nation.	JKLF-Y activists
8.	P.S. Hajin FIR no. 11/2019 u/s 10 and 13 of the UA(P)A, 1967	Against JKLF-Y activist after declaration of JKLF-Y as an unlawful association.	JKLF-Y activists

15. The *Background Note* further records that the above referred acts of the JKLF- Y lead to the conclusion that this organization is bent upon to work towards secession and separation of Jammu and Kashmir from the Union of India. It has been continuously encouraging the armed insurgency aimed at causing disaffection, disloyalty, disharmony by promoting feelings of enmity and hatred against the lawful government in a manner which is prejudicial to the territorial integrity and sovereignty of the Indian Union. Thus, the activities of JKLF-Y fall within the purview of unlawful activities.

DECLARATION OF JKLF - Y AS AN UNLAWFUL ASSOCIATION

16. Keeping in view the gravity of the situation and commission of unlawful activities by the organization, the Central Government decided to declare Jammu and Kashmir Liberation Front – Md. Yasin Malik as an ‘unlawful association’ under the provisions of the Unlawful Activities (Prevention) Act, 1967.

17. Accordingly, Notification no. S.O. 1416 (E) dt. 15th March 2024 declaring JKLF-Y as an unlawful association, was issued. Subsequent thereto, the Unlawful Activities (Prevention) Tribunal has been constituted vide Notification no. S.O. 1627 (E) dated 5th April 2024.

III. STATUTORY PROVISIONS

18. Section 2 (o) and (p) of the UA(P)A, read as follows:

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

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

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

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

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

(p) “unlawful association” means any association-

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

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

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

19. 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.

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

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

IV. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

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

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

the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained."

23. The present Tribunal constituted under the UA(P)A, has been vested with certain powers and the procedure to be adopted by it, under *section 5* read with *section 9* of the said Act, which are reproduced as under:

"5. Tribunal. (1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;*
- (b) the discovery and production of any document or other material object producible as evidence;*
- (c) the reception of evidence on affidavits;*
- (d) the requisitioning of any public record from any court or office;*
- (e) the issuing of any commission for the examination of witnesses.*

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

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

24. Further, under *section 4(1)* of Act, the Central Government refers the Notification (issued under *Section 3(1)* of the Act) to the *Tribunal* for "adjudicating" whether or not there is "*sufficient cause*" for declaring the association unlawful. *Section 4(2)* requires issuance of notice on the association affected to show cause why the association should not be declared as unlawful. *Section 4(3)* mandates an inquiry in the manner specified in *section 9* after calling for such information as may be necessary from the 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 UA(P)A in *Jamaat-e-Islami Hind* (supra), it was held by the Supreme Court as under:

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

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

26. 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 UA(P) Rules, 1968. Rule 3(1) stipulates that the *Tribunal*, subject to sub-rule (2), shall follow “*as far as practicable*”, the rules of evidence laid down in *Indian Evidence Act, 1872* (*‘Evidence Act’, here-in after*). In this regard, reference can be made to the following observations in *Jamaat-e-Islami Hind* (supra):

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

23. In *John J. Morrissey and G. Donald Booher v. Lou B. Brewer* [408 US 471: 33 L Ed 2d 484 (1972)] the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

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

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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."

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

Indian Evidence Act, 1872

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

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

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

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

Code of Criminal Procedure, 1973

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

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

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

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

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

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

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

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

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

28. 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.

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

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

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

“3. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines “inquiry” to mean “every inquiry, other than a trial conducted under this Code by a Magistrate or court”. Clause (a) of Section 2 gives the definition of “investigation” and it says that investigation includes “all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”. Section 4 provides:

“4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

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

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

“162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the

prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

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

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

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

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in Baliram Tikaram Marathe v. Emperor that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jagannohan 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."

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

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

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

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in *Kanwar Lal Gupta v. Amar Nath Chawla*. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC p. 667) “made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent”. This Court in fact followed an earlier decision of the Court in *P.C.P. Reddiar v. S. Perumal*. So also in *Jagdat v. Sheopal, Wazirhasan, J.* held that the result of an inquiry by a Kanungo under Section 202 of the Code of Criminal Procedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in *Chandulal v. Pushkar Raj* where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in *Lionell Edwards Limited v. State of W.B.* that official correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated February 16, 1981 we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981 it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on January 27, 1981. All these reports including the report submitted on December 9, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the court in deciding the question at issue between the parties.”

32. The Supreme Court in *Vinay D. Nagar v. State of Rajasthan*, (2008) 5 SCC 597, again held that the 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.”

33. After examining the aforementioned provisions, as well as the legal principles established in a catena of judgments, and considering that the inquiry before this *Tribunal* does not entail adjudicating the guilt of the accused but rather assessing the adequacy of material before the Central Government to designate JKLF-Y as an ‘*unlawful association*’, the statements of witnesses recorded by the police officers, the statements made by the accused before police officers, along with the lists of items seized and seizure memos, are deemed admissible before this *Tribunal*. They can be utilized to ascertain the sufficiency of material before the Central Government for making the declaration under section 3(1) of UA(P)A.

V. PROCEDURE FOLLOWED BY THIS TRIBUNAL

34. Consequently, upon due consideration of the aforesaid Notification no. 1416 (E) dt. 15th March, 2024 and Notification no. 1627 (E) dt. 5th April, 2024, this *Tribunal* held a preliminary hearing on 16.04.2024, whereupon on a consideration of the material placed on record by the Central Government, statutory notice under section 4(2) of the Act was issued to the JKLF-Y and its leaders/activists/members to show cause, within a period of 30 days, as to why JKLF-Y ought not to be declared an unlawful association. The notices issued were given due publicity as is required under section 3(4) of the Act.

35. The Gazette Notification dated 15.03.2024 was also published in two National Newspapers (all India Edition), out of which one was in English while the other was in Hindi. The said notification was also published in two local newspapers one of which was in vernacular language and the other in English, both having wide circulation in Kashmir zone of UT of Jammu & Kashmir where the activities of the JKLF-Y 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 known addresses of the JKLF-Y along with all of its leaders, members and front organization as well as that of its principal office bearers.

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

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

38. The Registrar attached to the *Tribunal* was directed to ensure the compliance of the service of notice issued to the JKLF-Y and its office bearers in the manner indicated. The Registrar was also directed to file an independent report in that behalf before the next date of hearing i.e. 20.05.2024.

39. Accordingly, the Union Territory of Jammu and Kashmir filed its affidavit of service, affirming that service had been effected as directed by the *Tribunal*. The Registrar, vide his report dated 18.05.2024, also confirmed service of statutory notice issued by the *Tribunal*. Specifically, notice was also served on Mohd. Yasin Malik being the chief protagonist of JKLF–Y, in Tihar Jail where he is currently lodged, through the Superintendent of Prisons, Central Jail no. 7.

40. This *Tribunal* having satisfied itself that service had been effected on JKLF–Y as per the directions contained in the order dated 16.04.2024, proceeded further with the inquiry. On the next hearing which was scheduled for 20.05.2024, Md. Yasin Malik appeared through video conference from the jail premises, on behalf of JKLF–Y. Md. Yasin Malik was specifically asked by the *Tribunal* whether he will be represented by a lawyer for the current *Reference* proceedings or whether he wishes to engage a lawyer and needs some time for the same, and if he doesn't have the means to do so, whether he would like to be assigned a lawyer at state expense? However, Md. Yasin Malik categorically responded that he will personally argue and represent JKLF–Y in the *Reference* proceedings. Further, on behalf of Union of India, more time was sought to file affidavits and relevant documents in support of the notification declaring the JKLF–Y as an unlawful association.

41. *Vide* order dt. 20.05.24 itself, further proceedings of the present *Reference* for the purpose of recording of evidence were scheduled to be held at Srinagar on 20th, 21st, and 24th June 2024. However, prior to the hearings scheduled at Srinagar, this *Tribunal* also fixed a prior hearing on 05.06.2024 in the High Court of Delhi for directions.

42. On 05.06.2024, it was submitted on behalf of the Union of India/ Central Govt. that some more time would be required for filing the affidavits in evidence in support of the Notification of declaration dt. 15.03.2024. Consequently, this *Tribunal* further adjourned the proceedings for 13.06.2024 and permitted the filing of affidavit/s on behalf of the Union of India by the said date. Direction was also given to the UOI to file a list of witnesses. However, a reply cum affidavit of Md. Yasin Malik on behalf of JKLF–Y was received by the Registrar of the *Tribunal* on 30.05.2024. On 05.06.24, Md. Yasin Malik who had joined through video conference submitted that he shall not be filing any other affidavit. Proceedings were thereafter adjourned to 13.06.2024, to be held in the High Court of Delhi on which date, it was submitted by Id. Counsel appearing for the UOI that list of witnesses shall be filed with the Registrar by 17.06.2024 and that affidavits in evidence shall also be filed by 28.06.2024. The *Tribunal* was further informed that affidavit of 1 witness *i.e.* from the Enforcement Directorate, on behalf of UOI has already been filed with the Registrar of the *Tribunal*. Thereafter, the present *Reference* was directed to be taken up for hearing on 20.06.2024 at Srinagar.

43. On 20.06.2024, the *Reference* proceedings were taken up in Srinagar, in the premises of High Court of Jammu & Kashmir and Ladakh. However, despite a public notice having been issued for the hearings to be held in Srinagar, no person from the general public or from/on behalf of JKLF–Y appeared before the *Tribunal* on 20.06.2024 to join or participate in the proceedings. Consequently, this *Tribunal* directed the next proceeding to be held in the present *Reference* on 06.07.2024 in Tihar Jail, to give an opportunity of personal hearing to Md. Yasin Malik, in the interest of justice since Md. Yasin Malik cannot be taken out from the Jail premises owing to a specific office order passed by the competent authority. Witnesses who were to depose on behalf of the Union of India and whose affidavits had already been served on Md. Yasin Malik were directed to be examined in Tihar jail on 06.07.2024.

44. On 06.07.2024, *Reference* proceedings were conducted in a makeshift court room which was set up in the office of the Superintendent of Central Jail no. 7. Md. Yasin Malik was brought to the courtroom with adequate security arrangements. Directions were given to the concerned jail authority to facilitate the entry of witnesses who were to be examined as also of Id. Counsels for Union of India and UT of Jammu & Kashmir. On 06.07.2024, statements of the following witnesses on behalf of the Union of India were recorded at **Tihar Jail**:

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in File no.
1.	Sh. Hariprasad K.K., S.D.P.O., Kothibagh, Srinagar	Ex. PW-1/A dated 02.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 10; and exhibits from page nos. 11 to 52
2.	Sh. Saqib Gani, D.S.P, HQ, Budgam, Kashmir	Ex. PW-2/A dated 02.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 8; and exhibits from page nos. 9 to 20
3.	Sh. Rameez Rashid Bhat,	Ex. PW-3/A dated	File no. – Vol. IV

	D.S.P, Hajin, Bandipora, Kashmir	02.07.2024	Affidavit from page nos. 1 to 8; and exhibits from page nos. 9 to 23
4.	Sh. Shabir Ahmad, S.H.O, P.S. Pulwama, Kashmir	Ex. PW-4/A dated 02.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 8; and exhibits from page nos. 9 to 18

All of these witnesses were cross-examined by Md. Yasin Malik in person. Owing to ill health of Md. Yasin Malik, further recording of evidence of other witnesses was adjourned. Further proceedings for recording of evidence were scheduled for 13th and 14th July 2024, in Tihar Jail no. 7.

On 13.07.2024, following witnesses on behalf of the UOI were examined:

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in File no.
5.	Sh. Showkat Ahmad Mir, SHO, P.S. Handwara, Kashmir	Ex. PW-5/A dated 02.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 8; and exhibits from page nos. 9 to 31
6.	Sh. Rajesh Kumar Gupta, Director (Counter Terrorism), MHA, GOI	Ex. PW-6/A dated 05.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 8; and exhibits from page nos. 9 to 59, along with documents/confidential material in a sealed cover
7.	Sh. B.B. Pathak, D.S.P., NIA, Delhi	Ex. PW-7/A dated 03.07.2024	File no. – Vol. IV - A Affidavit from page nos. 1 to 23; and exhibits from page nos. 24 to 499

On 14.07.2024, following witnesses were examined in Tihar Jail no. 7:

8.	Munshi Ghulam Nabi, D.S.P, Counter Intelligence, Kupwara, Kashmir	Ex. PW-8/A dated 08.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 7; and exhibits from page nos. 8 to 59
9.	Tariq Ahmad Sofi, Dy.S.P, CIK, Bandipora, Kashmir	Ex. PW-9/A dated 08.07.2024	File no. – Vol. IV Affidavit from page nos. 1 to 7; and exhibits from page nos. 8 to 29
10.	Ghulam Hasan, D.S.P, Ganderbal, Kashmir	Ex. PW-10/A dated 03.06.2024 (inadvertently mentioned as 03.07.2024 in the verification	File no. – Vol. IV Affidavit from page nos. 1 to 5;

		para of the affidavit)	and exhibits from page nos. 6 to 32,
11.	Sh. Arun Kumar Gupta, Assistant Director, ED, Delhi Zonal Office - II	Ex. PW 11/A dt. 12.06.2024	File no. – Vol. IV - B Affidavit from page nos. 1 to 14; and exhibits from page nos. 15 to 195

It needs a highlight that *Witness* Mr. Rajesh Kumar Gupta who appeared as PW – 6, claimed privilege on behalf of Union of India in respect of the documents/confidential material supplied in a sealed cover. Subject to the outcome of claim of privilege, the sealed cover was taken on record. On 14.07.2024, after conclusion of evidence on behalf of UOI, Md. Yasin Malik appeared as a witness on behalf of JKLF–Y. As RW, he tendered his reply dt. 27.05.2024 which he asserted to be supported by an affidavit but the same was objected to by Id. counsel for the UOI on the ground of not being a properly affirmed/sworn affidavit and also that it contained scandalous assertions. Subject to the objection raised, the reply was allowed to be tendered as **Ex. RW 1/A**. Md. Yasin Malik also gave a statement that no other witness is to be examined on behalf of JKLF–Y. Md. Yasin Malik was thereafter *cross-examined* on behalf of UOI.

45. On 14.07.2024, recording of evidence on behalf Union of India as also JKLF–Y concluded and consequently, proceedings were adjourned to 27.07.2024 for addressing final submissions.

46. On 27.07.2024, elaborate submissions were heard on behalf of the Union of India under *section* 123 of the Evidence Act read with *Rule* 3(2) of the UA(P) Rules, 1968 claiming privilege / confidentiality in respect of certain documents submitted in a sealed envelope; and as referred to in the paragraph 13 of the affidavit of the concerned witness from the Ministry of Home Affairs i.e. PW 6. Further, arguments were also addressed on the same day in respect of existence of ‘sufficient grounds’ for JKLF-Y to be declared as an ‘unlawful association’. However, since Md. Yasin Malik needed some time to prepare his arguments to respond to the submissions put forth on behalf of Union of India, the proceedings were further adjourned to 03.08.2024 for submissions on behalf of JKLF–Y. On 03.08.2024 itself, after conclusion of submission/arguments on behalf of JKLF–Y, order in the matter was reserved.

VI. EVIDENCE ADDUCED BEFORE THE TRIBUNAL

PW-1

47. **Mr. Hariprasad K.K.**, S.D.P.O., Kothibagh, Srinagar tendered his affidavit as **Ex. PW 1/A** and deposed that he is the supervising officer of case bearing FIR no. 23/2023 and in course of discharge of his duties as the supervisory officer, had gone through the records of the case files and was well conversant with the facts and circumstances of the case. *Witness* further submitted that he had been duly authorized by the competent authority to depose before the Tribunal and relied on such authorization dt. 04.07.24 as **Ex. PW 1/A-1**.

48. PW 1 deposed that the Central Government in exercise of its powers under sub-section (1) of *section* 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March, 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

49. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 1 stated that as is borne out from the records, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front* (Yasin Malik Faction).

50. PW 1 testified on the basis of the Background Note prepared by the Central Govt. and the govt. records that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for re-unification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

51. PW 1 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terrorist organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI,

Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 1 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J&K.

52. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 23/2023:

53. In regard to criminal cases which have been registered against JKLF-Y, *Witness* deposed that on 09-07-2023, Police Station Kothibagh, Srinagar received an information through reliable sources that Mohd. Yasin Bhat r/o Naseembagh, Srinagar has organized a meeting in *Habib Restaurant* situated at Residency Road and had invited many ex-members of banned association of JKLF-Y along with other separatist activists, who are yet to be identified. As per the information received, this meeting was a cover for undertaking separatist/ unlawful activities and the real intention of this meeting was to rekindle the activities of banned JKLF-Y for waging a war against the Government of India so as to threaten the integrity, sovereignty and security of India. The above said meeting was organized under the garb and cover of *Eid Milan Party*. Based on the above said information, **FIR no. 23/2023** was registered at PS Kothibagh on 09.07.2023 *u/s* 10/13 of UA(P)A and *u/s* 121A of the IPC against the named accused. A true copy of **FIR no. 23/2023** along with its true English translation was relied upon by PW 1 as **Ex. PW 1/1**.

54. *Witness* further deposed that during the investigation of the FIR, statements of witnesses were recorded *u/s* 161 Cr.P.C who corroborated the contents of the written complaint. Since on the basis of statements of the witnesses, and evidence collected, commission of the offence punishable *u/ss* 10/13/18 of UA(P)A *r/w* ss. 121A/201 of the IPC was *prima facie* established, hence a charge-sheet dt. 06.12.2023 was filed before the jurisdictional Court against the accused namely (i) Mohd. Yasin Bhat (ii) Mohd. Rafiq Phaloo @ Salim Nanaji (iii) Syed Rehman Shamas @ Shams-u-din Rehmani (iv) Jahangir Ahmad Bhat (v) Khurshed Ahmad Bhat (vi) Shabir Ahmad Dar (vii) Sajad Hussain Gul (viii) Firdous Ahmad Shah (ix) Gh. Hassan Parray @ Firdousi (x) Saheel @ Suhail Ahmad Mir (xi) Farooq Siddiqui @ Papa @ Dada (presently in Canada and absconding), and (xii) Khurshed Ahmad Mir (also absconding). True copies of the statements of witnesses recorded *u/s* 161 Cr.P.C and *u/s* 164 Cr. P.C., in vernacular, along with their true English translations were relied upon by PW 1 as **Ex. PW 1/2 to Ex. PW 1/4**.

55. *Witness* also relied upon true copies of seizure memos prepared during the investigation of FIR no. 23/2023, in vernacular, along with their true English translations as **Ex. PW 1/5 to Ex. PW 1/16**. PW 1 also relied on true copies of disclosure memos prepared during investigation of FIR no. 23/2023, in vernacular, along with their true English translations as **Ex. PW 1/17** and **Ex. PW 1/18**. Copy of the charge-sheet filed in FIR no. 23/2023 was further relied upon by PW 1 as **Ex. PW 1/19**.

56. PW 1 concluded his testimony by affirming that from the knowledge acquired by him during the course of service and the records of the criminal cases registered against JKLF-Y, it was manifest that JKLF-Y, its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of the territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts of commission and omissions intended to disrupt the territorial integrity of India to bring about cession of lawful constitutional authority of GOI in the territory of Jammu and Kashmir;
- d) promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;
- e) tacitly and tactically supporting militancy and have been a firm preacher of Kashmir separatist movement.
- f) exploiting the situation in the valley by actively provoking and luring the youth of Jammu & Kashmir towards violence so as to disrupt the peace in the valley through announcement of *hartal* calls and issuance of protest calendars, leading to riots which have resulted in injuries to and death of several civilians, police and security forces personnel.

Witness further deposed that sufficient material has been brought on record which manifests that the proscribed organization JKLF-Y, its leaders and members who continued to be its members even after being banned, also have support from across the border and have been actively supporting the separatists to bring about a secession of Jammu and Kashmir from the Union of India.

Cross-examination by Md. Yasin Malik on behalf of JKLF-Y

57. In *cross-examination*, PW 1 stated that he could not admit or deny that JKLF – Y had its origin in 1966 and at that point of time was known as JKNLF. PW 1 was not aware if JKLF came into existence in London in 1976. *Witness* denied, as per his knowledge that in 1988 this organization was being headed by Amanullah Khan or that Mohd. Yasin Malik became its member in 1988 only. Regarding a question on the arrest of Yasin Malik in the year 1990 or 1992, *Witness* replied that as per his affidavit, Yasin Malik was arrested in 1992. PW 1 however submitted that he could not admit or deny if Yasin Malik was arrested on 06.08.1990 as Commander in Chief of JKLF-Y and was brought to Tihar Jail under the *Public Safety Act*. PW 1 also could not admit or deny the suggestion that the split of JKLF-Y happened in 1995 when Yasin Malik got expelled by Amanullah Khan and thereafter, formed his own independent faction i.e. JKLF(Y). *Witness* denied the suggestion that the organization of Yasin Malik never provided any logistic support or did not provide any militant shelter or financial support for any terror activities and also that no FIR has been registered against JKLF-Y or its members after 1994 in regard to terrorist activities. PW 1 *further* denied the suggestion that except accused no. 1 in FIR no. 23/2023 registered at P.S. Kothi Bagh i.e. Mohd. Yasin Bhat, who is in custody, all other accused are **not** the members of JKLF(Y). PW 1 *vol.* that all the accused in the said FIR were members of JKLF(Y). PW 1 also denied the assertion that Khurshid Ahmed Mir was never a part of JKLF(Y), which fact has been stated in paragraph no. 7 of Ex. PW1/19 i.e. the charge-sheet, or that all the persons as mentioned in paragraph no. 12 of the charge-sheet were never associated with the organization JKLF(Y).

PW-2

58. **Saqib Gani** who is currently posted as Dy.S.P. Budgam, Kashmir tendered his affidavit as **Ex. PW 2/A**. *Witness* deposed that he is the supervisory officer of the case bearing FIR no. 61/2019, and in the course of discharge of his duties as the supervisory officer, had gone through the records of the case files and was well conversant with the facts and circumstances of the case. PW 2 further deposed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 04.07.24 as **Ex. PW 2/A-1**.

59. PW 2 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March, 2024, has declared Jammu and Kashmir Liberation Front - Y as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

60. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 2 stated that as is borne out from the records, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

61. PW 2 testified on the basis of the Background Note prepared by the Central Govt. and the govt. records that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for re-unification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

62. PW 2 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terrorist organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 2 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives i.e. secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J&K.

63. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports,

addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 61/2019:

64. In regard to criminal and unlawful activities of JKLF-Y affecting the sovereignty and integrity of the Indian Union, PW 2 deposed that on 23.03.2019, information was received from reliable sources that despite declaration of JKLF-Y as an unlawful organization by the Central Government, the offices of the organization located within the jurisdiction of Police Station Budgam are operating where the members of the proscribed organization are utilizing resources kept in the offices for continuing their illegal activities which are prejudicial to the sovereignty of the country. Based on the said information, **FIR no. 61/2019** was registered at P.S. Budgam on 23.03.2019 u/ss 10, 11 and 13 of UA(P) Act after which investigation commenced. A true copy of the **FIR no. 61/2019**, in vernacular, along with the true English translation of its relevant portion was relied upon by PW 2 as **Ex. PW 2/1**.

65. *Witness* testified that during the course of investigation, statements of material witnesses were recorded under section 161 Cr.P.C who corroborated the information regarding activities of the proscribed organization and continuing illegal activities of its members. True copies of the statements of some of the witnesses recorded u/s 161 Cr.P.C., in vernacular, along with their true English translations have been relied upon by PW 2 as **Ex. PW 2/2** and **Ex. PW 2/3**.

66. PW 2 further deposed that after collecting sufficient material, *prima facie* case was made out and accordingly, charge-sheet dt. 27.04.2023 bearing *Challan* no. 37 of 2019 was filed before the concerned jurisdictional Court and the case is now at the stage of trial. A true copy of the aforesaid charge-sheet filed in FIR no. 61/2019 in vernacular, along with its true English translation was relied upon by PW 2 as **Ex. PW 2/4**.

67. PW 2 concluded his testimony by affirming that from the knowledge acquired by him during the course of service and the records of the criminal cases registered against JKLF-Y, it was manifest that JKLF-Y, its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of the territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts of commission and omissions intended to disrupt the territorial integrity of India to bring about cession of lawful constitutional authority of GOI in the territory of Jammu and Kashmir;
- d) promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;
- e) tacitly and tactically supporting militancy and have been a firm preacher of Kashmir separatist movement.
- f) exploiting the situation in the valley by actively provoking and luring the youth of Jammu & Kashmir towards violence so as to disrupt the peace in the valley through announcement of *hartal* calls and issuance of protest calendars, leading to riots which have resulted in injuries to and death of several civilians, police officials and security forces personnel.

Witness further deposed that sufficient material has been brought on record which manifests that the proscribed organization JKLF-Y, its leaders and members who continued to be its members even after being banned, also have support from across the border and have been actively supporting the separatists to bring about a secession of Jammu and Kashmir from the Union of India.

Cross-examination by Md. Yasin Malik on behalf of JKLF-Y.

68. In *cross-examination*, PW 2 stated that he could not admit or deny that JKLF - Y had its origin in 1966 and at that point of time was known as JKNLF. PW 2 was not aware if JKLF came into existence in London in 1976. *Witness* denied, as per his knowledge that in 1988 this organization was being headed by Amanullah Khan or that Mohd. Yasin Malik became its member in 1988 only. Regarding a question on the arrest of Yasin Malik in the year 1990 or 1992, *Witness* replied that as per his affidavit, Yasin Malik was arrested in 1992. PW 2 however submitted that he could not admit or deny if Yasin Malik was arrested on 06.08.1990 as commander-in-chief of JKLF-Y and was brought to Tihar Jail under the *Public Safety Act*. PW 2 also could not admit or deny the suggestion that the split of JKLF-Y happened in 1995 when Yasin Malik got expelled by Amanullah Khan and thereafter, formed his own independent faction i.e. JKLF(Y). *Witness* denied the suggestions that the organization of Yasin Malik never provided any logistic support or did not provide any militant shelter or financial support for any terror activities and also that no FIR has been registered against JKLF-Y or its members after 1994 in regard to terrorist activities. PW 2 further denied the suggestion that despite there being thousands of members of JKLF(Y), and there being operative offices in J&K, none of the members except Yasin Malik is in jail. *Witness* vol. that those members of JKLF-Y who were arrested are

presently on bail except Yasin Malik. It was *also denied* by PW 2 to be correct that there is no serious crime made out against those who have been admitted on bail by the competent court.

PW-3

69. **Rameez Rashid Bhat**, Deputy Superintendent of Police, Hajin, Bandipora, Kashmir tendered his affidavit as **Ex. PW3/A** and deposed that he was the supervising officer of the case bearing FIR no. 11/2019 and in course of discharge of his duties as the supervisory officer, had gone through the records of the case files, and consequently was well conversant with the facts and circumstances of the case. *Witness* deposed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 04.07.24 as **Ex. PW 3/A-1**.

70. PW 3 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

71. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 3 stated that as is borne out from the records, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

72. PW 3, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for re-unification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

73. PW 3 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terrorist organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 3 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J & K.

74. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 11/2019:

75. Concerning secessionist activities of JKLF-Y, PW 3 deposed that on 25.03.2019, information was received from reliable sources that despite declaration of JKLF-Y as an unlawful organization, a number of persons still continue to be the members of the proscribed organization and were carrying out illegal activities within the jurisdiction of Police Station Hajin which are prejudicial to the security, territorial integrity and sovereignty of India. Based on the said information, **FIR no. 11/2019** was registered at P.S. Hajin on 25.03.2019 u/ss. 10 and 13 UA(P) Act and an investigation was initiated. A true copy of the **FIR no. 11/2019**, in vernacular, along with the true English translation of its relevant portion was relied upon as **Ex. PW 3/1**.

76. *Witness* further deposed that in the course of investigation of the FIR, statements of material witnesses were recorded u/s 161 Cr.P.C who corroborated the information regarding continuing illegal activities of the proscribed organization and continued membership of the unlawful organization. PW 3 testified that leading to the statements, raids were conducted and incriminating materials were seized. Accused Mushtaq Ahmad Wani was arrested, and his confessional statement was recorded. True copies of the statements of some of the witnesses recorded u/s 161 Cr. P.C.

in vernacular along with their true English translations were relied upon by PW 3 as **Ex. PW 3/2 to Ex. PW 3/3**. *Witness* also relied upon a true copy of a seizure memo prepared during the course of investigation, dated 16.06.2019, in vernacular, along with its true English translation as **Ex. PW 3/4**. A true copy of the confessional statement dated 07.09.2019 of accused Mushtaq Ahmed Wani in vernacular along with its true English translation was relied upon as **Ex. PW 3/5**. PW 3 further deposed that after collecting sufficient material which *prima facie* established the contents of the FIR, a chargesheet dt. 17.08.22 bearing *Challan* no. 39 of 2022 was filed before the concerned jurisdictional Court and the case is now at the stage of trial. A true copy of chargesheet bearing *Challan* no. 39 of 2022 filed in FIR no. 11/2019 in vernacular along with its true English translation was relied upon as **Ex. PW 3/6**.

77. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 3 further *testified* that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) promoting anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country;
- e) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- f) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti-India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in the injuries to and death of several civilians, police officials and Security Forces personnel.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

78. In *cross-examination*, PW 3 stated that he could not admit or deny that JKLF – Y had its origin in 1966 and at that point of time was known as JKNLF. PW 3 was not aware if JKLF came into existence in London in 1976. *Witness* denied, as per his knowledge that in 1988 this organization was being headed by Amanullah Khan or that Mohd. Yasin Malik became its member in 1988 only. Regarding a question on the arrest of Yasin Malik in the year 1990 or 1992, *Witness* replied that as per his affidavit, Yasin Malik was arrested in 1992 *but* admitted it to be correct that Mohd. Yasin Malik was arrested in 1990 while he was commander-in-chief of JKLF-Y. However, *witness* could not confirm whether Yasin Malik was brought to Tihar Jail under the *Public Safety Act*. PW 3 also could not admit or deny that the split of JKLF-Y happened in 1995 when Yasin Malik got expelled by Amanullah Khan and thereafter, formed his own independent faction i.e. JKLF(Y). *Witness* denied the suggestions that the organization of Yasin Malik never provided any logistic support or did not provide any militant shelter or financial support for any terror activities and also that no FIR has been registered against JKLF-Y or its members after 1994 in regard to terrorist activities. PW 3 further denied the suggestion that despite there being thousands of members of JKLF(Y), and there being operative offices in J&K, none of the members except Yasin Malik is in jail. *Witness* vol. that those members of this Organization who had been arrested may or may not be on bail. It was further denied, as being incorrect, the suggestion that there was no serious crime made out against those who have been admitted to bail by the competent court. In regard to a question concerning other FIR's having been registered against JKLF-Y, *Witness* stated that as per his affidavit, FIR no. 11/2019 was registered at P.S. Hajin against members of JKLF(Y) but he was not aware if any other FIRs have been registered thereafter against any member of JKLF(Y).

PW-4

79. **Sh. Shabir Ahmad**, currently posted as S.H.O, P.S. Pulwama, Kashmir tendered his affidavit as **Ex. PW 4/A** and deposed that he was the Investigating officer of the case registered as FIR no. 44/2019 and as such was well conversant with the facts and circumstances of the case. *Witness* further affirmed that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 04.07.24 as **PW 4/ A-1**.

80. PW 4 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Y as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central

Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

81. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 4 stated that as is borne out from the records, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

82. PW 4, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for reunification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

83. PW 4 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terrorist organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 4 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J & K.

84. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 44/2019:

85. *Witness* further testified that despite JKLF-Y being declared by the Central Government to be an unlawful organization, it is continuing to operate its offices at different places within the jurisdiction of Police Station Pulwama through its representatives and is causing threat to the sovereignty of the Union of India. Consequently, **FIR no. 44/2019** was registered at PS Pulwama on 30.03.2019 u/ss 10, 11 & 13 of the UA(P) Act and an investigation was initiated. A true copy of the FIR no. 44/2019, in vernacular, along with true English translation of its relevant portion was relied upon as **Ex. PW 4/1**.

86. PW 4 affirmed on oath that during the investigation, statements of material witnesses were recorded under section 161 Cr.P.C who corroborated the information regarding operation of offices of the proscribed organization by its members. Consequently, leading to the statements and information, searches were conducted at different places and incriminating materials were seized. True copies of the statements of some of the witnesses recorded u/s 161 Cr.P.C., in vernacular, along with their true English translations were relied upon as **Ex. PW 4/2 to PW 4/3**. A true copy of the *seizure memo* dt. 24.06.2023 prepared during investigation was relied upon as **Ex. PW 4/4**.

87. *Witness* further stated that the investigation conducted till date and which is still ongoing *prima facie* establishes commission of the alleged offences. However, it is yet to be concluded though the same is at its fag end and a chargesheet is also likely to be filed soon. Explaining the delay in conclusion of investigation, PW 4 stated that the investigations faced significant challenges due to reorganization of the State of Jammu and Kashmir into two separate Union Territories and subsequently, due to lockdowns on account of Covid-19. *Witness* elaborated that significant delay has also been caused due to the climate of fear created by the proscribed organization and other separatist organizations such that individuals are deterred from coming forward to provide statements, hindering the progress of the investigations.

88. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 4 further *testified* that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) promoting anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country;
- e) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- f) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti- India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in injuries to and death of several civilians, police officials and Security Forces personnel.

89. PW 4 concluded his testimony by further affirming that it stood established that the activities of JKLF-Y were aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and that the members of JKLF-Y are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

90. In *cross-examination*, PW 4 stated that he could not admit or deny that JKLF-Y had its origin in 1966 and at that point of time was known as JKLF. PW 4 was not aware if JKLF came into existence in London in 1976. *Witness* denied, as per his knowledge that in 1988 this organization was being headed by Amanullah Khan or that Mohd. Yasin Malik became its member in 1988 only. Regarding a question on the arrest of Yasin Malik in the year 1990 or 1992, *Witness* replied that as per his affidavit, Yasin Malik was arrested in 1992 *but* stated that he could neither admit or deny that Mohd. Yasin Malik was arrested in 1990 while he was commander-in-chief of JKLF-Y or whether Yasin Malik was brought to Tihar Jail under the *Public Safety Act*. PW 4 also could not admit or deny the suggestion that the split of JKLF-Y happened in 1995 when Yasin Malik got expelled by Amanullah Khan and thereafter, formed his own independent faction i.e. JKLF(Y). *Witness* denied the suggestions that the organization of Yasin Malik has never provided any logistic support or did not provide any militant shelter or financial support for any terror activities and also that no FIR has been registered against JKLF-Y or its members after 1994 in regard to terrorist activities. PW 4 further denied the suggestion that despite there being thousands of members of JKLF(Y), and there being operative offices in J&K, none of the members except Yasin Malik is in jail. *Witness* vol. that those members of this organization who had been arrested may or may not be on bail. It was further denied, as being incorrect, the suggestion that there was no serious crime made out against those who have been admitted to bail by the competent court. In regard to a question concerning other FIR's having been registered against JKLF-Y, *Witness* stated that as per his affidavit, FIR no. 44/2019 was registered at P.S. Pulwama against members of JKLF(Y) but he was not aware if any other FIRs have been registered thereafter against any member of JKLF(Y).

PW-5

91. **Sh. Showkat Ahmad Mir**, currently posted as Inspector, P.S. Handwara, Kashmir, tendered his affidavit as **Ex. PW 5/A** and deposed that he was the supervising officer of case bearing FIR no. 42/2019 and was well conversant with the facts and circumstances of the case. *Witness* further stated that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 11.07.24 as **Ex. PW 5/A-1**.

92. PW 5 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967, vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

93. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 5 stated that subsequently, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

94. PW 5, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for reunification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an

armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

95. PW 5 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terrorist organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 5 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J & K.

96. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 42/2019:

97. PW 5 testified that an information was received from reliable sources that despite ban having been imposed on JKLF-Y, activities of the organization were still being carried on by its members which activities were against the integrity and sovereignty of the nation. Based on the information, **FIR no. 42/2019** was registered on 23.03.2019 u/ss 10 and 13 of the UA(P) Act at P.S. Handwara, district Kupwara and investigation was consequently conducted. A true copy of the **FIR no. 42/2019**, in vernacular, along with true English translation of its relevant portion was relied upon as **Ex. PW 5/1**.

98. *Witness* deposed on oath that during the investigation, statements of material witnesses were recorded u/s 161 and 164 of Cr.P.C who corroborated the information regarding continuation of unlawful activities of the proscribed organization by its members despite the ban and also of their involvement in terrorist activities. Leading to the said information and statements, accused Rafiq Ahmad War was arrested on 30.06.2019. True copies of the statement of some of the material witnesses recorded u/s 161 and 164 Cr.P.C in vernacular along with their true English translations were relied upon as **Ex. PW 5/2 to PW 5/7**. A true copy of arrest memo dt. 30.06.2019 was relied upon as **Ex. PW 5/8**. PW 5 further deposed that after collecting sufficient material which *prima facie* establishes the contents of the FIR, a charge-sheet bearing *Challan* no. 4/2024 was filed before the concerned jurisdictional Court on 20.02.2024 and the case was now at the stage of framing of charges. A true copy of charge-sheet bearing *Challan* no. 4 of 2024 filed in FIR no. 42/2019, in vernacular, along with its true English translation has been relied upon as **Ex. PW 5/9**. *Witness* explained that the investigation faced significant challenges due to reorganization of the State of Jammu and Kashmir into two separate Union Territories and subsequently, due to the lockdown situation created by Covid-19. PW 5 elaborated on the aspect of delay that significant delay had been caused in the investigation due to the climate of fear created by the proscribed organization and other separatist organizations such that individuals are deterred from coming forward to provide statements, hindering the progress of the investigations.

99. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 5 further *testified* that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) promoting anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country;

- e) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- f) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti-India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in injuries to and death of several civilians, police officials and Security Forces personnel.

100. PW 5 concluded his testimony by further affirming that it stood established that the activities of JKLF-Y were aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and that the members of JKLF-Y are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

101. In *cross-examination*, PW 5 stated that he could not admit or deny if Yasin Malik as commander-in-chief of JKLF (Y) was arrested on 06.08.1990. *Witness* denied the suggestion that no FIR has been registered against JKLF-Y after 2019. PW 5 *vol.* to state that many FIRs have been registered in different districts against the workers of JKLF-Y. He further stated that he had only given the details of the criminal case which is pertaining to his Police Station and could not state about other districts/police stations about which the witnesses from those respective districts can give the details. PW 5 further testified that there were many persons supporting militancy, who belonged to JKLF-Y, and had been arrested but he could not state if they were still under arrest or not. PW 5 admitted it to be correct that in his Police Station, no FIR subsequent to the one mentioned in the affidavit, had been registered against JKLF-Y.

PW-6

102. Sh. Rajesh Kumar Gupta, currently posted as *Director (Counter Terrorism)*, MHA, GOI, tendered his affidavit as **Ex. PW 6/A** and deposed that he was well conversant with the facts and circumstances of this Reference since he has been dealing with all official files concerning JKLF-Y in his current position. *Witness* relied upon a copy of the official noting dt. 04.07.24 vide which he had been authorized to appear before this Tribunal as **Ex. PW 6/A-1**. The complete file containing the said noting was submitted by the witness in a sealed cover.

103. PW 6 further deposed that the Notification no. S.O. 1416 (E) dt. 15th March 2024, issued by the Central Government is based on the information and material received from the central intelligence and investigation agencies and Criminal Investigation Department of UT of Jammu and Kashmir, with regard to the unlawful activities of JKLF-Y. On the basis of information received from the intelligence and investigation agencies of the Central Government and the UT of Jammu and Kashmir regarding unlawful activities of JKLF-Y, a note was prepared for the consideration of the Cabinet Committee on Security. Thereafter, the Cabinet Committee on Security took the decision and approved the proposal contained in the above note, in the meeting held on 7th March, 2024. Accordingly, the declaration concerning JKLF-Y to be an 'unlawful association' was made and published vide Notification dated 15th March, 2024, bearing no. S.O. 1416 (E). A copy of the said Notification published in the official gazette dated 15.03.2024 was relied upon as **Ex. PW 6/1**.

104. *Witness* testified that in terms of sub-section (1) of *section 5* read with sub-section (1) of the *section 4* of the Unlawful Activities (Prevention) Act, 1967, vide Notification dated 5th April 2024, bearing no. S.O. 1627 (E), this Tribunal was constituted. *Witness* further testified that the *Background Note* submitted to this Tribunal in terms of *Rule 5* of the Unlawful Activities (Prevention) Rules 1968, vide letter dated 9th April 2024, is based upon the material/information as contained in the concerned file. A copy of the said *Background Note* was relied upon as **Ex. PW 6/2**.

105. PW 6 further stated that earlier, on the basis of unlawful activities of JKLF-Y, the Central Government had declared the JKLF-Y as an 'unlawful association' vide Gazette of India Notification no. S.O. 1403 (E) dt. 22nd March 2019 for a period of five years under the Unlawful Activities (Prevention) Act, 1967. Subsequently, the Unlawful Activities (Prevention) Tribunal constituted to adjudicate whether or not, there is sufficient cause for declaring JKLF-Y as an unlawful association, had also confirmed this notification vide its Order dt. 20th Sept. 2019 which was published in the Gazette of India bearing Notification no. S.O. 3460 (E) dt. 25th Sept. 2019.

106. *Witness* further testified that various cases registered by the Jammu and Kashmir Police, National Investigation Agency and Directorate of Enforcement throw light on the unlawful and subversive activities of the chairman and activists of JKLF-Y. The concerned officers of the UT of Jammu and Kashmir have filed their affidavits in evidence before this Tribunal in respect of cases registered in Jammu and Kashmir against the activists of JKLF-Y under various provisions of law including the Unlawful Activities (Prevention) Act, 1967 and IPC. Further, the officers concerned of the National Investigation Agency and Directorate of Enforcement have also filed respective affidavits in evidence before this Tribunal in respect of the cases registered against the Chairman of JKLF-Y under various sections of the Unlawful Activities (Prevention) Act, 1967, Indian Penal Code and Prevention of Money Laundering Act.

107. PW 6 further submitted that in addition to the evidence already having been adduced by various witnesses during the course of proceedings before this Tribunal in support of the declaration as contained in Notification no.

S.O. 1416 (E), various intelligence inputs show that JKLF-Y is continuing its unlawful activities which are prejudicial to the security of the country. Inputs received from intelligence agencies clearly bring out that JKLF-Y is continuously indulging in activities for seeking separation of Jammu and Kashmir from the Union of India and considering all these facts, circumstances and evidence adduced before this Tribunal, the JKLF-Y has been banned under the UA(P)A, 1967. *Witness* further stated that the declaration of JKLF-Y as an unlawful association is not only justified but is necessary in the interest of security, sovereignty and territorial integrity of India since the chairman and activists of the JKLF-Y have been indulging in radicalizing the youth through provocative speeches aimed at separation of Jammu and Kashmir from Union of India.

108. During the course of his testimony, PW 6 submitted the original file (duly indexed) containing the above-mentioned central intelligence reports/inputs for the perusal of this Tribunal and deposed that the Central Government is seeking privilege for the said original file, relying on *section 123* of the *Indian Evidence Act* read with *section 3(2)* and *proviso* to **Rule 5** of Unlawful Activities (Prevention) Rules of 1968. *Witness* submitted that the contents of the original file are privileged and confidential in nature and hence, 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 the Unlawful Activities (Prevention) Rules, 1968. Subject to the claim of privilege raised on behalf of the Central Govt. by PW 6, the original file containing confidential inputs/reports was taken on record as **Ex. PW 6/3**.

109. Responding to the reply dt. 27.05.2024 filed by Yasin Malik on behalf of JKLF-Y after statutory Notice u/s 4(2) of the UA(P) Act was directed to be issued by this Tribunal vide the order dt. 16.4.2024, *Witness* stated that in his reply, Yasin Malik has not refuted the grounds as detailed in the Background Note on the basis of which the Notification has been issued by the Central Government declaring JKLF-Y to be an unlawful association and infact, has admitted that JKLF-Y was involved in militant activities for secession of Jammu and Kashmir from the Union of India and further that till date offices of JKLF-Y even in the international sphere continue to operate and work towards their sole aim of secession of Jammu & Kashmir from the Indian Union. As per the submission of the witness, the said reply is devoid of any merit and was merely a personal note prepared by Yasin Malik which does not serve the purpose of the present proceedings before the Tribunal in any manner.

110. PW 6 concluded his testimony by submitting that from the cogent and irrefutable evidence which has emerged till now, it is clear that JKLF-Y is continuously encouraging veiled terrorist activities and inciting people to bring about a secession of a part of the territory of India from the Union. Such activities of JKLF-Y are aimed at causing disaffection, disloyalty and dis-harmony by promoting feeling of enmity and hatred against the lawful government in a manner which is prejudicial to the territorial integrity and sovereignty of the India and consequently, the Notification no. S.O. 1416 (E) dated 15th March 2024 may be confirmed and upheld in the national interest.

This witness was not cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

PW 7

111. **Sh. B.B. Pathak**, currently posted as DSP, NIA, Delhi tendered his affidavit as **Ex. PW7/A** and deposed that he was the current investigating officer of the case registered as RC-10/2017/NIA/DLI and in course of discharge of his duties as the investigating officer, had gone through the records of the case files and was well conversant with the facts and circumstances of the case.

112. In support of the grounds necessitating the notification declaring JKLF-Y as an 'unlawful association', PW 7 deposed that the Central Government, in exercise of its powers conferred under sub-section (1) of *section 3* of the UA(P) Act, 1967 has declared the *Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction* to be an unlawful association vide Notification number S.O. 1416 (E) dt. 15.03.2024.

113. PW 7 further deposed that National Investigation Agency being India's Federal Counter Terrorism Investigation Agency has investigated the case RC-10/2017/NIA/DLI in which anti-national and unlawful activities of accused Mohd. Yasin Malik @ Aslam have surfaced. Detailing the facts and circumstances, PW 7 testified that on 30.05.2017, the Ministry of Home Affairs, GOI issued the *Order* no. 11011/2017-IS-IV, in exercise of its powers conferred under *section 6(5)* read with *section 8* of the NIA Act, 2008, directing the NIA to register a 'Regular Case' and take up the investigation of the same as credible information had been received by the Central Government that Hafiz Muhammad Saeed and other secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with active militants of proscribed terrorist organizations *i.e.* Hizb-ul-Mujahideen, Dukhtaran-e-Millat, Lashkar-e-Taiba and other terrorist organizations/associations 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, damage to public property and waging war against India. Accordingly, on 30.05.2017, NIA registered a case being RC-10/2017/NIA/DLI under *sections 120B, 121 & 121A* of the Indian Penal Code and *sections 13, 16, 17, 18, 20, 38, 39 and 40* of the Unlawful Activities (Prevention) Act, 1967. A Copy of the

FIR i.e. RC-10/2017/NIA/DLI along with MHA Order no. 11011/2017-IS-IV were relied upon by PW 7 as **Ex. PW 7/1**.

114. *Witness* testified that investigation revealed that various terrorist organisations *viz.* Jammu & Kashmir Liberation Front, HM, LeT, in connivance with various secessionist groups particularly the *APHC/Hurriyat Conference* and its constituents funded by Pakistan and its agencies have entered into a criminal conspiracy to wage war against the Government of India by following the ideology of ‘freedom’ i.e. secession of J&K from the Union of India. *Witness* deposed 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 has been consistently promoted by Pakistan to fulfil its motive to establish its claim over J&K. In the year 2008, the APHC split into three factions. One faction was headed by Mirwaiz Umar and is called as APHC-M, the 2nd is led by Syed Ali Shah Geelani and is called as APHC-G whereas the 3rd faction is led by Yasin Malik who is head of JKLF. Syed Ali Shah Geelani, Mirwaiz Umar Farooq and Yasin Malik together had formed the **Joint Resistance Leadership (JRL)** which used to promote the cause of secession of Jammu & Kashmir from the Union of India through calendar of protests mentioning the precise dates and places of protests, demonstrations etc. which were conveyed to the general population through newspapers and social media platforms. These protest calendars had detailed instructions for *hartal*, picketing, blockage of routes and roads, suspension of public transport, instructions for organizing processions and marches, writing of graffiti on the walls, exhorting people to play ‘*azadi taranas*’ (songs) and complete shutdown of markets/economic activities. These protest calendars would exhort and provoke people to agitate against the State and the security forces, showing defiance against the Government of India. During the course of investigation, protest calendars for the period 06.08.2016 to 16.08.2016 were recovered and seized during a search conducted in the house of one of the leaders of APHC namely Altaf Ahmad Shah @ Fantoosh. Investigation further revealed that during the period as mentioned in the seized protest calendars, the protests were very violent and led to the registration of 89 cases of stone-pelting and other unlawful activities including arson, school burning, damage to the public property and vehicles etc. In the said incidents, 07 persons got killed and 175 persons were injured. Arrests of 366 persons involved in such activities were carried out in Srinagar. As per the information received from BSF, 40 BSF personnel got injured who were dealing with stone-pelting incidents from Sept. 2016 to June 2017. APHC, though poses as a political front, however it is manifest that agenda of APHC is to create an atmosphere conducive to the fulfilment of the goal of secession of Jammu & Kashmir from the Union of India. The secessionist agenda of the Hurriyat is also reflected on its website www.hurriyatconference.com, which speaks about “Freedom struggle” and that “People of Jammu & Kashmir have been fighting against Indian Occupation”.

115. PW 7 further testified that pursuant to the investigation carried out by the NIA in RC-10/2017/NIA/DLI, charge-sheet dated 18.01.2018 was filed before the NIA Special Court, New Delhi against 12 accused persons, including two designated terrorists based in Pakistan, namely Hafiz Muhammad Saeed who is heading the banned terror outfit ‘LeT’ and Mohd. Yusuf Shah @ Salahuddin who is heading the banned terror outfit ‘HM’, both of whom have been declared as absconders. The said charge-sheet also includes other arrested accused persons who are the leaders of APHC *viz.* (i) Aftab Ahmad Shah @ Shahid-ul-Islam (ii) Altaf Ahmad Shah @ Fantoosh (since expired) (iii) Nayeem Ahmad Khan (iv) Farooq Ahmad Dar @ Bitta Karate (v) Mohammad Akbar Khanday (vi) Raja Mehrajuddin Kalwal (vii) Bashir Ahmad Bhat @ Peer Saifullah and (viii) Zahoor Ahmad Shah Watali, who is a ‘*hawala*’ conduit and who was involved in providing funds to APHC for terrorists and secessionist activities leaders, all of whom have been charge-sheeted u/ss 120B, 121, 121A & 124A of the Indian Penal Code and *sections* 13, 16, 17, 18, 20, 38, 39 & 40 of the UA(P) Act, 1967. The case was further investigated in terms of *section* 173 (8) of Cr.P.C. Copy of the 1st charge-sheet dated 18.01.2018 was relied upon by PW 7 as **Ex. PW 7/2**.

116. *Witness* further stated that during the course of further investigation, active role of Yasin Malik who heads the JKLF-Y surfaced in carrying out secessionist activities including organising protests and stone pelting incidents, and in providing tacit help to terror activities. PW 7 affirmed that JKLF became a part of a larger consortium called ‘All Parties Hurriyat Conference (APHC)’ to give a political mask to the militant activities of various secessionist groups so that their so-called ‘cause’ of securing secession of Jammu and Kashmir through terrorist activities gets a wider acceptability before the larger world. This was done as a part of a well-thought-out conspiracy by Yasin Malik along with other accused persons to show the Indian Government in poor light in front of the world and to divert the attention from the crimes against humanity in Jammu & Kashmir.

117. *Witness* further stated on oath that during further investigation, it has been established that Yasin Malik had a close nexus with militant and terrorist organisations, and they were collaborating to undermine the territorial integrity of India to achieve the ultimate goal of secession of Jammu & Kashmir from the Indian Union. This is demonstrated from a *whatsapp* message sent by co-accused Ayaz Akbar Khanday to Mirwaiz Umar Farooq on 14.05.2017, and retrieved from the mobile phone of accused Ayaz Akbar Khanday, which reads as follows:

“Syed Ali Geelani, Mirwaiz Umar Farooq and **Mohammad Yasin Malik** on Sunday in a joint statement asked all political and militant organization to follow freedom struggle with vision and wisdom. Appealing to maintain unity, the leaders said that it is time to remain united and follow cherished goal with spirit of persistence and unity among all concerned factions. Freedom movement is in its crucial stage, said

resistance leaders and added that we need to be careful as our enemy can derive advantage from prevailing crises."

118. PW 7 further testified that the seizure of a copy of *Hizb-ul-Mujahideen's* letter-head from the premises of Yasin Malik wherein the terrorist organizations viz. Hizb-ul-Mujahideen, Lashkar-e-Taiba and Jaish-e-Muhammad jointly warned the people who supported the football tournament/ game in the valley, to disengage themselves from the organisers of this game and to show loyalty and "faithfulness" to the freedom struggle, clearly shows the association of Yasin Malik with terrorist organizations and their common aim which is to secure secession of Jammu & Kashmir from the Union of India.

119. PW 7 also deposed that the statements recorded during the investigation disclose that for carrying forward its agenda of secession, the APHC has a well-established network of cadres starting from the village level to the district level in Kashmir valley who, at the instance of APHC leaders, at the grass-root level, propagate the ideology of secession among the masses, collect donations from the public, instigate the youth for anti-India activities, facilitate them to join terrorist organisations, arrange safe hide-outs for them, and in case they are located by security forces, these cadres mobilise the public for obstructing security forces and organise stone-pelting. In case the terrorists get killed in action, these local cadres create massive lawlessness, spread insurrectionary and hateful messages against the Indian State on social and mass media. Further, the APHC leaders or their representatives go and attend the funerals of killed terrorists, hail them as 'martyrs' and instigate many more youth to follow their path, thus pushing an entire generation into ranks of terrorist organisations.

120. PW 7 further deposed that during the investigation, sms messages of July 2016, retrieved from the mobile phone of accused Altaf Ahmad Shah @ Fantoosh¹ clearly reveals that the 'Joint Resistance Leadership' i.e. Syed Ali Shah Geelani, Mirwaiz Umar Farooq and Yasin Malik incite people to hold protests, 'hartals' and complete shut-downs for seeking 'Right to self-determination', 'ask *Imams* to lead the protests in mosques' and tell traders etc. not to go to police when they are called there. It has also been revealed from the SMS messages that they were particular about sending the press notes regarding strike-calls given by them so that maximum number of people can be mobilized for the protests. **Further**, during the investigation, certain incriminating emails have also been recovered which show that Yasin Malik has set up an elaborate structure and mechanism across the world to raise funds for carrying out terrorist and other unlawful activities in Jammu and Kashmir in the name of "Freedom Struggle". Giving examples, PW 7 deposed that Tariq Sharif is JKLF Finance Coordinator for U.K Zone and Khwaza Manzoor Ahmed Chishti is JKLF Finance Secretary for Saudi Arabia. Such money is transferred to India through various channels and is then pumped into Kashmir for running secessionist agenda. One of the emails retrieved from the email inbox of Yasin Malik is the one sent by Khawaza Manzoor Ahmed Chishti, Secretary Finance- JKLF, Riyadh to Tariq Sharif, who is the Finance Coordinator of UK Zone for JKLF. In the highlighted email, both had discussed about their 'short term' and 'long term' financial plans for their offices in India & PoK.

121. *Witness* further testified that during the investigation, it has further been established that Yasin Malik had a close connection with banned terror organization *Lashkar-e-Taiba*, which is revealed from an email sent by Mohd. Hussain Khan to Arif Shafi Wani GK and copied to Yasin Malik on 24.08.2014. This email has the transcript of an interview given by Yasin Malik to Rajat Sharma in a programme titled '*Aap Ki Adalat*' wherein Yasin Malik stated that he had visited *Lashkar-e-Taiba's* camp in 'Mureed' where Hafiz Saeed who is head of 'LeT' and a designated global terrorist, had organized a felicitation event for him, and he had addressed *Lashkar* cadres there. Another email dated 03.07.2017 titled as 'Open letter to United States of America' retrieved from the e-mail account of Yasin Malik shows his support, solidarity and unity with Syed Salahuddin, the chief of banned terror organization *Hizb-ul-Mujahideen*, when the US declared him a 'global terrorist'.

122. Highlighting the role of Yasin Malik in utilising funds through the *hawala* route, PW 7 deposed that investigation has revealed that Yasin Malik was receiving funds from Pakistan through a hawala conduit, which is substantiated by a document seized from the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of co-accused Zahoor Ahmad Shah Watali who himself was the biggest *hawala* operator in the Kashmir valley. The said document shows Yasin Malik to have received Rs. 15,00,000/- from co-accused Zahoor Ahmad Shah Watali on 07.04.2015 which tranche was a part of the funds received by Zahoor Watali from Hafiz Sayeed. Consequently, based on the evidence collected during further investigation, 2nd supplementary charge-sheet was filed on 04.10.2019 against five accused persons, namely Mohd. Yasin Malik, Shabir Ahmad Shah, Masarat Alam Bhat, Syeda Aasiya Andrabi, and Abdul Rashid Sheikh u/ss 120B, 121, 121A & 124A IPC and sections 13, 16, 17, 18, 20, 38 & 39 of the UA (P) Act. *Witness* highlighted that the anti-national and secessionist activities of Yasin Malik are detailed in the paras 17.3.1 to 17.3.43 of the 2nd *supp.* charge-sheet. A Copy of the 2nd *supp.* Charge-sheet was relied upon by PW 7 as **Ex. PW 7/3**. Subsequently, charges have also been framed on 16.03.2022 against Yasin Malik for the offences punishable under sections u/ss 120B IPC, 121 IPC, 121A IPC, 13 UA(P) Act r/w sections 120B IPC, 15 UA(P) Act r/w sections 120B IPC, and sections 17, 18, 20, 38 & 39 of UA (P) Act. A copy of the order 'on charge' dt. 16.03.2022 passed by

¹ Accused no. 4 in the first charge-sheet filed by the NIA

the Id. Special Judge, NIA, New Delhi was relied upon as **Ex. PW 7/4**. Yasin Malik had pleaded guilty to the charges framed against him following which he was convicted of all the 'charges' and sentenced to R.I. for life, and a fine of Rs. 10 lakhs has also been imposed on him. A copy of the order dated 25.05.2022 convicting Yasin Malik was relied upon as **Ex. PW 7/5**.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

123. In his *cross-examination*, PW 7 deposed that he could not *admit or deny* that APHC had split in 2002 and not 2008 as stated in *para 7* of his affidavit, and *vol.* to state that his testimony is on the basis of investigations carried out in FIR no. RC-10/2017/NIA/DLI. *Witness* further submitted that he could not *admit or deny* that S.P. Faisal Qyum along with SDPO of Kothibagh, SHO P.S. Maisuma and the police team came and arrested Yasin Malik from his residence and detained him in Police Stn. Kothibagh for a few days and thereafter, he was shifted to Srinagar Central Jail where he was detained for one and half months *or* that Yasin Malik, thereafter, was shifted to JIC. PW 7 denied the suggestion that because Yasin Malik was detained in custody from 08.07.2016 till the 1st week of November, 2016, he could not have indulged in anti-national activities during that period.

124. PW 7 further deposed that he could not *admit or deny* if Zakir Mussa of *Al Qaida* gave a speech, which was made viral by *Al Qaida* following their pattern of propaganda where name of Mr. Yasin Malik was taken. *Witness* stated that he could not admit or deny whether the three posters which were recovered from the house of Yasin Malik, form a part of the charge-sheet. PW 7 denied the suggestion that Yasin Malik had never ever met Afzal Guru. *Witness* further denied the suggestions that the contents of *para 22* of his affidavit were wrong *or* that the email referred therein was not sent by Yasin Malik. PW 7 also denied the suggestions that the particulars of the email referred to in *para 22* of his affidavit were incorrect *or* that the contents of *para 23* of his affidavit are incorrect. PW 7 further denied the suggestion to the effect that the 'open letter to United States of America' dated 03.07.2017, referred in *para 24* of his affidavit, which was written by Yasin Malik, was an act of being a 'Peace Maker'. *Witness* denied the suggestion that the contents of *para 25* of his affidavit are incorrect *or* that the contents of *para 26* of his affidavit are **also** incorrect. PW 7 specifically denied the assertion of Yasin Malik that he had not received Rs. 15 lakhs from co-accused Zahoor Ahmed Shah Wadali on 07.04.2015 and *volunteered* to state that the contents of this paragraph were based on the documents recovered during the investigations.

PW 8

125. **Sh. Munshi Ghulam Nabi (PW-8)**, currently posted as Dy.S.P., CIK, Kupwara tendered his affidavit as **Ex. PW8/A** and deposed that he was the investigating officer of case bearing FIR no. 3 of 1990 and having gone through the case records, was well conversant with the facts and circumstances of the case. *Witness* further stated that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 10.07.24 as **Ex. PW 8/A - 1**.

126. PW 8 deposed that the Central Government in exercise of its powers under sub-section (1) of *section 3* of the UA(P) Act, 1967 vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction to be an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

127. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 8 stated that subsequently, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

128. PW 8, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for reunification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

129. PW 8 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terror organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 8 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for

furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J&K.

130. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 03/1990:

131. Regarding the secessionist activities of JKLF-Y, PW 8 deposed that on 04.04.1990, a letter was received from SSP, CID, Srinagar disclosing that terrorist organizations such as HM, JKLF, Hizballah, Ala Tigers, Peoples League and few others have conspired to create public disorder with the specific purpose of disrupting the constitutionally established Govt. in J&K by resorting to violence and making efforts to secede the state of J&K from Union of India. It was further disclosed in the letter that in view to achieve their objective, these organizations have been recruiting large number of youths and are sending them to POK for arms training. It was also disclosed that the said organizations, in collaboration and as well as with the help of Pakistan Government, have been obtaining firearms, explosives etc. for killing innocent people including Govt. Officials and security forces to achieve their abovementioned objective. Based on the said information, **FIR no. 03/1990** was registered at P.S. CI, Kupwara on 04.04.1990 u/s 3 & 4 of TADA, u/s 25 of Arms Act, u/s 3 of the Official Secrets Act, u/s 3 of EOA, u/s 2 & 3 of E&IMCO *and* u/s 120B of RPC. A true copy of the FIR no. 03/1990 in vernacular, along with true English translation of its relevant portion was relied upon by PW 8 as **Ex. PW 8/1**.

132. *Witness* further deposed that during investigation, various arms, ammunitions and other incriminating materials were seized vide seizure memos. True copies of the seizure memos prepared during investigation, in vernacular, along with their true English translations were relied upon by PW 8 as **Ex. PW 8/2 to PW 8/22**.

133. PW 8 *testified* that though the material collected till date during investigation *prima facie* proves the commission of the alleged offences but since in the FIR there have been more than 58 accused till date, most of whom are terrorists and many of them have exfiltrated to POK and other places, as a result of which the investigation could not be completed. However, the same is now at its fag end. PW 8 *further* testified 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 organizations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations.

134. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 8 further *affirmed* that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- e) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti- India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in the injuries to and death of several civilians, police officials and Security Forces personnel.

135. PW 8 concluded his testimony by further affirming that it stood established that the activities of JKLF-Y were aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and that the members of JKLF-Y are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

136. In *cross-examination*, PW 8 stated that he could not admit or deny whether Yasin Malik was first arrested on 06.08.1990. He *vol.* to state that as per record, the date of arrest as mentioned in his affidavit was correct. *Witness*

further deposed that that the FIR no. 03/1990 had been registered against the organizations named therein, which includes JKLF and admitted it to be correct that there were no specific named accused in the FIR. *Witness* denied the suggestion that no accused have been arrested under this FIR since the date of its registration. He *vol.* to state that during the investigations, many persons including those who were part of JKLF, had been arrested. However, PW 8 could not give names of such arrested persons though he also stated that their names have been mentioned in the records prepared during the investigations and are a part of the *Case Diary*. *Witness* denied the suggestion that the above FIR and the investigations being carried out have no relevance today, in regard to the present proceedings. PW 8 further deposed that he was not aware of any *Cease Fire* agreement between Yasin Malik and Government of India as no such document is part of the investigation. PW 8 also denied the suggestion that no FIR has been registered against any member of JKLF(Y) after 1994 with regard to militancy cases and highlighted in this regard, FIR bearing no. 42/2019 registered at P.S. Handwara against Rafiq Ahmed War who is the District Commander of JKLF(Y). PW 8 denied the suggestion that Rafiq Ahmed War is the District President and not a District Commander.

PW 9

137. **Mr. Tariq Ahmed Sofi**, currently posted as Deputy Superintendent of Police, Counter-Intelligence, Bandipora, Kashmir appeared as PW 9 and tendered his affidavit in evidence as **Ex. PW 9/A**. *Witness* deposed that he is the Investigating Officer of FIR no. 01/1991 and in that capacity, was well conversant with the facts and circumstances of the case. PW 9 stated that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 10.07.24 as **Ex. PW 9/A – 1**.

138. PW 9 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the UA(P) Act, 1967 vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

139. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 9 stated that subsequently, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

140. PW 9, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for re-unification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

141. PW 9 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terror organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 9 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J&K.

142. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 01/1991

143. As regards the secessionist activities of JKLF-Y, *Witness* deposed that it came to light that Pakistan's intelligence agency ISI, in connivance with other organizations like JKLF, JEI etc. have planned to separate J&K from the Indian Union at the behest of Pakistan Government by threatening the minorities, radicalizing the Kashmiri youth against the Govt. of India, and creating communal strife in the valley to achieve the said objective. It also came to light that these organizations have been working to send Kashmiri youth to POK for arms training by orchestrating

infiltration with the assistance of Pakistani Military and intelligence agencies. Based on the said information, **FIR no. 01/1991** was registered at P.S. CI, Kashmir on 10.01.1991 u/s 3 & 4 of TADA, u/s 25 of Arms Act, u/s 3 of EOA, u/s 2 & 3 of E&IMCO *and* u/s 302, 365, 307 and 120B of RPC. A true copy of **FIR no. 01/1991**, in vernacular, along with true English translation of its relevant portion was relied upon as **Ex. PW 9/1**.

144. *Witness* further deposed that during investigation, various arms, ammunitions and other incriminating material was seized vide separate seizure memos and statements of material witnesses were recorded. True copies of the statements of witnesses recorded u/s 161 Cr.P.C. in vernacular, along with their true English translations were relied upon by PW 9 as **Ex. PW 9/2 to PW 9/4**. Further, true copies of the seizure memos prepared during investigation of aforesaid FIR, in vernacular, along with their true English translations were relied upon by PW 9 as **Ex. PW 9/5 to PW 9/13**. PW 9 stated that though the material collected till date during investigation *prima facie* proves the commission of the alleged offences, however, the investigation is still in progress though at its fag end.

145. PW 9 elaborated on the aspect of delay in concluding the investigation and submitted that the investigation faced significant challenges due to the volatile situation in the valley orchestrated by separatist leaders and their affiliated groups, who received steady support from across the border and terrorist organizations. This climate of fear deterred individuals from coming forward to provide statements, hindering the progress of the investigations.

146. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 9 further *affirmed* that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- e) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti- India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in the injuries and death of several civilians, police officials and Security Forces personnel.

147. PW 9 concluded his testimony by further affirming that it stood established that the activities of JKLF-Y were aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and that the members of JKLF-Y are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

148. In *cross-examination*, PW 9 stated that Yasin Malik might have been arrested on 06.08.1990 as he used to keep getting arrested and released. However, *witness* stated that as per record, the date of arrest as mentioned in his affidavit was correct. *Witness* further deposed that the FIR no. 01/1991 had been registered against the organizations named therein, which includes JKLF and admitted it to be correct that there were no specific named accused in the FIR. *Witness* denied the suggestion that no accused have been arrested under this FIR since the date of its registration. He *vol.* to state that during the investigations, many persons including those who were part of JKLF, had been arrested. However, PW 9 could not give names of such arrested persons though he also stated that their names have been mentioned in the records prepared during the investigations and are a part of the *Case Diary*. *Witness* denied the suggestion that the above FIR and the investigations being carried out have no relevance today, in regard to the present proceedings. PW 9 further deposed that he was not aware of any *Cease Fire* agreement between Yasin Malik and Government of India. PW 9 also denied the suggestion that no FIR has been registered against any member of JKLF(Y) after 1994 with regard to militancy cases

PW 10

149. **Mr. Ghulam Hassan**, currently posted as Deputy Superintendent of Police, Head Quarters, Ganderbal, Kashmir appeared as PW 10 and tendered his affidavit in evidence as **Ex. PW 10/A**. *Witness* deposed that he is the Supervising Officer of FIR no. 51/2019 and in that capacity, was well conversant with the facts and circumstances of the case. PW 10 stated that he had been duly authorized by the competent authority to depose before this Tribunal and relied upon such authorization dt. 11.07.24 as **Ex. PW 10/A – 1**.

150. PW 10 deposed that the Central Government in exercise of its powers under sub-section (1) of section 3 of the UA(P) Act, 1967 vide Notification no. S.O. 1416(E) published in the Gazette of India, Extraordinary, on 15th March 2024, has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction as an 'unlawful association'. *Witness* affirmed that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of the facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in carrying out secessionist activities.

151. *Witness* further deposed that it was borne out from the records that *Jammu and Kashmir National Liberation Front* was formed in the year 1964, which was later on renamed as *Jammu and Kashmir Liberation Front*. PW 10 stated that subsequently, a new faction of the said organization was established in the year 1988 by the prominent separatist leader Mohd. Yasin and was named as *Jammu and Kashmir Liberation Front - Yasin Malik Faction*.

152. PW 10, on the basis of the Background Note prepared by the Central Govt. and the govt. records, testified that JKLF-Y was formed with the objective of secession of Jammu & Kashmir from the Union of India and for reunification of Jammu & Kashmir, Pakistan Occupied Kashmir, Gilgit, Baltistan, Hunza and Aksai Chin through an armed struggle. *Witness* further testified that between 1988 to 1990, JKLF-Y became one of the largest terrorist organizations in Jammu & Kashmir, whose members/activists were involved not only in the infamous exodus of Kashmiri Hindus from Kashmir Valley but also in some prominent crimes of that period including the kidnapping of Rubaiya Syed, daughter of the then Home Minister of India.

153. PW 10 further testified that it was also borne out from the records that Mohd. Yasin Malik, who was the chief commander of JKLF-Y, was arrested in the year 1992 but subsequently released in the year 1994 after which though he distanced himself from armed resistance but he continued supporting terror organizations covertly and financially. *Witness* deposed that JKLF-Y has been spearheading anti-India secessionist agenda at the instance of ISI, Pakistan and prominent terrorist organization by following pro-Pakistan propaganda for secession of Jammu & Kashmir from the Indian Union. PW 10 further deposed that because of these unlawful activities, JKLF-Y was proscribed by the Central Government in the 2019 which ban was confirmed by the *Tribunal* constituted to adjudicate the validity of the ban imposed. However, as is borne out from the records and the FIR's registered, despite banning of JKLF-Y, the organization and its members have not stopped their secessionist activities and are continuing to raise funds for furtherance of the organizational activities and objectives *i.e.* secession of Jammu & Kashmir from the Union of India and cession of constitutional authority of the GOI in J&K.

154. *Witness* further affirmed on oath that JKLF-Y, its leaders and members have consistently been challenging the accession of erstwhile State of Jammu & Kashmir with the Union of India and have been issuing press reports, addressing public gatherings and are working towards secession of Jammu & Kashmir by continuously encouraging the armed insurgency which acts are aimed at causing disaffection, disloyalty, dis-harmony by promoting feelings of enmity and hatred against the lawful government of India, in a manner which is gravely prejudicial to the territorial integrity and sovereignty of the Indian Union.

FIR No. 51/2019:

155. PW 10 deposed further about the specific secessionist activities of JKLF-Y. *Witness* stated that on 23.03.2019, information was received from reliable sources that JKLF is still active in Jammu & Kashmir with the object of separating J&K from the Union of India despite being banned by the Central Government on 22.03.2019. Two persons namely Bashir Ahmad Rather and Mushtaq Ahmad Wani both of whom are closely associated with JKLF, were planning to make a call of *hartal* successful which had been called by the separatist organizations on 24.03.2019. Based on the said information, **FIR no. 51/2019** was registered at P.S. Beehama, Ganderbal on 23.03.2019 u/s 10 & 13 of UA(P) Act. A true copy of the **FIR no. 51/2019**, in vernacular, along with true English translation of its relevant portion was relied upon as **Ex. PW 10/1**.

156. PW 10 further stated that during investigation of the FIR, statements of material witnesses were recorded under section 161 Cr.P.C. who corroborated the information regarding activities of the proscribed organization and continued membership of the unlawful organization. Leading to the statements and information, raids were conducted, and incriminating material was seized vide seizure memos. Accused Mushtaq Ahmad Wani was arrested and his confessional statement was recorded. True copies of the statements of some of the witnesses recorded u/s 161 Cr.P.C. and u/s 164. Cr.P.C., in vernacular, along with their true English translations were relied upon by PW 10 as **Ex. PW 10/2 to PW 10/4**. Further, true copies of seizure memos prepared during investigation of the aforesaid FIR, in vernacular, along with their true English translations were relied upon as **Ex. PW 10/5 to PW 10/10**. *Witness* further deposed that after collecting sufficient material *prima facie* establishing the allegations of the FIR, a chargesheet bearing *Challan* no. 1 of 2023 was filed before the concerned jurisdictional Court. A true copy of chargesheet bearing *Challan* no. 1 of 2023 filed in FIR no. 51/2019, in vernacular, along with its true English translation was relied upon as **Ex. PW 10/11**. *Witness* stated that the case is now at the stage of trial.

157. *Witness* further affirmed on oath that JKLF-Y, since its inception, has been propagating anti-national narrative and secessionist propaganda in Jammu and Kashmir, backed by Pakistan and its agencies inimical to India which openly supported terrorist organizations which are active within Jammu and Kashmir. PW 10 further *affirmed*

that from the knowledge acquired by him during the course of service and the records of the criminal cases, it is manifest that JKLF-Y and its leaders and members have been:

- a) incessantly encouraging and continuously advocating secession of territory of Jammu and Kashmir from the Indian dominion;
- b) incessantly encouraging and inciting separatist groups, on religious lines to destabilize the Government of India;
- c) committing acts which are intended to disrupt the territorial integrity of India and to bring about cession of lawful authority of Government of India in the territory of J & K;
- d) tacitly and tactically supporting militancy and inciting violence in the territory of Jammu and Kashmir on religious lines;
- e) inciting and lured the youth of Jammu and Kashmir for violence to disrupt the peace in the valley and in order to keep the anti- India pot boiling, announced *hartal* calls and issued protest calendars, leading to riots which resulted in the injuries to and death of several civilians, police officials and Security Forces personnel.

158. PW 10 concluded his testimony by further affirming that it stood established that the activities of JKLF-Y were aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government and that the members of JKLF-Y are indulging and acting in a manner which is prejudicial to the territorial integrity and sovereignty of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

159. In *cross-examination*, PW 10 deposed that he could not admit *or* deny that Yasin Malik was first arrested on 06.08.1990. *Witness* volunteered to state that as per record, the date of arrest as mentioned in his affidavit is correct. PW 10 further deposed that he could not state that no FIR has been registered against JKLF(Y) *or* any of its member after the FIR no. 51/2019. *Witness volunteered* that he could only depose about his district where he had been posted and was not aware about the FIRs that may have been registered in the other districts. PW 10 admitted it to be correct that the abovementioned FIR had been registered against the organizations named therein, which includes JKLF and also that the names of the accused are specified in the FIR. *Witness* however denied the suggestion that no member of JKLF (Y) has been arrested since 1994 with regard to any militancy activity *or* for providing logistical support to the terrorists. He further *vol.* to state that many members of JKLF(Y) have been arrested after 1994 for the offences of unlawful and terrorist activities. PW 10 admitted it to be correct that Bashir Ahmed Rather was District President of JKLF (Y), District Ganderbal. However, he further stated that he could not admit *or* deny that JKLF(Y) had its office in Ganderbal in the year 2019.

PW 11

160. Mr. Arun Kumar, currently serving as Assistant Director in Enforcement Directorate, Delhi Zonal Office – II, New Delhi appeared as PW 11 and tendered his affidavit in evidence as **Ex. PW 11/A**. *Witness* deposed that he is fully conversant with the facts of the present Reference concerning JKLF–Y, based upon his knowledge derived from the relevant records of the case, being the Investigating Officer of ECIR no. 03/DLZ0-II/2017 emanating from FIR no. RC-10/2017/NIA/DLI.

161. PW 11 stated that the Central Government in exercise of its powers under *section* 3(1) of the Unlawful Activities (Prevention) Act, 1967, vide notification number S.O. 1416 [E] dated 15th March 2024 has declared Jammu and Kashmir Liberation Front - Mohd. Yasin Malik Faction to be an ‘unlawful association’. *Witness* further stated that he had read the brief Background Note on JKLF-Y prepared by the Central Government and on the basis of facts of various cases registered against the said organization and its leaders, he could testify that JKLF-Y and its leaders were involved in secessionist activities.

162. PW 11 further testified that the National Investigation Agency registered a case bearing no. RC-10/2017/NIA/DLI dated 30.05.2017 u/ss 120B, 121 and 121A of IPC, 1860 read with ss. 13, 16, 17, 18, 20, 38, 39 and 40 of UA(P) Act, 1967 against Hafiz Muhammad Saeed, members/cadres of Hurriyat Conference, Hizb-ul-Mujahideen (HM), Dukhtaran-e-Milat, Lashkar-e-Toiba (LeT), other proscribed terrorist organizations, various secessionist & separatist leaders, hawala operators and LoC traders for acting in connivance with active militants for raising, receiving and collecting funds domestically and abroad through various illegal channels for funding separatist and terrorist activities in Jammu and Kashmir through the funds so collected and entering into a larger criminal conspiracy for causing disruption in the Kashmir valley by way of pelting stones on the security forces, causing damage to public property and waging war against India. A true copy of FIR no. RC-10/2017/NIA/DLI dt. 30.05.2017 was relied upon by PW 11 as **Ex. PW 11/1**.

163. PW 11 further deposed that pursuant to investigation conducted, NIA filed charge-sheet no. 1 of 2018 dated 18.01.2018 before the Special Judge, NIA, New Delhi. Subsequently, NIA filed first supplementary charge-sheet no. 1

A of 2018 dated 22.01.2019 under sections 120B, 121 & 121 A of IPC read with sections 13, 16, 17, 18, 20, 38, 39 and 40 of UA(P)A, 1967. Thereafter, NIA filed a 2nd *supp.* charge-sheet no. 1 B of 2019 dated 04.10.2019 under Section 173 (8) Cr. PC.

164. *Witness* further testified that investigation by the NIA revealed that various terrorist organisations *viz.* JKLF-Y, Hizb-ul-Mujahideen, Dukhtaran-e-Milat, Lashkar-e-Taiba, in connivance with various secessionist groups particularly the All Party Hurriyat Conference and its constituents funded by Pakistan and its agencies have entered into a criminal conspiracy to wage a war against the Government of India. APHC which was formed as a conglomerate of 26 political/social/religious organisations in 1993 to give a political mask to the secessionist activities, has been consistently promoted and supported by Pakistan to fulfil its evil motive and establish its claim over Jammu & Kashmir. The investigation has revealed that APHC had entered into a criminal conspiracy and engaged in instigating the general public of Kashmir for taking part in violent activities in furtherance of propagating the secessionist agenda. APHC has repeatedly asked the people to observe strikes and instigated them to indulge in unlawful activities such as stone-pelting, burning of public properties etc.

165. PW 11 further stated that the investigation by NIA revealed that JKLF-Y which was an active constituent of APHC was involved in receiving overseas funds through conduits such as Zahoor Ahmad Shah Watali, terrorist organisations based in Pakistan, Pakistani establishment and other overseas persons through *hawala* and other means. In pursuit of the secessionist agenda, in 2016, Yasin Malik along with SAS Geelani and Mirwaiz Umar Farooq formed a self-styled group called "Joint Resistance Leadership" whereby they started issuing directions to the masses to hold protests, demonstrations, *hartals*, shutdowns, road-blocks and such other disruptive activities which would push the entire society into chaos and lawlessness. During the period from 06.08.2016 to 16.08.2016, these protests were very violent and as per the record available 366 persons were arrested, 175 persons got injured and 7 persons were killed during these incidents.

166. PW 11 further deposed that Yasin Malik had set up an elaborate structure and mechanism across the world to raise funds for carrying out terrorist, secessionist, and other unlawful activities in Jammu and Kashmir in the name of "freedom struggle". These funds were then used not only to sustain JKLF-Y but also to fuel secessionist activities and unleash violence in Jammu and Kashmir in the form of terrorist attacks, stone-pelting, protests, demonstrations, forced shut-downs. All this was done to build up and feed an anti-India and pro-secession narrative, glorifying the secessionists as 'freedom-fighters' and denigrating the security forces. The investigation further revealed that valley wide intense protests after the killing of militant Burhan Wani were funded by the Hurriyat, of which JKLF-Y is a part.

167. *Witness* further stated that the NIA had initially filed charge-sheet against 12 accused persons, including two accused persons who are designated global terrorists based in Pakistan, namely Hafiz Muhammad Saeed and Mohd. Yusuf Shah @ Salahuddin. Other accused persons who were arrested and have been charge-sheeted are the leaders of APHC *viz.* Aftab Ahmad Shah @ Shahid-ul-Islam, Altaf Ahmad Shah @ Fantoosh, Nayeem Ahmad Khan, Farooq Ahmad Dar @ Bitta Karate, Mohammad Akbar Khanday, Raja Mehrajuddin Kalwal, Bashir Ahmad Bhat @ Peer Saifullah, and Zahoor Ahmad Shah Watali. On 04.10.2019, NIA filed a second *supplementary* charge-sheet arraigning Mohd. Yasin Malik @ Aslam, Shabir Ahmad Shah @ Shabir Shah, Masarat Alam @ Masrat Alam Bhat, Syeda Aasiya Andrabi @ Asiya Andrabi and Abdul Rashid Sheikh @ Er. Rashid @ Sheikh Rashid as accused.

168. PW 11 further testified that pursuant to the investigation by the NIA which revealed large scale laundering of funds through illegal channels which funds were *prima facie* being used for illegal and unlawful activities in Jammu & Kashmir, investigation was conducted by Enforcement Directorate under the *Prevention of Money Laundering Act, 2002* after registering an ECIR which revealed that Yasin Malik was a part of the terror design to raise funds, to propagate the ideology of terrorists, agenda of secessionism and subversive activities. JKLF-Y had formed a well-developed network of cadres with district presidents, block level leaders and workers who collected donations from public, businessmen and others. The collected money was routed through a complex system including cash couriers and conduits who gathered money from Pakistan High Commission in New Delhi and delivered the funds to the Hurriyat leadership including Yasin Malik for subversive and secessionist activities in J & K. Yasin Malik was duly supported in this cause by Pakistani agencies through the Hurriyat activists such as Zahoor Ahmed Shah Watali. He was continuously in touch with these Pakistan-based entities and had received money through *hawala* to act as the financial conduit in the larger conspiracy network. A true copy of ECIR no. 03/DLZO-II/2017 dated 14.06.2017 registered by the Enforcement Directorate was relied upon by the witness as **Ex. PW 11/2**.

169. PW 11 further affirmed that investigation conducted into the use of funds generated through suspect money laundering by Hurriyat activists for secessionist activities shows that Zahoor Watali was receiving money from various sources *i.e.* Hafiz Saeed, ISI, Pakistan High Commission at New Delhi and also from a source based in Dubai. In turn Zahoor Watali used to remit the same to the separatist Hurriyat leaders including Yasin Malik who had received foreign contributions of an amount of Rs 15,75,595 from a source in Saudi Arabia in 2013 and Rs. 15,00,000 in 2015-16 through Zahoor Watali. Investigation has further revealed that these funds were used to organize stone pelting, to damage property, to organize assaults on security forces and for funding families of slain terrorists. *Witness* highlighted that NIA has filed along with its charge-sheet, the incriminating documents recovered during the course of

investigation which provide proof of funds having received by Yasin Malik from Zahoor Watali *i.e.* a document recovered from the house of accountant of Zahoor Watali showing that Yasin Malik has been given Rs. 15 lacs. A true copy of the complaint dt. 22.01.2019 filed by the Enforcement Directorate u/s 44 & 45 of the PML Act was relied upon by PW 11 as **Ex. PW 11/3**.

170. *Witness* further highlighted in his deposition that in the statement of Yasin Malik which was recorded on 25.08.2022 u/s 50 of the PML Act, he refused to comment on the document seized by NIA reflecting that he has received 15,00,000/- from Zahoor Ahmed Shah Watali. Thus, he could not discharge the burden of proof under section 24 of the PML Act with respect to the incriminating documents which showed foreign contributions received from Hafiz Saeed, the Pakistan High Commission and another source from Dubai. A true copy of statement dated 25.08.2022 of Yasin Malik recorded under section 50 of PML Act has been relied upon by PW 11 as **Ex. PW 11/4**.

171. PW 11 stated that investigation has revealed that funds equivalent to Rs. 30,75,595/- were received by Yasin Malik which funds are proceeds of crime as defined under *section 2(1)(u)* of the PML Act, same having been derived from criminal activity relating to a scheduled offence and in terms of *section 3* of the PML Act, it amounts to the offence of money laundering which is punishable u/s 4 of the PML Act, 2002. Further, Yasin Malik has been arraigned as an accused in the complaint dt. 09.01.2023 filed by the Enforcement Directorate u/s 44 & 45 of the PML Act. A true copy of complaint dt. 09.01.23 filed by the ED u/s. 44 & 45 of the PML Act has been relied upon as **Ex. PW 11/5**.

172. *Witness* concluded his testimony by stating that investigated facts show that JKLF-Y and its *head* Yasin Malik, have indulged in anti-national subversive activities for secession of Jammu and Kashmir from the Union of India and cession of the Constitution of India in the said territory. PW 11 further stated that the ban imposed upon on JKLF-Y by the Central Government is appropriate and needs to be upheld in national interest since the activities of JKLF-Y are aimed at causing disaffection, disloyalty and dis-harmony by promoting feelings of enmity and hatred against the lawful government in a manner which is prejudicial to the territorial integrity of the Union of India.

Cross-examination by Mohd. Yasin Malik on behalf of JKLF-Y.

173. In *cross-examination*, PW 11 was asked about the document on the basis of which he has deposed that Yasin Malik has been receiving illegal foreign funds for secessionist activities. In response, *Witness* answered that the document was recovered from the house of Mohd. Ghulam Bhat, accountant-cum-cashier of Zahoor Ahmed Shah Watali and was titled as "*Foreign Contributions and Expenditures 2015-2016*" having four columns, wherein the first column is of the date, the second column is of the amount, the third column is of the source of receiving the fund and the fourth column mentions the name of the persons who have been given the money. *Witness* admitted it to be correct that in this document, Rs. 15 lacs have been shown to have been received from Zahoor Ahmed Shah Watali but denied the suggestion that in this document, there is no amount which is shown to have been received from Hafiz Syed, and Mr. Iqbal Cheema, High Commissioner, Pakistan *by* Yasin Malik. PW 11 *vol.* to state that this document is only a document showing the money being received in a year by Zahoor Ahmed Shah Watali and money being distributed to various persons but is not a statement of account. In response to a further question, PW 11 deposed that he could not state whether Yasin Malik was confronted with Zahoor Ahmed Shah Watali while taking Yasin Malik on remand since he was not a part of the investigations at that time. *Witness* further denied the suggestions that the money sent by Umar Bashir, as has been reflected at page no. 143 of annexure A-4 *i.e.* document recovered from Ghulam Bhat, is apparently the money forwarded by him over a period of three years to his family members for their day to day expenditure *or* that this money was not received by Yasin Malik.

RW

174. Mohd. Yasin Malik entered in the witness box as the sole witness on behalf of JKLF-Y. He tendered his reply cum affidavit as **Ex. RW 1/A**. The reply cum affidavit tendered by Yasin Malik contains the history of how Yasin Malik was drawn into believing that an armed struggle was the only way to fulfil and realise the aspirations of the Kashmiri youth in particular and Kashmiri population in general. The reply delves into how after a while Yasin Malik purportedly gave up armed struggle in favour of a 'Gandhian' way of resistance to the perceived Indian occupation/domination of Jammu & Kashmir. He has also tried to highlight, through questionable factual assertions, as to how the top political and govt. functionaries of Central Govt. had engaged with him so as to bring out a peaceful settlement to the Kashmir issue raised by the separatists, through a dialogue and that infact, Central Govt., over the years since him having adopted 'Gandhian' mode of peaceful resistance, has been soliciting his efforts in resolving the Kashmir issue. The reply is full of references to *urdu* poetry by the use of which Yasin Malik has tried to justify his struggle for secession of Jammu & Kashmir from the Indian Union. He has also levelled certain allegations against some senior police and intelligence functionaries and Central govt. functionaries also but those allegations hold little relevance in so far as the present *Reference* proceedings are concerned. He has also tried to make out a case that post the ban imposed by the Central Govt. on JKLF-Y in 2019, there has been no instance of any unlawful activity by the JKLF-Y and its cadres warranting reimposition of the ban. The reply also contains point wise explanation of the allegations levelled against JKLF-Y *i.e.* visiting terrorists camps and being facilitated therein, working with Pakistani military establishment, receiving illegal funds from *hawala* operator Zahoor Watali.

175. Mr. Yasin Malik has further sought to explain that the allegation leveled by National Investigation Agency (NIA) to the effect that he received money from Mr. Zahoor Ahmad Shah Watali, is completely fabricated and concocted. He has counter alleged that in the 'NIA case', he was arrested without a counsel being present and was transferred to New Delhi without a counsel in violation of law and procedure. Further, it has been claimed by Mr. Yasin Malik that in 1994, various state officials assured him that they shall resolve the Kashmir dispute through a meaningful dialogue process and once he will initiate a unilateral ceasefire, then all cases against him and his members shall be taken back. Subsequently, a unilateral ceasefire was declared in 1994 by him and his organization and consequently, he was provided bail in all the 32 pending militancy related cases under *Terrorist and Disruptive Activities (Prevention) Act, 1982* ('TADA') and thereafter, none of the cases were pursued against him in terms of the *cease-fire* agreement from 1994 till 2018. It has been further stated in the reply cum affidavit that after the ceasefire in 1994, there has not been a single incident or accusation against him or his colleagues at JKLF that they have supported militancy openly *or* clandestinely *or* provided any logistical help to any militant organization. Regarding the formation of **All Parties Huriyat Conference (APHC)**, it has been stated in the reply that in the early 1990s, there was a political vacuum in the state of J&K where the militancy was on absolute peak and 'pro-Indian' political section in J&K had either left the Indian shore or were residing in Jammu as migrants under security. It was in this context, to address the political vacuum in J&K, that GOI unanimously decided to release certain Kashmiri political leaders in 1992 *namely* Syed Ali Shah Geelani, Abdul Ghani Lone, Molana Abbas Ansari, Prof. Abdul Ghani Bhatt and Qazi Nisar who were till then holed up in Indian prisons but which did not include Mr. Malik. It has further been stated that Yasin Malik did not have any role in the formation of APHC in 1993.

176. Concerning the accusation against him regarding his active role in fueling the unrest in Kashmir after the death of Burhan Wani, Mr. Yasin Malik has submitted in his reply that the NIA in its charge-sheet *alleges* that he has been implicated in over 89 cases of stone pelting and other unlawful activities such as arson, school burning and damage to public property etc. between 06.08.2016 to 16.08.2016. However, he could not have been involved in any law & order situation *or* stone pelting between the first week of July to November 2016 as he was in Police Custody within 30 minutes of the announcement that Burhan Wani had been killed. Mr. Yasin Malik in his reply has also denied that he had close nexus with militant & terrorist organizations and they were working in collaboration to destroy the territorial integrity of India. It has been stated that in fact, militants and other terrorists were victimizing Mr. Malik by issuing death threats, an example of which is the speech issued by one Zakir Musa, a militant with 'Al-Qaeda', where-in Musa stated that he shall publicly execute and hang Yasin Malik on the tower at Lal Chowk, Srinagar, for keeping youth in Kashmir away from the Jihad ('armed struggle') and exposing them to *Gandhian* ideology of non-violent struggle.

177. Mr. Yasin Malik has also denied accusations of colluding with Pakistan. In rebuttal, Mr. Yasin Malik states in his reply that in fact he was issued a passport in the year 2001 by the GOI and subsequently, in 2006, he along with other Kashmiri leaders were cleared to visit Pakistan from Srinagar to Muzffarabad by bus. It was a highly publicized event and was reported by media as he was a guest of Pakistan state and thus, all the photographs with senators, local MLA's and government officials of Pakistan were taken during the visit. *In conclusion*, it was submitted in the reply that after travelling on both paths *i.e.* of the armed struggle and non-violence, his advice to the youth of Kashmir is that their struggle should only be guided by the principles of non-violence and peace and on a path where no wife loses her soldier husband and no Kashmiri parent needs to lose their children, henceforth in Kashmir.

Cross-examination of Mohd. Yasin Malik on behalf of UOI by Sh. Amit Prasad, Id. Advocate.

178. In *cross-examination*, RW deposed that he was arrested in NIA RC No 10/2017 on 10.04.2019. RW *vol.* to state that he was detained in Srinagar on 22.02.2019 and thereafter was arrested under the *Public Safety Act* and subsequently, was brought to Delhi on 09.04.2019 and thereafter, formally arrested by the NIA on 10.04.2019. RW admitted it be correct that JKLF(Y) has its offices in every district of Kashmir but *volunteered* to add that since the organization has been banned on 22.03.2019, the offices remain closed. *Witness* gave details of the organisational structure including his position as the Chairman and Treasurer of JKLF(Y); Advocate Bashir Ahmed Bhatt, Shauquat Ahmed Bakshi, Mushtaq Ahmed Dar and Master Afzal being its 4 Vice-Chairmen; Er. Ghulam Rasul Dar being the General Secretary; *and* Mr. Altaf Hussain Khan was the Spokesperson. RW further stated that JKLF-Y had different zonal set-ups for PoK, Gilgit, Baltistan and Jammu & Kashmir, and that this Organization also had an international structure and there exist branches in more than 50 countries in the world. *Witness* further admitted that in London, they have a full Secretariat of JKLF-Y as it was formed in London in 1976. RW further deposed that the members of JKLF-Y which are about 1000 in Kashmir, are not working on his instructions and advice as their active working may result in their arrest and detention since the ban has been imposed by the Government of India in 2019. In response to a specific question, RW answered that he had not met any of the above-mentioned office bearers of his Organization since he is in Judicial Custody in *Tihar* from 10.04.2019.

179. RW further stated that except the offices of JKLF(Y) in India, other offices across the world are functional and supporting the cause of JKLF(Y). *Witness* further deposed that since inception, the ideology of JKLF(Y) has been to establish United Independent Kashmir *i.e.* reintegration of PoK, Gilgit, Baltistan with existing J&K, India and from 1988 to 1994, efforts were made to achieve the said object by way of armed militancy. However, after the year 1994 the said efforts were continued through a non-violent struggle.

VII. SUBMISSIONS ON BEHALF OF THE UOI

180. On 27.07.2024 the matter was fixed for addressing final submissions. Ld. Additional Solicitor General addressed arguments for claiming privilege for the documents produced in a sealed cover **and** also submitted arguments on the existence of 'sufficient grounds' to hold JKLF-Y as an unlawful association. Addressing the Tribunal first on the claim for privilege, ld. Addl. SG referred to *section 123* of the Evidence Act read with *Rule 3(2)* of the UA(P) Rules, 1968, which are reproduced as under:

Indian Evidence Act, 1872

“123. Evidence as to affairs of State – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

The Unlawful Activities (Prevention) Rules, 1968

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

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

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

182. To support her arguments, ld. Addl. SG has relied upon the judgment delivered in a case of preventive detention *i.e. Raj Kumar Singh vs. State of Bihar* (1986) 4 SCC 407 wherein the Hon'ble Supreme Court, *inter alia*, held as under:

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

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

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

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

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

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

20...

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

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

23...

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

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

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

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

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

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

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

72. The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can

be found in Section 162. Under Section 162 a person summoned to produce a document is bound to bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court. It further says that: The court, if it deems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility

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

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

186. Ld. Addl. SG further submitted that the confidential documents form a part of the evidence collected by the intelligence agencies which pertain to secessionist and unlawful activities of the JKLF-Y and those associated with it, and the said documents can be verified by the Tribunal only. Ld. Addl. SG also submitted that material placed in the sealed cover by the Central Government is in the form of secret information collected over a period by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies but the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. Ld. Addl. SG highlighted that the material filed by the Central Government contains the note then put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the Notification dt. 15.03.2024 was issued besides intelligence inputs and correspondence in relation thereto.

187. Ld. Addl. SG further submitted that the sealed cover material is inherently and *dehors* being a part of the evidence of the present proceedings, of confidential nature, disclosure of which would be contrary to the public as also national interest.

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

- (a) S.P. Gupta Vs. Union of India (1981) Supp SCC 87
- (b) Iqbal Singh Marwah Vs. Meenakshi Marwah (2005) 4 SCC 470

189. Placing reliance on the above, Ld. Addl. SG further emphasised that in regard to the claim of privilege for non-disclosure of sealed cover documents, Hon'ble Supreme Court in *S.P. Gupta* (supra), has held as under:

“73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the non-disclosure would thwart the administration of justice by keeping back from the court a material document. There are two aspects of public interest clashing with each other out of which the court has to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer [(1968) AC 910, 952, 973, 979, 987, 993 : (1968) 1 All ER 874 (HL)] :

“It is universally recognized that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved.”

190. Ld. Addl. SG, therefore, submitted that the rigors of *S.P Gupta* (supra) for claiming privilege have to be read in context of the provisions of UA(P)A and the *Rules* framed thereunder which provide that document, disclosure

whereof may not be in the public interest, be not disclosed. She further submitted that the UA(P) Rules, as quoted above, start with a *non obstante* clause and thus, an inbuilt mechanism has been provided under the UA(P)A and the Rules framed thereunder. Accordingly, the Tribunal is mandated to grant privilege, forbidding disclosure where the claim of the Government is that the disclosure of such documents could affect the safety and sovereignty of the country and where the Tribunal also finds that the public interest outweighs the interest of the association/members/office bearers.

191. Ld. Addl. SG submitted that the claim of confidentiality has to satisfy the test of character of the document and thus, the foundation of immunity from non-disclosure stems from the character of the document.

192. Ld. Addl. SG also submitted that the decisions of the previous Tribunals constituted under Section 4 of the UA(P)A, in which the claim of privilege by the Central Government had been allowed holding that the same satisfied the requirement of *section* 123 of the Evidence Act, are binding on this Tribunal in view of the provisions of *section* 5(7) of the UA(P)A which provide that the proceedings before this Tribunal are judicial proceedings and accordingly, reliance has been placed on the order dt. 21st March 2023, vide which the Tribunal chaired by Hon'ble Mr. Justice Dinesh Kumar Sharma, Judge, Delhi High Court, in exercise of the powers conferred by *sub-section* (3) of section 4 of the abovesaid Act, confirmed the declaration made by Central Government declaring the Popular Front of India (PFI) and its associates or affiliates or fronts including Rehab India Foundation (RIF), Campus Front of India (CFI), All India Imams Council (AIIC), National Confederation of Human Rights Organization (NCHRO), National Women's Front, Junior Front, Empower India Foundation and Rehab Foundation, Kerala as 'unlawful associations', by upholding the Notification no. S.O. 4559 (E), dated the 27th September, 2022 of the GOI issued by the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part II, dt. 28th Sept. 2022.

193. In view of the aforesaid highlighted legal position, the Ld. Addl. SG submitted that the Central Government respectfully claims privilege on the documents contained in the sealed cover, as mentioned in the affidavit filed by the concerned witness from the MHA who deposed on behalf of the Central Government/ UOI.

194. Thereafter, as a precursor to the submissions on the existence of *sufficient grounds* for banning JKLF-Y as an unlawful association, Ld. Addl. SG underscored the reasons for the enactment of the UA(P) Act, 1967. Ld. Addl. SG highlighted that the *statement of objects and reasons* of the UA(P)A itself underlines the purpose of its enactment which is to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. She submitted that the statute empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form an association, freedom of speech and expression, and on right to assemble peacefully and with arms. Ld. Addl. SG submitted that further, *section* 48 of the UA(P)A itself provides that the provisions of the UA(P)A and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act, giving it a clear over-riding position. She submitted that the validity of the provisions of the Act ought to be judged in the backdrop of the history of the Act necessitating their introduction. Ld. Addl. SG submitted that the Unlawful Activities (Preventive) Act, 1963 was enacted to make powers available for dealing with activities directed against the integrity and sovereignty of India which may take the manner and form either of "terrorism" or "other unlawful activity" which threatens the sovereignty of India.

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

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

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

- a. Unlawful Activity & Unlawful Association [S-2(o) r/w Chapter 2 & 3 (Sections 3-14)]; and
- b. Terrorist Act & Terrorist Organization [S-2(k), (I),(m) r/w Chapter 4-6 (Sections 15-40)].

198. Ld. Addl. SG further submitted that the repeal of the Prevention of Terrorist Activities Act, 2002 entailed an absence of a legal framework to address the perils of terrorism. Accordingly, as a consequence, the UA(P)A was amended to include a definition of the term 'terrorism' and to give substantive powers to the Indian State to address the same. The amendments made therein were made also keeping in mind India's commitments under the Security Council Resolution dated 28th September, 2001, which enjoined the Indian state to fight both terrorism as well as terror funding.

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

"90. Thus from the aforesaid it can be seen that before any organization is declared unlawful a detailed procedure is required to be followed including the wide publicity and even the right to a member of such association to represent before the Tribunal. As observed hereinabove the notification issued by the Central Government declaring a particular association unlawful, the same is subject to inquiry and approval by the Tribunal as per Section 4. Once that is done and despite that a person who is a member of such unlawful association continues to be a member of such unlawful association then he has to face the consequences and is subjected to the penal provisions as provided under Section 10 more particularly Section 10(a)(i) of the UAPA, 1967."

200. Ld. Addl. SG submitted that from the aforesaid discussion of the Hon'ble Supreme Court, it is clear that an organization can be banned solely on the basis of the opinion of the Central Government and through the process duly established by the law enacted by the Parliament.

201. On the aspect of standard of proof required for judging the merits of the present *Reference*, learned Addl. SG submitted that the proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Hon'ble Supreme Court in **Jamaat-e-Islami Hind** (supra) as per which the matter has to be decided by objectively examining which version is more acceptable and credible. In this regard, Ld. Addl. SG has referred to the observation made in *para* 30 of **Jamaat-e-Islami Hind** (supra). Ld. Addl. SG also argued that the procedure to be followed by the Tribunals can be read from the law enacted under the *Administrative Tribunals Act, 1985*. Ld. Addl. SG submitted that similarly, the Tribunal established under the UA(P)A has been bestowed with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act.

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

203. Ld. Addl. SG has submitted that for the purpose of assessing the sufficiency of cause, this Tribunal has to holistically look into the entire material / incidents and 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. Ld. Addl. SG submitted that the Central Government has led sufficient and cogent material and evidence to demonstrate that there was sufficient material available with the Central Government to form an opinion that the JKLF-Y and its associates were indulging in unlawful activities. Ld. Addl. SG submitted that the law does not require that the cases which should form the basis of opinion formed by the Central Government should be proximate to the date of the decision or there should be 'X' number of cases to prove an association to be an unlawful association; and that even one case may be sufficient for this assessment. Ld. Addl. SG has submitted that the delay in the investigation will have no bearing in the present proceedings as the degree of evidence required before this Tribunal and the adjudication thereon is to be based on the principle of preponderance of probabilities.

204. As regards the hostile environment prevailing in the territory of Jammu & Kashmir creating hurdles in conclusion of cases against the separatist and militants, Ld. Addl. SG submitted that as has been stated in the testimonies of various witnesses, the delay in the investigation and trial has occurred due to extremely hostile environment which prevailed in the erstwhile State of Jammu and Kashmir. Ld. Addl. SG submitted that it is a matter of public knowledge that since last more than three decades, the erstwhile State of Jammu and Kashmir has been adversely affected by the acts and deeds of the separatist groups and its leaders.

205. Ld. Addl. SG submitted that from 1989 to 2016, the situation in the erstwhile State of Jammu and 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. Ld. Addl. SG has submitted that these facts have been referred to in the concurring opinion of Hon'ble Justice Sanjay Kishan Kaul in para-31 and *Epilogue* recorded in *paras* 113-135 of the judgment **Re: Article 370 of the Constitution**, reported in 2023 SCC Online SC 1647.

206. Ld. Addl. SG submitted that the separatist leaders and their activists had created such terror in the minds of public that the general public, which even did not support their cause, feared to oppose them or to report to the police against various incidents and even feared to depose or give evidence against the said separatist leaders, thus, leading to a non-cooperative atmosphere for the police and investigating agencies in the cases registered against the said separatist organizations or its leaders.

207. Ld. Addl. SG also submitted that the investigation was further slowed thereafter due to COVID which had brought all the routine activities to a standstill as a complete lockdown in the entire nation was imposed. Hence, the investigation in the cases registered against the JKLF-Y in the State of Jammu & Kashmir could not be processed at the pace it should have been.

208. Ld. Addl. SG has also submitted that the NIA in its 2nd *supp.* charge-sheet filed on 04.10.2019 in RC-10/2017/NIA/DLI vide paragraphs 17.3.1 to 17.3.43 has highlighted the magnitude of secessionist and terrorist activities in the Kashmir valley and the nexus of JKLF-Y with cross border terrorist organizations in the Kashmir valley. The investigation carried out by the NIA, therefore, corroborates the hostile environment in Jammu and Kashmir, which for a long period did not let the Investigating agency to complete the investigations in respective FIRs.

209. The Ld. Addl. SG submitted that from a bare perusal of the facts stated in the NIA charge-sheet read *and* the facts stated in the judgment of the Supreme Court in **Re: Article 370 of the Constitution** (*supra*), it can be clearly inferred that prior to coming into force the Jammu & Kashmir Re-Organization Act, 2019, the various successive governments / authorities from 2004 to 2019, for the reasons recorded in the judgment of the Supreme Court, did not take any stern action against the separatists and rather than concentrating on prosecuting the criminal acts of separatist and secessionist forces, indulged in dialogue with separatists.

210. Ld. Addl. SG submitted that despite several FIRs having been lodged against the members of the JKLF-Y, its activists / sympathizers are still active and are indulging in unlawful/anti-national activities as defined in the UA(P)A, posing a serious threat to the sovereignty and integrity of India, communal harmony, and internal security. Ld. Addl. SG has submitted that if the JKLF-Y is not banned, the activists and sympathizers of JKLF-Y will again pose a serious threat to the communal harmony, internal security and integrity of the country.

211. Ld. Addl. SG also argued that the assertions made by the Central Government in the 'Background Note' submitted before this Tribunal and the material adduced in support of the said 'Background Note' has remained uncontroverted and has not been disproved by the proscribed organisation. Instead of controverting and disproving the assertions contained in the 'Background Note', Md. Yasin Malik, being the chairman of JKLF – Y, in his reply dated 27.05.2024 and during his examination before the Tribunal dated 14.07.2024 at Tihar Jail has expressly admitted that the aim and objective of the organisation is to seek '**right of self-determination**' and work towards making of "**United Independent Kashmir**" which is nothing but a façade to advocating secessionism and cessation of a part of the territory of the Union of India.

212. It was further argued on behalf of UOI that the Chairman of JKLF-Y in his response to the express charge of indulging into secessionist activities, has not made any positive assertion or statement refuting the said allegation/assertion and has not expressly declared that the proscribed organisation i.e. JKLF-Y or its members and office bearers honour the Constitution of India, *or* that they do not advocate separation of territory of Kashmir from the Union of India. It was thus submitted on behalf of UOI that the factum of existence and relevancy of the material on the basis of which Central Government had declared JKLF-Y as a proscribed organisation has not been disproved, repelled or controverted by the said organisation. 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 organisation 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.

213. It was also submitted that ample opportunity was given by this Tribunal to the proscribed organisation to adduce evidence in its favour to prove that JKLF-Y has not been indulging into secessionist or cessationist activities. However, the proscribed organisation has failed to avail the said opportunity and *hence*, there is no material or evidence before this Tribunal having been adduced by JKLF-Y to seek non-confirmation of the ban imposed by the Central Government.

214. Ld. Addl. AG further argued that mere denial of the assertions made in the 'Background Note' do not qualify as a positive statement being made on behalf of the Organization that it believes in the Constitution of India and does not want secession of territory of Jammu & Kashmir.

215. Ld. Addl. SG thus reiterated that in view of the aforesaid, in the respectful submission of the Central Government, the reply of the Proscribed Organization which does not dispute its' indulgence into secessionist activities, does not make any positive assertion that it believes in the Constitution of India and does not want secession of the territory of Jammu & Kashmir from Union of India, does not state that it accedes to or intend to accept the sovereignty and merger of territory of Jammu & Kashmir with India, should be taken as acceptance by JKLF – Y of the facts and allegations made in the 'Background Note' as uncontroverted and on this ground only, the ban against the Proscribed Organization is liable to be confirmed.

216. Regarding certain parts of the Reply filed on behalf of JKLF – Y by Yasin Malik *i.e.* paras 1 to 25 of the preliminary submissions, it was submitted on behalf of the UOI that those submissions of the affidavit are liable to be expunged/struck off from the record as the same are vexatious and scandalous in nature and are based on unfounded facts. Mr. Yasin Malik has made scandalous allegations not only with regard to the administration of justice but also against the officers involved in investigation of the NIA case with ulterior motives despite the fact that he has pleaded guilty to the charges framed by the Id. Trial Court. Thus, in view of the provision of Order VI Rule 16 of CPC and the provisions analogous thereto, the said pleadings are liable to be expunged/struck off from the record of this Tribunal by holding the same to be **unnecessary, frivolous, vexatious and scandalous in nature.**

217. It was further argued that conviction of Md. Yasin Malik on admission of his guilt to the *charges* framed against him in the trial of RC 10/2017/NIA/DL further buttresses the case of the Central Govt. of existence of 'sufficient grounds' for declaring JKLF – Y as an 'unlawful association'.

218. Ld. Addl. SG concluded by highlighting that perusal of the reply filed by the Chairman of JKLF-Y and his examination recorded before the Tribunal dated 14.07.2024 makes it clear that the Proscribed Organization has been indulging into secessionist activity and has a secessionist ideology. There has been no positive assertion that the Proscribed Organization honors the Constitution of India but only works on making a '**United Independent Kashmir**' which is a secessionist act under *section 2(o)* of the UAP(A), 1967 and accordingly, a ground for declaration of an association as 'unlawful' under Section 3 of UAP(A), 1967. It was asserted on behalf of the UOI that by making a positive assertion to the effect of believing in the secessionist and secessionist ideology through its chairman, it is clear that as an organization, JKLF – Y has admitted to the grounds on which ban has been imposed by the Central Government.

219. Lastly, learned Addl. SG has submitted that the Notification no. S.O. 1416 (E), dated 15th March 2024, issued by the Central Government declaring the JKLF-Y to be an unlawful association is based on the information and material received from the administration of the Union Territory of Jammu and Kashmir, the National Investigation Agency, and the various intelligence agencies, with regard to the unlawful activities of JKLF-Y and is liable to be confirmed. On conclusion of submissions/arguments on behalf of the UOI on 27.07.2024, the proceedings were further posted for 03.08.2024 for Md. Yasin Malik to address the Tribunal with submission/ and counter arguments on behalf of JKLF-Y.

220. On 3.8.2024, Md. Yasin Malik appeared through video conference from Tihar Jail since he cannot be brought outside of the jail due to a specific order having been passed by the competent authority in this regard. The submissions on behalf of JKLF-Y were concluded on 03.08.2024 itself. On the same day, the order in the present *Reference* was reserved.

VIII. SUBMISSIONS ON BEHALF OF JKLF – Y

221. On 03.08.2024, Md. Yasin Malik put forth his submissions opposing the declaration concerning JKLF-Y. He joined through video conference from Tihar Jail. It may be highlighted that on 27.07.2024, final submissions on behalf of UOI stood concluded. Accordingly, to give a reasonable time frame to Md. Yasin Malik to prepare his submissions and counter arguments, since he was advocating the cause of his organization in person, the proceedings were adjourned to 03.08.2024.

222. The tenor of Md. Yasin Malik's submissions was in line with the cross-examination of witnesses and his own reply cum affidavit. He tried to buttress his submission that post his release in 1994, he had adopted 'Gandhian' way of resisting the Govt. machinery and since then, had been an ardent and most vocal proponent of non-violent struggle even at the cost of peril to his life due to death threats extended by other armed separatists. Regarding his involvement in the intense law & order situation which was created in Kashmir valley after the death of terrorist Burhan Wani, Yasin Malik reiterated his submission as contained in his reply that there was no possibility of his involvement in any of the protests/stone pelting incidents since he had been arrested on the very day when Burhan Wani was exterminated by the security forces.

223. Specifically concerning the declaration in question vide which JKLF-Y has been banned/declared to be unlawful again for a period of 5 years, Yasin Malik argued that UOI has not been able to highlight even a single

incident wherein the activists of JKLF-Y had indulged in any subversive or unlawful activities after the ban was initially imposed in 2019.

IX. ANALYSIS AND CONCLUSION

224. The arguments addressed on behalf of Union of India regarding the existence of 'sufficient grounds' for declaring JKLF-Y as an unlawful association also included submissions for claiming privilege in respect of the documents submitted in a sealed cover by one of the witnesses. The claim for privilege in regard to those documents has a significant bearing on the requirement of existence of 'sufficient grounds' since it has been argued that those documents contain extremely sensitive information regarding the unlawful and secessionist activities of JKLF-Y. Hence, it will be apposite to first rule on the claim for privilege raised by the Union of India. The issue regarding privilege claimed by the Central Government in respect of the documents disclosure whereof is injurious to public interest, is specifically envisaged in the UA(P) Rules, 1968. *Rule 3* of the said UA(P) 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.”

225. 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.

226. *Rule 5* of the UA(P) Rules, which 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, *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.”

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

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

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

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

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

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

“... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee....

We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.

Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law.”

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

26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it

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

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

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

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

“To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which

enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence of material in respect of which the Central Government claims non-disclosure on the ground of public interest.”

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

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

- a. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder contemplates maintenance of confidentiality whenever required in public interest;
- b. 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;
- c. The Tribunal can devise a suitable procedure for itself for examining and testing the credibility of such material
- d. 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.

230. Further, the rigors prescribed by the Supreme Court in the case of *S.P. Gupta* (supra) have to be read in the context of the provisions of the UA(P)A and the Rules framed thereunder. In particular, it needs to be borne in mind that Rule 3(1) of the UA(P) Rules, 1968 expressly provides that in holding any inquiry under sub-section (3) of section 4 of the UA(P)A, the Tribunal shall follow “*as far as practicable*”, the rules of evidence laid down in the *Indian Evidence Act*. Thus, the rigors that have been contemplated in the context of Section 123 of the *Indian Evidence Act*, cannot *ipso-facto* be made applicable to these proceedings. The legislative intent in making the provisions of the Evidence Act, 1872 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).

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

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

233. 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 in regard thereto.

234. This *Tribunal* also notes that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW - 6) to be based on a specific approval/direction of the Union Home Secretary (Head of the department). The said position is also borne out from the relevant official/noting files shared with this *Tribunal*.

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

236. On the basis of the material placed on record and the evidence adduced by the Central Government, this Tribunal finds sufficient cause for declaring the Jammu and Kashmir Liberation Front – Md. Yasin Malik ('JKLF-Y') as an unlawful association which conclusion is drawn for the following reasons.

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

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

- a. Evidence adduced by officers (senior police officers) from Union Territory of Jammu and Kashmir;
- b. Evidence in the form of Charge-sheet filed in NIA case no. RC-10/2017/NIA/DLI;
- c. Evidence in the form of documents/material submitted in a sealed cover before this Tribunal;
- d. Evidence of money laundering for use of illegal/unexplained funds in separatist activities.

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

239. As many as 8 senior police officers/officials from the Union Territory of Jammu and Kashmir (PW1 to PW5, PW8 to PW10) have deposed as regards the series of violent and secessionist incidents involving JKLF-Y in the past several decades. The same clearly brings out that the concerned association has been relentlessly indulging in "unlawful activities".

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

- e. raising anti-India and pro-Pakistan slogans (evidence of PW 3);
- f. continuing with unlawful activities by JKLF-Y cadres even after the organization was declared unlawful in March 2019 (evidence of PW 1, PW 2, PW 3, PW 4, PW 10);
- g. inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones on security forces (evidence of PW 6, PW 7 and PW 11);
- h. undermining the sovereignty and territorial integrity of India by demanding 'azadi' (evidence of PW 5);
- i. instigating the general public intending to cause disaffection against India through violent means (evidence of PW 8, PW 9);
- j. raising of funds through various sources including for promoting unlawful activities, including supporting terrorism/ violence/ militancy, spreading secessionist ideology in Jammu and Kashmir (evidence of PW 7, PW 11).

241. On a cumulative consideration of the various incidents/activities which are subject matters of the various FIRs with regard to which the aforesaid evidence has been led, it is evident that JKLF-Y has been indulging in "unlawful activities" and its cadres have posed a grave threat to the law & order situation in Jammu and Kashmir since the last 3 - 4 decades.

242. Although it is true that the investigation in most of the FIRs (with regard to which PW 1 to PW 5 and PW 8 to 10 have deposed) has been protracted, Id. Addl. SG has sought to emphasize that the same was on account of hostile environment prevailing in Jammu and Kashmir over a long period of time. However, what is of relevance to this *Tribunal* is the clear pattern that is discernible as regards the nature of activities of the concerned association and its office bearers. The pattern of conduct is to incessantly encourage secession of the state of Jammu and Kashmir, questioning or seeking to disrupt the sovereignty and territorial integrity of India, inciting the people of Jammu and Kashmir to take resort to violence/pelting of stones etc., and to disrupt peace in the region of Jammu and Kashmir. These activities continued unabated for a long period of time; and it is only in the last few years (post enactment of the Jammu & Kashmir Re-Organisation Act, 2019) that there has been a lull in the anti-national activities in Jammu & Kashmir, as is evident from the reduced instances of violence/disruption of law and order.

243. This Tribunal also takes note of the fact that each of the senior police officers from the U.T. of Jammu and Kashmir, who have deposed before this Tribunal, during the course of their examination, strenuously emphasized from their own personal knowledge derived during the course of discharge of their official functions, that JKLF-Y i.e. its chairmen, and members have been:

- k. incessantly encouraging and advocating claims for secession of Jammu and Kashmir from the Union of India and have been inciting the local population towards the same;
- l. promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country;
- m. tacitly and tactically supporting militancy and incitement of violence in the territory of Jammu and Kashmir on religious lines and have sought to escalate the separatist movement;

244. The compelling testimony of officers from various districts of Jammu and Kashmir cannot be disregarded. Moreso because in the cross-examination of these witnesses, nothing has been brought out which could convey that JKLF-Y is not linked *or* is not associated with illegal and unlawful activities which are aimed at secession of Jammu & Kashmir from the Indian Union. Even after the abovesaid organization was declared to be 'unlawful' in 2019 by the Central Govt., unlawful activities by its cadres have continued. **PW 1** Hariprasad KK has deposed in regard to one such FIR i.e. FIR no. 23/2023 at P.S. Kothibagh which was registered in July 2023 under the relevant provisions of UA(P) Act and the IPC. During the course of investigation, residences of accused Mohd. Yaseen Bhat and Mohd. Rafiq Pahloo @ Nanaji were searched and seizure of objectionable content was made. One such seizure is of a resolution dt. 6.10.2022 which clearly indicates of efforts by JKLF-Y cadres to regroup and re-initiate their goal of attaining freedom. Further, analysis of the mobile phones of Mohd. Yaseen Bhat and Nanaji has led to discovery of a number of objectionable contents including videos which clearly demonstrate that JKLF-Y cadre is committed to their goal of attaining freedom for Kashmir. It is thus obvious that if left unattended, JKLF-Y is very likely to regroup and strengthen itself and come back with secessionist activities with a vengeance. Charge-sheet has also been filed in the above FIR which *prima facie* corroborates the allegations of unlawful activities by JKLF-Y as levelled in the FIR no. 23/2023. The *cross-examination* of the above highlighted witness shows that Md. Yasin Malik did not even touch upon the veracity of the contents of the FIR. Additionally, in the cross-examination, Md. Yasin Malik by necessary implication, admitted that the main accused in the aforesaid FIR i.e. Mohd. Yaseen Bhat was a JKLF-Y cadre. *Further*, **PW 4** Shabir Ahmed in his testimony, deposed about FIR no. 44 of 2019 which was registered just after the ban was initially imposed on JKLF-Y. The said FIR pertains to continuation of the operation of the offices of JKLF-Y despite it being declared unlawful by the Central Govt. on 22nd March 2019. In *cross-examination* of this witness, no questions were put regarding the veracity of the allegations in the FIR. Majority of the questions put to the witness were relating to the history of JKLF-Y. In fact, one of the suggestions put to the witness was regarding arrest of any member of JKLF-Y other than Yasin Malik despite their being operative offices in J&K. This suggestion itself demonstrates that JKLF-Y continues with its operations even after the ban was imposed on it in 2019. Similarly, **PW 2** Saquib Gani and **PW 3** Ramiz Rashid Bhat also deposed in regard to offices of JKLF-Y being operational for carrying out unlawful activities even after the ban was imposed on it in March 2019 and in which regard, FIR nos. 61/2019 and 11/2019 were lodged in P.S. Budgam and P.S. Hajin respectively. Their *cross-examinations* were identical to that of the *cross-examination* of PW 4, and thus drawing the same conclusion that JKLF-Y continued with its operations even after the ban was imposed in March 2019. **PW 5** deposed about unlawful activities including terrorist activities of JKLF-Y members even after the imposition of ban on it by the Central Govt. in 2019. In *cross-examination*, no question was asked from the witness for contradicting the contents of the FIR. **PW 10** Ghulam Hassan deposed regarding members of JKLF-Y planning to give a '*hartal*' call after the said organization was declared as unlawful in March 2019. An FIR was also lodged in this regard i.e. FIR no. 51 of 2019. In *cross-examination* of this witness also, nothing relevant concerning the contents of the FIR was asked from the witness. All these above facts clearly show the propensity of JKLF-Y cadres to persist with unlawful activities despite a ban having been imposed in March 2019. In his own *cross-examination*, Md. Yasin Malik admitted that offices of JKLF-Y are functioning abroad. This admission, coupled with the fact that at no stage has Yasin Malik disassociated himself from the aim of secession/freedom of Jammu & Kashmir from the Indian Union, and the *prima facie* evidence led which shows that JKLF-Y continues with secessionist acts by use of violent means, furnishes sufficient ground to confirm the declaration of JKLF-Y being an unlawful association.

Evidence in the form of Charge-sheet filed in NIA case no. RC-10/2017/NIA/DLI

245. Even though Md. Yasin Malik repeatedly claimed during the course of proceedings that he had given up armed resistance and was following a *Gandhian* mode of struggle to achieve their professed aim since 1994, his proclivity to continue to engage with violent means and with entities/persons who are avowedly committed to violent means are too stark to be ignored. He has not only been engaging with wanted terrorists but has even admitted to having visited a terrorist camp in POK where he has been felicitated as well. In his reply cum affidavit, Md. Yasin Malik has sought to give an explanation to these aspects but the same is patently a superficial effort to offer an explanation just for the sake of it. Investigation conducted by the NIA and subsequently by Enforcement Directorate reveals that Yasin Malik has been at the forefront of using illegally mobilised funds for aiding violent activities in Jammu & Kashmir. Testimony of the *witness* from the NIA brings out how JKLF-Y is intricately involved in the process of not only mobilising funds to further the secessionist aims of JKLF-Y but also in organizing violent protests across the Kashmir valley. The first charge-sheet dt. 18.01.2018 filed by the NIA in RC/10/2017/NIA/DLI brings out a well-organized hierarchical structure of the APHC leadership to continue with violent means to achieve secession of Jammu & Kashmir under the cloak of APHC's socio-political umbrella. At the top of this hierarchical structure sit, amongst others, SAS Geelani, Md. Yasin Malik and Mirwaiz Umar Farooq who are the chief organizers of the resistance movement classified as Joint Resistance Leadership by the separatists. The 2nd supp. charge-sheet filed by the NIA brings to fore the active role of JKLF-Y in fund mobilization from various regions and countries across the world such as Europe, UK, Dubai and Saudi Arabia. Investigation has revealed that fund mobilization is towards the sole purpose of carrying forward the secessionist agenda of separating Jammu & Kashmir from the Indian Union. Investigation into the digital sphere has also revealed exchange of emails between Yasin Malik and other JKLF-Y cadres, between Yasin Malik and terrorist organisations across the border and recovery of *Whatsapp* messages from the accounts of other accused arraigned in the 1st charge-sheet filed by the NIA, all of which clearly bring out JKLF-Y's committed stance to continue with secessionist activities vis-a-vis Kashmir and the Indian Union, and the linkage between fund mobilisation by JKLF-Y and organizing violent secessionist activities in Jammu & Kashmir by JKLF-Y which is headed by Yasin Malik. At this stage, it would be relevant to briefly highlight the emails exchanged between JKLF - Y cadre which buttresses the assertion and belief of the Central Govt. that if the activities of JKLF - Y are not restrained, this organization is bound to continue with its secessionist activities. These emails have been retrieved from the *hotmail* account of Yasin Malik. Following is the text of an email exchanged between Khawaja Manzoor Ahmed Chisthi, Secretary Finance-JKLF Riyadh and Tariq Sharif, Finance Coordinator, JKLF UK zone:

"Solely, this financial plan is only to make our central offices, both in IOK & POK, powerful financially therefore it is neither an investment plan nor a business plan whereas the basic objective is to fulfil the basic needs and liabilities.

If you read the code of conduct, thoroughly, you will come to know how the funds will be collected and how safely & securely we will utilize these funds. Here, for your convenience I would bring some major prints to you:

- A. We asked every zone to collect funds all together for a complete year and send it to the central office in Rawalpindi. FYI, our target is to achieve 10 million (PKR) from all zones and then this capital money will be saved in an Islamic bank which will give the interest rate about 8 to 10%. We can get about 70,000 (PKR) per month, if we consider 8% only, which will be enough for the monthly office expenditures whereas capital money will remain constant in the account.*
- B. Above mentioned was our initial plan which can be modified with the more sophisticated & applicable suggestions. We have plan-B as well, in which we can buy a small permanent building approximately 200 sq.m and this will save our monthly building rent and gives accommodation facility to our members/guests who might stay overnight in Rawalpindi office. In addition, the value of this property will go up with the passage of time.*

Now, I would like to brief you about the safety and accountability of the funded money. We have opened a joint account under the authorization of three reliable JKLF's members namely Mr. Raja Haqnawaz Sahib, Mr. Hameed Sahib and Mr. Manzoor Khan Sahib. Even I cannot withdraw any money from this account but I would keep the check and balance on this money which will be taken on the name of this noble cause. Further, from each zone we will have 2 members to be considered as auditors and can investigate the utilization of this money at any time.

Note: We have already collected funds from Saudi Arabia and submitted to central office Rawalpindi, approximately 32800 SR equivalent to 870,000 PKR and we are expecting more 20000 PKR from Saudi Arabia. Whereas rest of the fund from UAE etc. is not submitted yet.

Being a party secretary finance, this is my core responsibility to raise the funds and to provide the better scheme for annual budget. Based on this annual budget, JKLF's central office will distribute the money as per yearly calendar among different offices in IoK & PoK as per their needs and requirements.

I hope you will understand the need of this project and we can easily cope with the financial issues if it is timely completed and implemented as discussed.

Once again, I highly appreciate your inputs and hope you will work on it with while keeping in mind the noble cause as your brother was a great asset of JKLF and we expect the same from you as well.

This will be much better if you kindly could arrange the meeting which can represent all UK's units and I would then schedule my personal visit to UK accordingly. It will be better if you can manage it in next 2 to 3 months especially in April, 2015.

246. Another email exchanged between Khawaja Manzoor Ahmed Chisthi, Secretary Finance-JKLF Riyadh and Tariq Sharif, Finance Coordinator, JKLF UK zone is reproduced below wherein there is discussion about financial code of conduct and plans for better utilization of funds collected from various zones. Khwaja Manzoor has discussed about a joint account under authorization of one 'Raja Haq Nawaz Sahib', 'Hameed Sahib' and 'Manzoor Khan Sahib'. He concludes his mail with these words:

"Once again, I reiterate that funds are very important to keep the movement alive and we are expecting a handsome amount from each individual member living abroad. I would like to make my personal visit to UK and for this as discussed if you can arrange a meeting representing all units in next 3 to 4 months where I can address to them as its really difficult to write down details on e-mails.

Thank you for understanding the needs of the organization and working with positive approach for the development of the organization- JKLF.

247. The 2nd supp. charge-sheet also contains details of other such emails wherein elaborate plans for mobilizing funds for secessionist aims of JKLF-Y have been discussed. In one such email dt. 03.05.2014, Khwaza Manzoor Chisthi has discussed plans to raise Rs. 15–20 lacs per year from Europe and had invited Yasin Malik to visit UK to strengthen the outfit. Needless to underscore that the above emails show as to how JKLF-Y activists mobilize funds in the name of 'Kashmiri freedom' in a very organized manner. These funds are collected abroad by JKLF-Y foreign offices and then routed to India through various illegal channels, to be utilized for violent secessionist activities in Jammu & Kashmir. It would be highly perilous to let such an organization function when patently it operates with such impunity and when there is clear evidence which has been unearthed through sustained investigation of the acts of such organization being avowedly anti-India and which directly affect the sovereignty of the nation.

248. Further, admission of guilt by Md. Yasin Malik of the charges framed against him by the Special NIA Court puts to rest any doubt regarding the involvement of JKLF-Y in unlawful activities as defined in the UA(P) Act. Even though in regard to the allegation of use of *hawala* funds for organizing violent protests including stone pelting on security forces to further the secessionist aims, Yasin Malik argued that he has been confronted merely with the document recovered from the house of the accountant of the *hawala* operator and not with the alleged *hawala* operator himself i.e. Zahoor Ahmed Watali, his confession of guilt to the charge framed u/ss 120B IPC, 121 IPC, 121A IPC, 13 UA(P) Act r/w sections 120B IPC, 15 UA(P) Act r/w sections 120B IPC, and sections 17, 18, 20, 38 & 39 of UA (P) Act renders his aforesaid argument/submission of no relevance. Relevant to highlight that in his reply cum affidavit, Md. Yasin Malik describes the exodus of minority Kashmiri pandits from the valley as a Govt. orchestrated move to unleash terror on Kashmiris *sans* the minority community when infact, it is an established fact that it were the acts of terror committed by organisations like JKLF-Y in the early 1990's bordering a genocide which forced the minority community members to leave their homes and hearth behind in the middle of the night. The insensitivity spewing from the reply cum affidavit of Md. Yasin Malik only buttresses the belief that JKLF-Y spitefully believes in secession of Jammu & Kashmir through violent means.

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

250. It would also need a brief observation here that an 'objective assessment' by the Tribunal of the relevant material before the Central Govt. for carrying out the declaration vide the Notification in question would not translate into substituting the Tribunal's satisfaction for that of the Central Govt. It has to be borne in mind that it is the Central Govt. which is in the best position to appraise whether the acts of an entity/organization are impinging upon the sovereignty and integrity of the country. The assessment process by the Tribunal therefore has to evaluate whether there was qualitative material before the Central Govt. before it proceeded ahead to declare an organization as unlawful. The 'sufficiency' aspect of inquiry into existence of grounds to carry out a declaration thus has to be construed accordingly and is not to be misconstrued as being an appellate authority over the decision making by the Central Govt. The Tribunal has thus to see whether the process of decision making by the Central Govt. was correctly arrived at in terms of the statutory provisions of the UA(P)A. When the evidence led before the Tribunal is assessed in

the above backdrop, there appears to be no reason not to concur with the line of reasoning adopted by the Central Govt. in declaring JKLF-Y as an unlawful association.

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

251. As noted hereinabove, the documents submitted by the witness (PW 6) who has deposed on behalf of the Central Government, *inter alia*, includes reports of intelligence agencies and the note prepared for the Cabinet Committee on Security setting out the entire background of JKLF-Y and its activities, based on the information collated by the intelligence agencies and also bringing out linkage of JKLF-Y with cross-border agencies/establishments, and finally from inputs received from Criminal Investigation Department, Jammu and Kashmir (Srinagar).

252. A perusal of the said documents has brought out in vivid detail the terrorist and secessionist activities of JKLF-Y in close coordination with inimical elements in Pakistan. The role of JKLF-Y in orchestrating public unrest and its manifestation through incidents of stone pelting, systematic public protests and *hartals* has prominently figured in the confidential documents. The systematic attempts to promote secession of Jammu and Kashmir from the territory of India, to undermine the sovereignty of India, to incite the local populace and to promote violence have been brought out in the said material/documents. Further, perusal of the file containing confidential documents/materials shows that the Central Govt. has applied its mind to the material placed before it and thereafter, taken the decision of approving the declaration of JKLF-Y to be an 'unlawful association'.

Evidence of money laundering for use of illegal/unexplained funds in separatist activities.

253. Testimony of PW 11 who is a senior officer from the specialized agency of the Central Govt. which is specifically tasked with tracking down funds which are generated through illegal activities and then routed back into financial system as clean money also clearly brings about the role of JKLF-Y in use of illegally generated funds for use of secessionist activities. The complaint dt. 24.08.2020 filed by the Enforcement Directorate brings out startling facts of the modus to bring in funds from abroad by Zahoor Ahmed Watali (who is an accused in the FIR no. RC/10/2017/NIA/DLI and also in the ECIR investigated by the Enforcement Directorate) by setting up front companies. Though details of same have been mentioned in the complaint which has been exhibited by PW 11 as Ex. PW 11/3, it will be relevant at this stage to highlight one such instance of (alleged) money laundering to have an idea of how much funds were being generated illegally and through unexplained sources for eventual use in secessionist activities by *Hurriyat* activists in Jammu & Kashmir. Investigation has revealed that a company set up by Zahoor Ahmed Watali entered into a lease agreement with a person based in Dubai, posing as owner of a certain land near Srinagar. The lease was for a purported commercial project which was to be set up by the Dubai based person (who also is an accused in the ECIR). Pursuant to the lease agreement, close to Rs. 6 crores was transferred to the company set up by Zahoor Ahmed Watali when in fact, as the investigation has revealed, the land was never in the ownership of the company set up by Zahoor Watali. Further, on being questioned, the person from Dubai who has taken the land on lease i.e. Naval Kishore, could not offer any explanation as to the source of this huge amount of almost 6 crores. Further, a document which has been seized from the accountant of Zahoor Ahmed Watali i.e. Ghulam Bhat and which document has been signed by Zahoor Ahmed Watali (which fact has been confirmed by forensic analysis) shows that unexplained funds were being received by Zahoor Watali from foreign sources and a huge tranche from amongst these funds i.e. Rs. 15 lacs was transferred/given to Yasin Malik. When confronted by the Enforcement Directorate regarding the purpose for receiving this amount from Zahoor Watali, Yasin Malik refused to comment on the same. Still further, he also could not explain the contents of an email which had been received on his email from Khwaja Manjoor Chistshi who is the finance co-ordinator of JKLF in Saudi Arabia and responsible for fund mobilization for JKLF-Y in the middle-east Asia region, wherein it has been mentioned that Khwaja Mnajoor wanted to send an amount of Rs. 10 lac PKR for JKLF but wanted a trustworthy person from Delhi to receive it because the said amount was to be sent through cargo. This email is in itself gravely incriminating in as much as cash was purportedly to sent through cargo which is impermissible under any national economic law. This email is thus another evidence of JKLF activists including Yasin Malik indulging in brazen money laundering and currency smuggling.

CONCLUSION

254. In conclusion, it is held that there is no denial to the assertions of the witnesses who have deposed on behalf of UOI that JKLF-Y has indulged in acts of secessionism and is still committed to the goal of secession of Jammu & Kashmir from the Indian Union, which directly and gravely impinges upon the territorial integrity of India. From the elaborate material/evidence placed on record in these proceedings and which has been discussed in the preceding paras, this *Tribunal* thus finds that there is ample justification to uphold the ban on the JKLF-Y and as a corollary, upholds the declaration of JKLF-Y as being an unlawful association, under the UA(P)A. Moreover, given the nature of activities of the JKLF-Y, the Central Government was justified in taking recourse to the *proviso* to Section 3 (3) of the UA(P)A. As noticed hereinabove, the activities of the concerned association have had a toxic effect on maintenance of law and order in the region of Jammu and Kashmir over the last several decades. The measure of stability that has come about after 2019 (as is evident from the reduced number of uncondusive incidents) cannot be allowed to be jeopardized on account of continuing unlawful activities of JKLF-Y.

255. In the framework of the Indian Constitution and the UA(P)A, there is no space for an association like the JKLF-Y which openly propagates secessionism, avowedly express dis-allegiance to the Constitution of India and undermines the territorial integrity and sovereignty of India.

256. Thus, this *Tribunal* having followed the procedure laid down in the Unlawful Activities Prevention Act, 1967 and its Rules and having independently and objectively appreciated and evaluated the material and evidence on record, is of the firm and considered view that there is sufficient cause for declaring the JKLF-Y as an unlawful association under *Section* 3(1) of the UA(P)A, 1967, vide the Notification dated 15th March 2024. Thus, an order is passed under *Section* 4 (3) of the UA(P)A, 1967 confirming the declaration made in the Notification bearing no. S.O. 1416 (E) published in the official gazette on 15th March 2024 issued under *section* 3 (1) of the Unlawful Activities (Prevention) Act, 1967.

(JUSTICE NEENA BANSAL KRISHNA)
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

September 12th, 2024”

[F. No. 14017/57/2024-NI-MFO]

ABHIJIT SINHA, Jt. Secy.