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PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
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नई दिल्ली, बुधवार, जनवरी 8, 2020/पौष 18, 1941

No. 104]

NEW DELHI, WEDNESDAY, JANUARY 8, 2020/ PAUSHA 18, 1941

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 8 जनवरी, 2020

का. आ. 112(अ).—जबकि, केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) और (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग-II, खंड-3, उप-खंड (ii) में प्रकाशित दिनांक 10 जुलाई, 2019 की अधिसूचना संख्या का.आ. 2469(अ) (जिसे इसके बाद उक्त अधिसूचना कहा गया है) के तहत सिक्स फॉर जस्टिस (एसएफजे) को विधिविरुद्ध संगम घोषित किया है;

और, जबकि, केंद्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग-II, खंड-3, उप-खंड (ii) में प्रकाशित दिनांक 7 अगस्त, 2019 की अधिसूचना संख्या का.आ. 2856(अ) के तहत विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसके बाद उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के मुख्य न्यायाधीश, न्यायमूर्ति श्री डी.एन. पटेल शामिल थे;

और, जबकि केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या सिक्स फॉर जस्टिस (एसएफजे) को विधिविरुद्ध संगम घोषित किए जाने का पर्याप्त कारण है या नहीं, दिनांक 7 अगस्त, 2019 को उक्त अधिकरण को उक्त अधिसूचना संदर्भित की थी;

और, जबकि उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए दिनांक 6 जनवरी, 2020 को एक आदेश दिया था;

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

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

(न्यायमूर्ति डी. एन. पटेल)

विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण

जनवरी 6, 2020

[फा.सं. 17014/18/2019-आई.एस.-VII]

पुण्य सलिला श्रीवास्तव, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 8th January, 2020

S.O. 112 (E).—Whereas the Central Government in exercise of the powers conferred by sub-sections (1) and (3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as said Act), declared the Sikhs For Justice (SFJ) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 2469 (E), dated the 10th July, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated 10th July, 2019 (hereinafter referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Mr. [REDACTED], Chief Justice, High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 2856 (E), dated 7th August, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated 7th August, 2019;

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 the 7th August, 2019 for the purpose of adjudicating whether or not there is sufficient cause for declaring the Sikhs For Justice (SFJ) as unlawful association;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order on the 6th January, 2020, confirmed 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

COURT NO. 1: DELHI HIGH COURT, NEW DELHI

Date of decision: 6th January, 2020

Re: Notification No. S.O. 2469(E) dated 10th July, 2019 issued by the Central Government under Section 3(1) & 3(3) of the Unlawful Activities (Prevention) Act, 1967 declaring Sikhs For

Justice (SFJ) as an unlawful association, read with Notification No. S.O. 2856(E) dated 7th August, 2019.

UNION OF INDIA

Through: Mr. [REDACTED], Solicitor General of India with Mr. [REDACTED], Sr. Advocate with Mr. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED], Advocates for Union of India.

Mr. [REDACTED], Under Secretary, Mr. [REDACTED], Technical Officer (Monitoring) and Mr. [REDACTED], Asst. Section Officer from Ministry of Home Affairs.

Versus

SIKHS FOR JUSTICE (SFJ)

Through: Mr. [REDACTED], Sr. Advocate with Mr. [REDACTED], Ms. [REDACTED], Mr. [REDACTED] and Md. [REDACTED], Advocates for the respondent Association.

CORAM:

HON'BLE MR. [REDACTED]

ORDER

1. In exercise of powers conferred by sub-sections (1) and (3) of Section-3 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the Act'), the Central Government, vide Notification No. S.O. 2469(E) dated 10th July, 2019 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), declared the Sikhs For Justice [for short 'SFJ'] as an 'Unlawful Association' and directed 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.

2. Thereafter, in exercise of the powers conferred by sub-section (1) of Section 5 of the Act, the Central Government, vide Notification No. S.O. 2856(E) dated 7th August, 2019, constituted this Tribunal for the purpose of adjudicating whether or not there is 'sufficient cause' for declaring 'SFJ' as an Unlawful Association, which has already been declared as such by the Central Government vide its notification No. S.O. 2469(E) dated 10th July, 2019. The reference made to this Tribunal under the provisions of Section 4(i) of the Act was received by this Tribunal on 8th August, 2019.

3. This order will answer the aforesaid reference.

4. The Notification dated 10th July, 2019 was issued by the Central Government on the ground that 'SFJ' is indulging in activities which are prejudicial to the integrity and security of the country and further that the following unlawful activities indulged by the 'SFJ' fall within the meaning of clauses (o) and (p) of sub-section (1) of Section 2 of the Act, namely:

(i) SFJ is involved in anti-national and subversive activities in Punjab and elsewhere, intended to disrupt the sovereignty and territorial integrity of India;

(ii) SFJ is in close touch with the militant outfits and activists, and is supporting violent form of extremism and militancy in Punjab and elsewhere to carve out a sovereign Khalistan out of territory of Union of India;

(iii) SFJ is encouraging and aiding the activities for secession of a part of the Indian territory from the Union of India and supporting separatist groups fighting for this purpose in India and elsewhere by indulging in activities and articulations intended to disrupt the sovereignty and territorial integrity of India.

The Central Government further opined that if the unlawful activities of 'SFJ' are not curbed and controlled immediately, it is likely to:-

- (a) Escalate its subversive activities including attempts to carve out Khalistan Nation out of the territory of Union of India by destabilising the Government established by law;
- (b) Continue advocating the secession of the Khalistan from the Union of India while disputing the accession of the State with the Union;
- (c) Propagate anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country; and
- (d) Escalate secessionist movements, supports militancy and incite violence in the country.

5. Along with the aforesaid Notification, the Central Government had furnished to the Tribunal a Note about 'SFJ', detailing its backgrounds, objectives, activities, and associates as well as the details of cases registered in Punjab and Uttarakhand and by the NIA against operatives and handlers of 'SFJ'. It is also stated that 'SFJ' has no known presence in India but its modules and their activities in India are being operated by their foreign based handlers. The objectives of 'SFJ', as stated in the Note, read as under:

- (i) SFJ is presently propagating the so-called Referendum-2020 on the social media as well as on ground by holding meetings across USA and other countries where Sikhs are in significant numbers intending to cause disaffection against India.
- (ii) A website has also been launched by name www.referendum2020.org which is replete with pro-Khalistani posts and anti-India insinuations. The website has posters with photo of Sikh terrorist [REDACTED] juxtaposed with the caption 'PUNJAB REFERENDUM 2020 FRO KHALISTAN' and logos for 'PUNJAB REFERENDUM 2020' and 'KHASLISTAN'. There are posters saying 'STOP INDIAN TERRORISM' and 'FREE PUNJAB, END INDIAN OCCUPATION', intended to disrupt the territorial integrity of India.
- (iii) The website also propagates 'Right to Self-Determination under International Law' for the people of Punjab claiming that Punjabi is the common language and the Sikhs being predominant in Punjab, they have the right to Self-Determination based on language and religion, causing imputations and assertions prejudicial to national integration. It also supports dissolution of India into several smaller states such as Punjab (Khalistan), Gorkhaland, Assam, Kashmir, South India, Maoist insurrections.
- (iv) The written content as well as the visual representations in the website www.referendum.2020org are provocative and inciting the Sikh community to bring about secession of Punjab from the Union of India. The website also has a link for raising funds for 'Sikhs For Justice' (SFJ) for the purpose of campaign for so-called Referendum 2020 through PayPal account & Debit or Credit card, so as to escalate its subversive activities in India and abroad.
- (v) The website provides material on all the activities of SFJ related to so-called Referendum 2020 and provides links to download banners, placards, posters, Khalistan flag, T-Shirt designs (front & back), etc. supporting the so-called 'Referendum 2020', that are squarely covered under Sections 153A and 153B of IPC.

6. In addition to the aforesaid objectives of SFJ, the following activities of SFJ are also narrated in the Note annexed to the reference:

- (i) SFJ organized (Aug. 12, 2018) "London Declaration" on the "the so-called Referendum 2020" where approximately 1200-1500 Sikhs took part from the UK and abroad, intending to cause disaffection against India.
- (ii) SFJ launched the registration of "Team 2020", a team of volunteers to assist during the referendum campaign, from Gurdwara Panja Sahib (Hassanabdal, Apr. 14, 2019), followed by registration at Stockton, California (Apr. 14) in the US and Surrey, British Columbia (Apr. 20) in Canada. SFJ had also offered to reimburse travelling expenses to Sikhs visiting Gurdwara Panja Sahib on the occasion. It declared that it would sponsor 10,000 Sikhs pilgrims from India to attend the "Khalistan 2020 Convention" to be held at Kartarpur in November, 2019, coinciding with celebrations related to the 550th Birth Anniversary of Guru Nanak. From this it is evident that SFJ is encouraging and aiding the activities for secession a part of the Indian territory from the Union of India.

- (iii) SFJ commenced registration of volunteers online, in other locations across the world, including Khalsa Diwan Gurdwara (Hong Kong, Apr. 21); US based Gurdwaras including Gurdwara Sikh Cultural Society, Richmond Hill, New York; Gurdwara Singh Sabha, Carteret, New Jersey and Gurdwara Stockton, California (Apr. 14); and during 'Sikh Day Parades' held in New York (Apr. 27) and Surrey (Apr. 20). All these activities are intended to escalate its subversive activities against India.
- (iv) SFJ organized fund raising conferences in Fremont, California (Apr. 7, 2019), Toronto (Mar. 30) and New York (Mar. 17). To ensure participation of Sikh youth among the Diaspora in the campaign, SFJ in coordination with Sikh Club or Queens College, New York organized (Mar. 25, 2019) a meet on "Khalistan" and so-called "Referendum 2020". Earlier, similar events were held (Jan. 17, 2019) at University of California; San Jose State University (Feb. 21, 2019) and California Polytechnic University, Pomona (Mar. 7, 2019), wherein they incited the youth to indulge in unlawful activities with the aid of their Punjab-based friends and relatives. In addition, SFJ has been organizing a series of so-called "Referendum 2020" Conferences in various cities abroad for raising funds and promote their referendum campaign, and thus propagating anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country.
- (v) ██████████ wrote (Nov. 7, 2018) to the US Ambassador in New Delhi complaining against the measures taken by the Government on the operatives affiliated with the so-called "Referendum 2020" campaign in Punjab. He falsely accused Indian Government of "unleashing a reign of terror" by "labeling peaceful campaigners" as terrorists and filing "false charges" against them. Such representations were tweeted on social media to garner support for SFJ. This is an attempt to escalate secessionist movement, support militancy and incite violence in the country.
- (vi) ██████████ also wrote (New York, Jan. 13, 2019) a letter to the Chinese Ambassador in Islamabad, ██████████, in which he falsely alleged the involvement of Indian intelligence in the attack (Nov. 23, 2018) on the Chinese Consulate in Karachi. SFJ offered to donate Pak Rs.1 million to their families. In addition, ██████████ falsely accused India of "disturbing peace, security and stability" in China, Pakistan and Afghanistan over the last three decades, and held India "responsible" for the July 2018 attack in Jalalabad (Afghanistan). ██████████ further falsely alleged that India is not only "sponsoring terrorism" in foreign countries to "discredit Pakistan" but is also "violently" crushing the "domestic democratic movements for independence in Punjab and Kashmir" thereby supporting separatist groups fighting for this purpose in India.
- (vii) SFJ through social media posts incited (Feb. 2019) the teachers of Punjab, who had been protesting demanding higher remunerations and better service conditions, to promote so-called "Referendum 2020" in their schools and colleges, articulating that a change in the Government would not help resolve their issues, and "independence" was the only solution to ensure that their salaries were brought at par with developed countries, and thus is encouraging the activities for secession.
- (viii) SFJ is also using social media to garner support from Punjab based Sikh youth for its so-called "Referendum 2020" campaign. SFJ had made use of a Chinese social media app called Tik-Tok for pro-Khalistani propaganda with hashtags including #khalistanzindabad and #referendum2020 with 1 million views, and thereby is aiding and abetting the activities for secession.
- (ix) UK-based SFJ operative ██████████, through social media, has been abetting India-based SFJ supporters/operatives to circumvent the ban on SFJ's Facebook page promoting so-called "Referendum 2020" in India. The post describes the procedure of downloading and using Virtual Private Network (VPN) app and advises users to select a frequency/location outside the country to aid and abet anti-national and subversive activities in India and elsewhere, intended to disrupt the sovereignty and territorial integrity of India.
- (x) SFJ allegedly called upon Pak Prime Minister ██████████ to "politically support so-called 'Referendum 2020', to liberate Punjab from Indian occupation" and undo Pakistan's "failure to support Sikhs" during the 1984 "siege" of the Golden Temple under Operation Blue Star. In addition, SFJ also released a fictitious letter purportedly written (Dec. 3, 2018) by "Deputy Director General in Psy-Ops Wing of the Directorate

of Military Intelligence”, which claimed that Sikhs in the Indian armed forces are “getting united and secretly” extending support to so-called “Referendum2020” and that called for maintaining a database of the Sikhs personnel in the armed forces and “controlling” their further recruitment, intended to escalate its subversive and secessionist activities.

- (xi) SFJ and its operatives have been trying to radicalize, fund and motivate the youth of Punjab into committing acts of arson and violence. It has also been making efforts to enlist the support of gangsters and radicals in Punjab and exhorting them to fight for the ‘liberation of Punjab’ from the Indian government, thereby propagating anti-national and separatist sentiments prejudicial to the territorial integrity and security of India.
- (xii) Punjab Police have registered criminal cases against SFJ leaders abroad and operatives based in India who had been radicalized, indoctrinated, motivated and funded by SFJ leaders in carrying out acts of violence, such as burning of liquor shops and targeting of political and social leaders/workers belonging to a particular community. Such foreign based SFJ leaders include ██████████, ██████████ (close associate of ██████████ based in New York), ██████████ (UK), ██████████ (UK), and ██████████ (Malaysia). Arms & ammunition have been recovered from members of such radical modules and there are ample evidences to prove that such modules were being funded by above-mentioned SFJ leaders and operatives based in various South-Eastern, Western and even African countries, through money transfers over MTSS or Hawala channels. From these cases, it is evident that SFJ is supporting violent form of extremism and militancy in Punjab in support of its secessionist agenda.
- (xiii) In May 2018, Batala Police arrested 2 radical operatives ██████████ (a Territorial Army Soldier) and ██████████, who had set 2 liquor vends on fire in Batala Police district. During preliminary investigations, these SFJ operatives disclosed that they had been radicalized, indoctrinated, motivated and funded by their foreign based handlers, including ██████████, ██████████ to Sikhs for Justice (SFJ), ██████████ @ ██████████ @ ██████████ (close associate of ██████████ based in New York), ██████████ (UK), ██████████ (UK), ██████████ (Malaysia) to carry out various types of violent acts to give wide publicity to the ongoing ISI funded and sponsored secessionist campaign for the ‘liberation of Punjab’ from the Indian government. They also disclosed that they were lured into the campaign over the social media after being contacted and motivated (including by Gurbatwant Pannun himself) on various social media platforms (such as Telegram and WhatsApp) by their above-mentioned foreign based handlers. They had been asked to spray-paint so-called Referendum 2020 slogans and to put liquor vends and government properties on fire during the Ghallughara week (June 2018). From this incident, it is clear that SFJ has been indulging in activities, which are prejudicial to internal security of India and public order, and have the potential of disrupting peace, the unity and integrity of India.
- (xiv) In October 2018, Amritsar Police had arrested two radical operatives, ██████████ and ██████████, who had pasted so-called Referendum 2020 banners in public places at Amritsar. During preliminary investigations, these operatives had disclosed that they had been motivated by their foreign based handlers, including ██████████. And that they have procured weapons from funds received from abroad to target political leaders of a particular community. Consequent to their arrest, Sikhs for Justice had announced that they would provide legal defense and also offered 2 lakh rupees each for the families of ██████████ and ██████████. Thus, SFJ is encouraging and aiding persons to undertake unlawful activities intending to disrupt the territorial integrity of India.
- (xv) In March 2019, three SFJ operatives (█████████, ██████████ @ ██████████ and ██████████) were arrested in Amritsar and 2 pistols were recovered from them. Posters and Pamphlets regarding so-called Referendum 2020 were also recovered from Baljit Singh. These SFJ operatives had also been motivated to kill leaders of a particular community in an attempt to indulge in unlawful activities intending to disrupt the territorial integrity of India.
- (xvi) SFJ operatives based in USA have also been involved in assault on moderate Sikhs Political leaders visiting USA. In August 2018, SFJ operatives attacked ██████████, President ██████████

Management Committee, in front of Yuba City Gurudwara. One ██████████ of California, SFJ operative and ██████████ were arrested by the US Police in connection with this assault on ██████████. This incident points to the fact of SFJ aiding and abetting the offenses abroad against Indians in support of its secessionist and subversive agenda of disrupting the territorial integrity of India.

- (xvii) SFJ had exhorted Punjab police personnel to rebel against the Punjab government and not to obey the orders of the Chief Minister of Punjab, and also desert the Punjab Police, which was taking effective and lawful action against militant/radical/gangster elements operating in Punjab, often with active support from across the border. SFJ has also come to notice threatening and intimidating Punjab Chief Minister, Punjab Jails Minister and senior police officers of Punjab, including former and serving DGPs, on alleged charges of torture of SFJ operatives who had been brought to justice and booked as per law for commission of violent acts in Punjab in 2018 and 2019. From these incidents it is evident that SFJ has been including in activities, which are prejudicial to internal security of India and public order, and have the potential of disrupting peace, the unity and integrity of India.
- (xviii) SFJ has also been targeting soldiers from Sikh community working in Indian Army through a dedicated social media campaign and instigating them to desert the army and work for promotion of the so-called Referendum-2020 instead. They have also been exhorting these soldiers not to fight for India or shed its blood for India but to fight for independence of Punjab from India. SFJ has also been making false claims that the Indian Army had killed 10,000 Sikhs in June 1984 and 2,50,000 Sikhs from 1984-1994. Thus, SFJ has been causing disaffection among Indian Army soldiers. IN April 2019, SFJ asked the soldiers from Sikh community working in Indian Army and the members of Punjab police to attend the so-called 'Referendum 2020' Rally in Washington D.C on 6th June, 2019. SFJ offered free sponsorship letter for U.S. visa to these soldiers and police personnel. These activities indicate that SFJ has been engaged in activities and articulations intended to cause disaffection against India.
- (xix) SFJ handlers based abroad have also been involved in burning of Indian Flag, and they have also come to notice instigating the youth of Punjab to indulge in similar acts. ██████████
██████████ and ██████████ have come to notice for uploading videos after burning Indian flags in various countries abroad causing disaffection against India.
- (xx) On 26-01-2019, SFJ operatives burnt the Indian Flag intended to vitiate India's Republic Day celebration at various places, especially in London and Washington D.C. ██████████ and ██████████ were seen leading the group in London while ██████████ burned the Indian National Flag in Washington D.C. In May, 2019, SFJ urged the Sikh Community in Punjab to boycott the General Parliamentary Elections-2019 and vote instead for Independent Punjab in so-called Referendum 2020 in November 2020. He claimed that only an Independent Punjab could solve the problems of Punjab, such as unemployment and farmer's suicides. These activities again indicate that SFJ's engagement in activities and articulations intended to cause disaffection against India.
- (xxi) UK based SFJ operatives especially ██████████ who is wanted for involvement for crimes in India, was seen in the India vs. England World Cup cricket match at Edgbaston (Birmingham) on 30th June, 2019. Pamma and his associates were seen wearing T-shirts of so-called Referendum 2020 and waving the Khalistani Flag at the Cricket match. In a highly secessionist act, SFJ also shared a poster on social media last week urging pro-Khalistani Sikhs to boo the Indian Team during the Semi-Final match against New-Zealand on 9th July, 2019. SFJ alleged that Team India represented the faces of Indian terrorism, thereby propagating anti-national and separatist sentiments prejudicial to the territorial integrity and security of the country.
- (xxii) On the occasion of Gurburab celebrations in Nankana Sahib in November 2018, ██████████ ██████████ of SFJ, made public a letter declaring that the SFJ will open so-called Referendum 2020 Information Centre in Lahore. He also claimed that hundreds of Referendum campaigners from North America, Europe and UK had reached Pakistan to coordinate 'Referendum 2020' campaign in Nankana Sahib during the 549th birth anniversary celebrations of Sri Guru Nanak Dev Ji. He also added so-called 'Referendum 2020' banners and Khalistan flags with the life size portrait of Jarnail Singh Bhindranwale

had been placed throughout the Nankana Sahib Complex. ██████ thus made it clear that the so-called Referendum-2020 campaign had the active support of the Pak establishment and the ISI.

(xxiii) SFJ posted insurrectionary and insinuating songs and other visual representations in the form of speeches or otherwise such as on Facebook/Twitter/YouTube Channels/Videos, thereby by glorifying Sikh terrorists as well as by propagating anti-India ideology, are radicalizing and instigating the members of Sikh community to agitate for the secession of Punjab from the Union of India, thereby trying to undermine the territorial integrity of India while inciting disaffection among the Sikh community towards Indian Government and Indian State.

7. The Central Government, in the Note annexed to the reference, has also given the details of cases registered in Punjab and Uttarakhand and by NIA against operatives and handlers of Sikhs For Justice (SFJ), which are summarized as under: -

1. FIR No. 149/2017 of PS-Sohana District-SAS Nagar under section 124-A, 153-A, 153-B and 120-B of IPC against the accused ██████ and ██████
2. FIR No. 26/2018 of PS-Sadar Banga District-SBS Nagar under section 436, 511 and 120-B of IPC against the accused ██████ and ██████;
3. FIR No. 46/2018 of PS-Rangar Nagal District-Batala under section 121, 121-A, 122, 124-A, 115, 120B, 307, 438, 427, 148 and 149 of IPC, 11, 12, 13, 17, 18 of Unlawful Activities (Prevention) Act and Section 25 of the Arms Act against the accused ██████
████████████████████
████████████████████ and ██████;
4. FIR No. 152/2018 of PS-Sultanwind District-Amritsar under section 117, 122, 124-A, 153-A, 153-B and 120-B of IPC, Section 17, 18 and 19 of the Unlawful Activities (Prevention) Act and Section 25 of the Arms Act against the accused ██████
████████████████████ and ██████;
5. FIR No. 132/2018 of PS-Lahori Gate, Div-4, Patiala under section 13, 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967, Section 3, 4, 5 of the Explosive Substance Act, 1908, Section 25 of the Arms Act and Section 120B of the Indian Penal Code against the accused ██████
████████████████████ and ██████;
6. FIR No. 156/2018 of PS-Sirhind under section 25 of Arms Act, Section 120B of Indian Penal code and Section 20 of the Unlawful Activities (Prevention) Act, 1967 against the accused ██████, ██████ and ██████;
7. FIR No. 3/2019 of PS-S.S.O.C. District-Amritsar under section 25/54/59 of Arms Act and Section 13 of Unlawful Activities (Prevention) Act, 1967 against the accused ██████ and ██████;
8. FIR No. 179/2018 of PS-Sadar Samana Patiala under section 25 of Arms Act against the accused ██████;
9. FIR No. 299/2018 of PS-Khatima, Udamsingh Nagar, Uttarakhand under section 153-B and 505 of IPC and Section 66 of IT Act against the accused ██████ and ██████; and
10. FIR/Case No. RC-02/2019/NIA/DLI under Section 120B, 124A, 153A, 153B and 505 of IPC and Section 13, 17 & 18 of Unlawful Activities (Prevention) Act, 1967 against the accused ██████.

8. In the aforesaid background, the Central Government formed an opinion that SFJ has been indulging in the activities which are prejudicial to the integrity and security of the country and have the potential of disrupting peace, unity and integrity of the country and that it is necessary to declare 'SFJ' to be an 'unlawful association' with immediate effect i.e. w.e.f. the date of publication of Notification No. S.O. 2469(E) dated 10th July, 2019.

9. Upon receiving the reference on 8th August, 2019, the Tribunal listed the matter for preliminary hearing on 13th August, 2019.

10. On 13th August, 2019, on, *prima facie* consideration of the material placed on record by the Central Government, this Tribunal directed that a notice under Section 4(2) of the Act be issued to 'SFJ' to show cause, within 30 days from the date of service of notice, as to why it be not declared as an "Unlawful Association" and the matter was fixed for hearing on 20th September, 2019. The notice was directed to be served on 'SFJ' in the following manner:

- I. By affixing a copy of the notice at some conspicuous part of the office(s), if any, of the Association;
- II. By serving a copy of the notice, wherever possible, on the principal office-bearers, if any, of the Association;
- III. In case, the offices of the Association are located outside the territory of India or the principal office-bearers of the banned Association are actually and voluntarily residing, carrying on business or personally working for gain outside the territory of India, the notices may be served in terms of Rules 25, 26 and 26A of Order-V of the Code of Civil Procedure, 1908;
- IV. By making an announcement over the radio/television from the local or nearest broadcasting station of the All India Radio/Doordarshan;
- V. By pasting the notice on the Notice Board of the office of the Deputy Commissioners at the Headquarters of each of the Districts in the States, where the activities of the Association are undertaken;
- VI. By pasting the notice on the Notice Board of the Indian Consulates/Embassies in the countries where the activities of the 'SFJ' are claimed; and
- VII. By publication in two National Newspapers in English and in two vernacular newspapers of the States of Punjab, Haryana, Jammu and Kashmir, Rajasthan, Uttar Pradesh, Uttarakhand, Government of National Capital Territory of Delhi and Chandigarh Administration as also in the States of New York in USA; Toronto in Canada and London in UK.

11. Pursuant to the directions given by the Tribunal, the affidavits of service were filed for the states of Haryana, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, Jammu and Kashmir, NCT of Delhi and NCT of Chandigarh, putting on record the factum of service of notice. So far as service of notice at the registered office and other offices of the respondent Association at USA, Canada and UK was concerned, an affidavit of service was filed by the Under Secretary, Ministry of Home Affairs, New Delhi confirming service of notice on the respondent Association at the addresses mentioned in the background note furnished by the government along with the reference. The affidavit was supported by the confirmation reports received from the High Commission of India at London, the Consulate General of New York at USA and the Consulate General of Toronto at Canada.

12. On 20th September, 2019, Mr. [REDACTED], Advocate, entered appearance on behalf of the respondent Association and filed his vakalatnama. He was lead by Mr. [REDACTED], Senior Advocate. A complete set of Background Note was supplied to them to enable them to file their reply to the Show Cause Notice. The reply to the Show Cause Notice was filed by the respondent Association on 14.10.2019 by way of preliminary submissions.

13. Before proceeding further in answering the reference, it would be appropriate at this stage to notice Sections 3, 4, 5 and 9 of the Unlawful Activities (Prevention) Act, 1967 and Rules 3 & 5 of the Unlawful Activities (Prevention) Rules, 1968 and some of the pronouncements of the Hon'ble Supreme Court on the subject:

Sections 3, 4, 5 and 9 of the UAPA read as under:

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

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

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

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

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—

- (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or
- (b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or
- (c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or
- (d) in such other manner as may be prescribed.

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

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry 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 any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

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].*

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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.”*

Rules 3 & 5 of the UAP Rules read as under:

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.]*

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.”

14. Sub-section (5) of Section 5 of the Act provides that subject to Section 9, the Tribunal has the power to regulate its own procedure in all matters during the discharge of its functions. Section 9 provides for the ‘procedure’ to be followed for disposal of the applications under the Act, viz. subject to the rules made under the Act, the procedure to be followed by the Tribunal in holding any inquiry under Section 4(3) or any application under Section 7(4) or Section 8(8) “*so far as*” may be, the procedure laid down in the Code of Civil Procedure 1908. Rule 3 of the UAP Rules provides that subject to sub-rule (1), the Tribunal shall follow “*as far as practicable*” the rules of evidence as laid down in the Indian Evidence Act 1872. Thus, the Indian Evidence Act and the Rules made thereunder are not ‘*stricto sensu*’ applicable to the proceedings under the Act. The Hon’ble Supreme Court in **Jamaat-e-Islami Hind v. Union of India, (1995) 1 SCC 428**, while examining a similar ban on an association named Jamaat-e-Islami Hind, examined the provisions of the Act and on the issue of procedure observed that 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. It has further been held by the Supreme Court that the material need not be confined only to legal evidence in the strict sense and such a procedure would ensure that the decision by the Tribunal is made after assessing the credibility of the material while protecting the rights of the association and its members without compromising and/or jeopardizing the public interest, following the principles of natural justice and not merely accepting the opinion already formed by the Central Government. It has also been held that the materials in such matters are not confined to legal evidence in the strict sense and that the scrutiny and the procedure required to be followed as well as appreciation of evidence and the material brought on the record is not akin to a criminal trial.

15. It is pertinent at this stage to also take note of the guidelines laid down by the Supreme Court in **Jamaat-e-Islami Hind (supra)** for holding an enquiry of this nature. The Hon’ble Court has highlighted the principles which ought to govern an enquiry of this nature and the manner of adjudicating the ‘sufficiency’ of cause to ban an association. In para 11 of the judgment, the Hon’ble Supreme Court has observed as under:-

“The nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under sub-section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the Association to be unlawful. 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 the them”.

In para 19 of the judgment, the Hon’ble Supreme Court has dealt with the issue of appreciation of material placed before the Tribunal, based on which the Central Government took the decision to ban the association. The said para reads as under:-

“The test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, 1967, is equally applicable in accordance with the decision in V.G. Row. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the expression ‘adjudication’.”

In para 26 of the same judgment, the Hon'ble Court has pronounced on the application of the principles of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the basis of material placed before it and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. The observations made by the Hon'ble Court in the said para 26 read as under:

“..... 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.”

16. During the hearing of the Tribunal on 17th October, 2019, the respondent Association moved an application seeking copies of documents which are referred to by the witnesses in their affidavits especially in the affidavit of Smt. ██████████ (PW-2). Response to this application was filed by the Union of India stating that so long as documents which are in public domain are concerned, they shall be supplied to the respondent Association. However, documents which are classified and not in public domain cannot be provided and that Union of India shall claim privilege in respect of those documents and the said documents would be placed before the Tribunal, for its perusal, in a sealed cover. Union of India subsequently also filed an application under Section 123 of the Evidence Act read with Section 172 of the code of Criminal Procedure claiming privilege in respect of certain documents which were sought by the respondent Association vide its application dated 17.10.2019. The respondent Association also preferred an application objecting to furnishing of documents by Union of India in sealed cover. Reply to the said application was filed by the Union of India. Vide order dated 06.12.2019, it was directed that the said issue will be heard and decided along with the main matter.

17. It is deemed necessary at this stage to decide the issue of “privilege” claimed by the Central Government in respect of documents submitted by the witnesses in sealed covers, the contents whereof have not been disclosed to the respondent Association or to its counsel.

18. Mr. ██████████, learned Senior counsel for the Union of India argued that the nature of proceedings and the scope of enquiry before the Tribunal and the treatment which has to be given to the documents in respect of which privilege has been claimed by the government is guided by the decision of the Hon'ble Supreme Court in *Jamaat-e-Islami Hind (supra)* It is submitted that the Hon'ble Supreme Court after interpreting the scheme of the Act and the Rules framed there-under has upheld the right of the government to claim privilege in respect of confidential documents in public interest. Learned senior counsel referred to para 20 and 22 of the said judgment, which read as under:

“20.The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must be satisfied, to make the adjudication meaningful. No doubt, the requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. This is also evident from the fact that the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of facts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit non-disclosure of confidential documents and information which the 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.”

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 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 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.”*

19. Learned senior counsel for the Union of India submitted that the documents in the sealed cover are confidential and sensitive in nature and are part of evidence collected during the course of investigation as also inputs received from the intelligence agencies. It is submitted that disclosure of these documents might put to peril the safety of certain entities, who are named in these documents and, hence, these documents cannot be supplied to the respondent Association or to their counsel. Learned senior counsel also sought to place reliance on Section 123 of the Indian Evidence Act. It is stated that the privilege in respect of the said documents is claimed based on the nature of documents which impinge upon national security and their disclosure might jeopardize the interest and safety of individuals and also the national security.

20. Mr. ██████████, learned senior counsel for the respondent Association on the other hand argued that non supply of copies of documents being produced before the Tribunal in sealed cover would, *in fact*, jeopardize their defense and the respondent Association would not even know as to what are they required to defend or what are the documents based on which the Central Government has formed its opinion to ban the respondent Association. Learned senior counsel referred to the decision of the Hon'ble Supreme Court in ***S. P. Gupta vs. Union of India, 1981 (Suppl.) SCC 87*** to submit that even if the privilege is to be claimed by the Union of India in respect to certain documents, it must follow the specified procedure and the claim for privilege can be made only by the Minister or the Secretary of the concerned department by way of an affidavit while in this case the application claiming privilege has been filed only with an affidavit of a DIG in the National Investigation Agency. Learned senior counsel relied on para 75 of the judgment which reads as under:

“Now we may conveniently at this stage consider the question as to how a claim for immunity against disclosure should be raised under section 123. It is necessary to repeat and re-emphasize that this claim of immunity can be justifiably made only, if it is felt that the disclosure of the document would be injurious to public interest. Where the State is a part to an action in which disclosure of a document is sought by the opposite party, it is possible that the decision to withhold the document may be influenced by the apprehension that such disclosure may adversely affect the head of the department or the department itself or the minister or even the government or that it may provoke public criticism or censure in the legislature or in the press, but it is essential that such considerations should be totally kept out in reaching the decision whether or not to disclose the document. So also the effect of the document on the

ultimate course of the litigation-whether its disclosure would hurt the State in its defense-should have no relevance in making a claim for immunity against disclosure. The sole and only consideration must be whether the disclosure of the document would be detrimental to public interest in the particular case before the Court. It has therefore been held since long before Conway v. Rimmer was decided in England and since the decision in Sodhi Sushkev Singh case in India that a claim for immunity against disclosure should be made by the minister who is the political head of the department concerned or failing him, by the secretary of the department and the claim should always be made in the form of an affidavit. Where the affidavit is made by the secretary, the Court may in an appropriate case require an affidavit of the minister concerned. The affidavit should show that the document in question has been carefully read and considered and the person making the affidavit has formed the view that the document should not be disclosed either because of its actual contents or because of the class of documents to which it belongs. If in a given case no affidavit is filed or the affidavit filed is defective, the Court may give an opportunity to the State to file a proper affidavit. The reason is that the immunity against disclosure claimed under section 123 is not a privilege which can be waived by the State. It is an immunity which is granted in order to protect public interest and therefore even if the State has not filed an affidavit or the affidavit filed is not satisfactory, the court cannot abdicate its duty of deciding whether the disclosure of the document in question would be injurious to public interest and the document should not therefore be allowed to be disclosed. That is why in England this immunity is no longer described as "Crown Privilege" but is called "public interest immunity". This aspect of the immunity was emphasized by Lord Reid in Reg v. Lewes Justices, ex parte Home Secretary where the learned Law Lord observed that the expression 'Crown Privilege' is wrong and may be misleading and there is no question of any privilege in the ordinary sense of the word, as the real question is whether the public interest requires that the document shall not be produced. Lord Simon of Glaisdale also pointed out in the same: "Crown privilege is a misnomer and apt to be misleading. It refers to the rule that certain evidence is inadmissible on the ground that its adduction would be contrary to the public interest...it is not a privilege which may be waived by the Crown or anyone else."

21. It is, thus, submitted that even if Union of India is to claim privilege for non-disclosure of certain documents on the basis of public interest, it ought to file an affidavit claiming such privilege showing exactly how such disclosure would be against public interest. It is, thus, argued that the plea of the Union of India claiming privilege for non-disclosure of certain documents be disallowed and the documents furnished by the Union of India in sealed covers be not perused or considered while answering the reference.

22. During the course of recording of evidence of the witnesses, the witness namely Mr. ██████████, Joint Secretary, Ministry of Home Affairs, Government of India handed over to the Tribunal two sealed envelopes, claiming their contents to be confidential and, thus, claiming privilege on disclosure of these documents to the respondent Association on the ground of public interest in terms of proviso to Rule 5 of the UAP Rules. Another sealed envelope is filed by PW-3, Mr. ██████████, DSP along with his affidavit PW-3/1, even though the contents thereof find mention in para 14 of the affidavit, wherein it is stated that the sealed cover contains the transcripts of ██████████ ██████████ ██████████'s video and the relevant portion of ██████████ ██████████ ██████████ conversations.

23. There is no doubt that every document produced by the Central Government cannot be accepted on its face value, particularly those which are produced in a sealed cover. While safeguarding the rights of the banned Association, it is necessary that each and every document produced by the Central Government must be made available to the respondent Association. At the same time it is also necessary, as observed by the Supreme Court, that sensitive information and intelligence inputs or their sources are not placed in public domain. But the credibility of each of the documents produced before the Tribunal in sealed cover must be assessed and examined. Even in *S.P. Gupta's case (supra)*, which was referred to by the learned senior counsel for the respondent Association, the Supreme Court has noted that cabinet papers, minutes of discussions of heads of departments, and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to classified category of documents which in the public interest must be regarded as protected against disclosure. In para 73 of the same judgment, the Supreme Court made certain observations with respect to

balancing public interest vis-à-vis non-disclosure of documents. It would be worthwhile to reproduce the said para 73 which reads as under:-

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

“It is universally recognised 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.”

[Emphasis supplied]

24. At the outset, it is made clear that the documents being produced by the Union of India in sealed covers cannot form the basis for assessing the sufficiency of cause in banning the respondent Association. At the most it may have only corroborative value and support to the substantive evidence placed before the Tribunal, copies whereof are served on the counsel representing the respondent Association. The principles of natural justice demand a fair opportunity to the respondent Association to defend itself and the ban on the respondent Association cannot be upheld based only on the documents furnished by the Union of India in sealed covers. The credibility of the documents in sealed cover and their corroborative value can only be a reconfirmation of the evidence brought on record, copies of which stand supplied to the respondent Association. This view is reinforced by the recent observations of the Hon’ble Supreme Court in ***P. Chidambaram Vs. Directorate of Enforcement (2019) SCC OnLine SC 1549*** wherein in para 25 the Hon’ble Supreme Court has observed that, “while the learned Judge was empowered to look at the materials produced in a sealed cover to satisfy his judicial conscience, the learned Judge ought not to have recorded finding based on the materials produced in a sealed cover”.

25. Coming now to the credibility and corroborative value of the sealed covers filed by the witnesses, the said sealed covers were opened and each of the documents were examined in relation to the evidence brought on record by the witnesses and their corroborative evidentiary value was assessed. They were found to have a direct corroborative link to the substantive evidence placed on record by the Union of India and, thus, worthy of reliance. It also emerged that these are sensitive documents and their disclosure in public domain may invite harm to certain identities. Further, the plea raised by the learned senior counsel for the respondent Association that the application seeking privilege must be supported by an affidavit of the Minister or the Secretary, which is not so in this case, wherein the application seeking privilege is supported by the affidavit of DIG only is a procedural/technical deficiency and is not fatal to the core issue of non-disclosure of confidential and sensitive documents to the respondent Association or its counsel. The documents have been re-sealed after examination.

26. The Act is a special enactment to deal with elements which threaten the integrity and sovereignty of the country and the provisions of the enactment must prevail over the general laws which may be applicable to such proceedings. Thus, keeping in view the observations by the Hon’ble Supreme Court in ***Jamaat-e-Islami Hind (supra)*** as well as in ***S.P. Gupta’s case (supra)*** and taking into consideration the statutory provisions of the Act as also Section 123 of the Indian Evidence Act, which is not applicable *stricto sensu*, the plea of the Union of India

claiming privilege in respect of the documents filed in sealed cover by two of the witnesses deserves to be allowed and is so allowed.

27. The Central Government, in support of the Notification banning JeI, examined the following twelve witnesses:-

- (i) Mr. ██████████, SP, NIA (PW-1);
- (ii) Ms. ██████████, DIG, NIA (PW-2);
- (iii) Mr. ██████████, DSP, District Gurdaspur (PW-3);
- (iv) Mr. ██████████, DSP, District Fatehgarh Sahib (PW-4);
- (v) Mr. ██████████, DSP, State Special Operation Cell, Amritsar (PW-5);
- (vi) Mr. ██████████, DSP, District Shaheed Bhagat Singh Nagar, Punjab (PW-6);
- (vii) Mr. ██████████, DSP Detective, SAS Nagar (PW-7);
- (viii) Mr. ██████████, ACP, Investigation, Amritsar (PW-8);
- (ix) Mr. ██████████, DSP (Detective), District Fatehgarh Sahib (PW-9);
- (x) Mr. ██████████, DSP, Udham Singh Nagar, Uttarakhand (PW-10);
- (xi) Mr. ██████████, IGP-ATS, State of Punjab (PW-11);
- (xii) Mr. ██████████, Joint Secretary, Ministry of Home Affairs, Government of India (PW-12); and

28. PW-1, Mr. ██████████, Superintendent of Police, National Investigation Agency, New Delhi appeared and produced his affidavit exhibit PW-1/1. The said witness has deposed in respect of Case No. RC-03/2018/NIA/LKW [Ex. PW-1/2] registered at PS NIA, Lucknow. Initially, one FIR bearing No. 723/2018 dated 03.10.2018 was registered at PS Jhinhana, District Shamli under Sections 395, 397 & 412 of IPC and Sections 13, 16 & 18 of Unlawful Activities (Prevention) Act, 1967. Subsequently, vide order dated 16.11.2018 passed by Ministry of Home Affairs, Government of India, the said case was transferred to NIA and accordingly Case No. RC-03/2018/NIA/LKW was registered at PS NIA, Lucknow. Along with the affidavit, the witness has annexed copy of order dated 16.11.2018 passed by Ministry of Home Affairs, Government of India; copy of FIR No. 723/2018; copy of charge-sheet filed in the aforesaid FIR; copy of whatsapp chat pertaining to SFJ recovered from the mobile set of accused ██████████ along with its translated copy; and copy of judgment dated 10.07.2019 of the Special NIA Court, Lucknow convicting all the accused persons in the aforesaid FIR along with its English translation. The said documents were marked Ex.PW-1/3, PW-1/4, PW-1/5, PW-1/6A & PW-1/6B and PW-1/7A & PW-1/7B respectively.

29. The witness in his affidavit has stated that on 02.10.2018 at about 22:10 hrs, HC ██████████ along with Home Guard ██████████, while deployed on duty at Khala Kamalpur Picket, Police Station Jhinhana, District Shamli were attacked by 05-06 armed persons who had come on 02 motorcycles. These miscreants snatched their service rifles and ammunitions (One INSAS with 20 rounds & one 303 bore rifle with 10 rounds). In the said incident, Home Guard ██████████ was shot while HC ██████████ sustained injury. Accordingly, one FIR No. 723/2018 was registered at PS Jhinhana, which case was subsequently transferred to NIA, which registered case No. RC-03/2018/NIA/LKW at PS NIA, Lucknow. During investigation, it was revealed that the main accused ██████████ @ ██████████ was highly motivated and radicalized to the cause of creation of Khalistan and had planned to assassinate the family members of Sh. ██████████, Ex-Chief Minister of Punjab, on the pretext that the government in state of Punjab let by his family was quelling of protests against the alleged news of desecration of Gurugranth Sahib. In pursuance thereof, he wanted to kill Sh. ██████████, ex-Dy.CM, Punjab and for the said purpose, he tried to illegally arrange automatic weapons through various channels i.e. by soliciting the same from different people but after having failed in his quest, he planned this incident of looting weapons from police personnel in association with his friends out of desperation and executed the same. He further stated that NIA had seized mobile handset at the instance of ██████████ and got it analyzed through CERT-In, New Delhi. During analysis of ██████████'s Whatsapp account, two groups were found having many participants including accused ██████████. Also, two mobile numbers +19294377324 and +13472388231 were found saved in the name of "2020" and "Sikhs for Justice" respectively. He further stated that during investigation, it was found that these were the numbers which operated WhatsApp accounts with the same name and shared pro-Khalistan

related texts, audios/videos, Facebook & Youtube video URLs with its members and used to discuss on 2020 Referendum issues for formation of separate Khalistan State carved out from India. By using these groups, they were spreading propaganda amongst Sikhs people against Government of India directly attacking integrity and sovereignty of India. He has further stated that the shared YouTube videos relate to provocation for creation of separate Khalistan state. In one of the video link shared by Sikh For Justice, one Jasbir Singh and others are raising slogan in favour of Khalistan with words like “Khalistan Jindabad”, “Referendum2020 Jindabad” and “India go of Khalistan”. In another video shared by SFJ appealed to its viewers to choose between “Khanda” or “Tiranga” i.e. either Khalistan or India.

30. The witness has further state that during trial, the accused persons viz. ██████████, ██████████ and ██████████ pleaded guilty and confessed their role in the crime. Accordingly, on 10.07.2019, the NIA Special Court, Lucknow convicted the accused persons and awarded sentence to all the accused persons under relevant sections.

31. In his cross-examination, the witness has denied the suggestion that suggest that the two telephone numbers mentioned on page-3 of his affidavit have nothing to do with the respondent Association. He further denied the suggestion that the videos referred to in his affidavit are not produced, promoted or financed by SFJ and volunteered that the videos which were found in the Whatsapp group by the name 2020 Referendum had certain videos which are uploaded through a number which had the initial digits ‘13’ and the said number is registered in the name of SFJ. He also denied the suggestion that that the chats referred to in Annexure – ‘E’ to his affidavit have nothing to do with the respondent Association.

32. PW-2, Ms. ██████████, Deputy Inspector General, National Investigation Agency, New Delhi appeared and produced her affidavit exhibit PW-2/1. The said witness has deposed in respect of Case No. RC-02/2019/NIA/DLI (State Vs. Sikhs for Justice) being the supervisory officer of the case. The said witness has also filed copy of the aforesaid FIR along with various annexures.

33. The witness in her affidavit has stated that Ministry of Home Affairs, Government of India vide order dated 11.01.2019 directed NIA to take up the investigation of the case against radical Khalistani organizations viz. “Sikhs For Justice”, and, thus, case No. RC-02/2019/NIA/DLI was registered. She has stated that during investigation, it has come to light that a systematic and sustained campaign has been launched by the Khalistani extremists based in offshore locations such as USA, Europe and Canada under the banner of ‘Punjab Referendum 2020 for Khalistan’ to mobilize the Sikh community all over the world, including India, and incite them to start a mass agitation against the Government with an intention to secure secession of the State of Punjab from the Union of India and to declare Punjab as a separate and independent Sikh nation viz. Khalistan. She has further stated that ██████████ is leading this campaign and formally launched the same in a rally organized in June, 2014 in New York. She has further stated that SFJ is presently propagating ‘Referendum 2020’ in a very big way on the social media as well as on ground by holding meetings across USA and other countries where Sikhs are in large numbers. Further, a website was also launched by name www.referendum2020.org which is full of pro-Khalistani posts and anti-India insinuations. The website has posters with photo of slain terrorist ██████████ juxtaposed with the caption ‘Punjab Referendum 2020 for Khalistan’ and logos for ‘Punjab Referendum 2020’ and ‘Khalistan’. These posters staying ‘Stop Indian Terrorism’ and ‘Free Punjab, End Indian Occupation’. She has further stated that the website has a discourse on ‘Right to Self-Determination under International Law’ wherein it discusses that two methods are available for the people of Punjab for independence; the first being secession and second being the solution/dissolution of India into several smaller states such as Punjab (Khalistan), Gorkhaland, Assam, Kashmir, South India, Maoist insurrections; further claiming that Punjabi is the common language and the Sikhs being predominant in Punjab, they have the right to self-determination based on language and religion. She has further stated that the Facebook page of SFJ exhorts Punjab Police not to obey the orders of Capt. ██████████, the Chief Minister of Punjab, thereby trying to incite mutiny and disaffection among the police force against the Government and instigating them to resort to violent forms of extremism. She has further stated that in its quest to mobilize and provoke the Sikh diaspora to agitate for the secession of Punjab from the Union of India, SFJ organized various gatherings viz. ‘London Declaration’ at Trafalgar Square, London on 12th August, 2018; Nagar Kirtans (processions) in New York and Toronto on 9th September, 2018 in an attempt to galvanize Sikh youth to join the fight for secession of Punjab through referendum 2020. Further, on 6th June, 2018, they organized ‘Sikh Freedom Rally’ at India House in London to protest against the Operation Blue Star at Golden Temple Amritsar in 1984.

34. In her cross-examination, the witness has stated that the documents referred to in her affidavit as Annexures 'D' to 'M' are part of an ongoing investigation and as a matter of procedure and practice, the documents forming part of the charge-sheet to be filed before the Special NIA Court are not shared with anyone prior to they being filed before the Court. She further stated that the charge-sheet in the case will be filed in due course in accordance with law. She has further stated that she had explained the contents as well as the source of each of the annexures annexed to her affidavit and each of these documents are available and can be accessed from the source mentioned in her affidavit. She denied the suggestion that the documents viz. Annexure – 'D' onwards to her affidavit are not genuine and are fake. She has further stated that as per the investigation so far carried out by NIA, the respondent Association has been attempting to instigate the masses and more particularly the Sikhs community to agitate and rebel for a separate state of Khalistan. In response to the question whether she can show a single instance where significant number of people have come out in India asking for Khalistan, she replied that it is a part of ongoing investigation.

35. PW-3, Mr. [REDACTED], PPS, Dy. Superintendent of Police, Sub Division, Sri Hargobindpur, Police District Gurdaspur appeared and produced his affidavit Ex.PW-3/1. The said witness has deposed in respect of FIR no. 46/2018 registered at PS Rangar Nangal, Police District Batala under Sections 307/438/427/120-B, 121, 121-A, 122, 124-A, 115 of IPC, Sections 11, 12, 13, 17 & 18 of the Unlawful Activities (Prevention) Act, 1967, under Sections 25/54/59 of the Arms Act, 1959 and Section 66-F of the Information Technology Act, 2000 being the investigating officer of the case.

36. The witness in his affidavit has stated that on 31.05.2018 at about 3:30 a.m, some unknown persons had attempted to kill [REDACTED], a salesman at the wine shop by setting the wine shop on fire by pouring petrol, however, he came out of the wine shop and saved his life. Thus, FIR No. 46/2018 was registered at PS Ranger Nangal, Police District Batala, District Gurdaspur. He has stated that during investigation, as per the disclosure statement of accused Dharminder Singh, one revolver 0.32 bore along with 03 live cartridges 0.32 and 02 live cartridges 0.315 bore, Rs.40,000/- Indian currency notes, 110 posters on which Sikhs For Justice is written in English, 03 stencils on which Khalistan Zindabad and one board on which Punjab Referendum 2020, one fiber sheet on which the words "Punjab Referendum" are written, 05 spray bottles, one box along with brush which is smudged with blue colour and 02 mobile phones were recovered. He has further stated that on the basis of investigation, it was established that the accused [REDACTED] and [REDACTED] are associated with the organization Sikhs For Justice. The leaders of this organization are sitting abroad and they are providing them funds through illegal means for carrying out unlawful activities in India like arson and setting wine shops on fire etc. The witness has further stated that on the disclosure statements of the accused, involvement of other persons including [REDACTED] were established and they were made accused in the aforesaid case. He has further stated that the mobile phones recovered from the accused persons were sent to CERT-In for examination and from the mobile phones, images related to SFJ sponsored 2020 referendum, videos of burning liquor shops, video on telegram app in which [REDACTED] was instigating [REDACTED] for waging a armed war against the government and an audio in which [REDACTED] asking [REDACTED] to do recce of Hindu Shiv Sena leader [REDACTED] were found. He has further stated that [REDACTED] and other accused are a part of module and their criminal activities was on the behest of Sikhs For Justice.

37. In his cross-examination, the witness has denied the suggestion that [REDACTED] have nothing to do with SFJ. He also denied the suggestion that [REDACTED] has nothing to do with the money used for purchasing pistols and that [REDACTED] had nothing to do with any of the illegal activities stated by him in paragraph-9. He also denied the suggestion that [REDACTED] is not a member of any of the groups mentioned in paragraph-11 of his affidavit but volunteered that he is a member of one of the groups. He also denied the suggestion that no warrants were issued against [REDACTED] but volunteered that open-ended warrants issued against [REDACTED] and others. He also denied the suggestion that persons mentioned in paragraph 32 of his affidavit are not the members of SFJ.

38. PW-4, Mr. [REDACTED], PPS, Dy. Superintendent of Police, Bassi Pathana, District Fatehgarh Sahib, Punjab appeared and produced his affidavit exhibit PW-4/1. The said witness has deposed in respect of FIR no. 132/2018 registered at PS Lahori Gate Patiala, District Patiala under Sections 13, 16, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967, under Sections 3/4/5 of the Explosives Act, 1908, Section 25/54/59 of the Arms Act and Section 120-B of the IPC. The witness had also annexed various annexures viz. R-1/T to R-7/T, R-8, R-9/T to R-12/T, R-13 to R-15 and R-16/T and R-17/T to his affidavit.

39. The witness in his affidavit has stated that on 31.10.2018 he had received secret information from an informer that ██████████ son of ██████████, against whom cases under Arms Act have already been registered and who is part of a terrorist organization KLF, was participating in terrorist activities and was working for recruiting new members for terrorist activities by constituting another new organization, namely Khalistan Gadar Force (KGF). To setup KGF he was being helped by his handlers in Pakistan who provide him money, arms and ammunition. Thus, FIR No. 132/2018 was registered. He has further stated that on 01.11.2018, while checking for the suspected persons at around 08:30 a.m., one ██████████ was stopped and on his search 0.30 bore pistol along with 6 live cartridges was recovered from him. Further, a grenade and two latter pads one each of Khalistan Gadar Force (KGF), Khalistan Liberation Force (KLF) and Babbar Khalsa International (BKI) were also recovered from the shoulder bag of ██████████. He has further stated that during investigation it has been found that ██████████ is very active on social media about 2020 Referendum and Sikhs for Justice.

40. In his cross-examination, the witness has denied the suggestion that ██████████ has nothing to do with the SFJ, as pointed out in his affidavit.

41. PW-5, Mr. ██████████, PPS, Dy. Superintendent of Police at State Special Operation Cell, Amritsar appeared and produced his affidavit exhibit PW-5/1. The said witness has deposed in respect of FIR no. 03/2019 registered at PS State Operation Cell, Amritsar under Section 25 of the Arms Act and Section 13 of the Unlawful Activities (Prevention) Act, 1967. The witness had also annexed Annexures-A to F to his affidavit.

42. The witness in his affidavit has stated that on 15.03.2019, an informer informed that ██████████ s/o ██████████ and ██████████ were in possession of illicit weapons and were planning to carry out a major criminal activity in the area. Thus, FIR No. 3/2019 was registered. After registering the FIR, SI ██████████ raided the spot and arrested the three accused and recovered

02 pistols 0.32 bore along with 03 magazines and 14 live cartridges from their possession. During investigation it was revealed that the weapons recovered from the accused were to be used by them to target the people responsible for sacrilege incidents in Punjab. He has further stated that it was further revealed that the group was working for an organization Sikhs for Justice and was in contact with one ██████████ r/o United Kingdom on Facebook, who was motivating the group to work for Sikh Referendum 2020. He has further stated that the data extracted from the phone of the accused ██████████ contains objectionable material pertaining to Sikh Referendum 2020, a brainchild of SFJ circulated by the accused and his associates on social media. Further, literature regarding 2020 Sikh Referendum was also recovered from the accused which was published by SFJ.

43. In his cross-examination, the witness has denied the suggestion that the affidavit filed by him is false.

44. PW-6, Mr. ██████████, PPS, Dy. Superintendent of Police, Sub-Division Banga, District Shaheed Bhagat Singh Nagar, Punjab appeared and produced his affidavit exhibit PW-6/1. The said witness has deposed in respect of FIR No. 26/2018 registered at PS Sadar Banga, District SBS Nagar, Punjab under Section 436 and 511 of IPC. The witness had also annexed Annexures-A to I to his affidavit.

45. The witness in his affidavit has stated that on 02.04.2018, while patrolling, SI ██████████ stopped four youths namely ██████████ and ██████████, who were coming from village Khaan-Khana on a motorcycle. On preliminary inquiry carried out at the spot, ██████████ was found in possession of one match box, ██████████ was carrying a plastic can of five litres containing kerosene oil and ██████████ was found in possession of plastic gloves. He has further stated that after thorough inquiry from the young men, it was revealed that they were in the process of setting ablaze a liquor vend shop in the area of village Gunachaur and thereafter the imprint of 'Khalistan Zindabad Referendum-2020' was to be printed on the wall. Thus, FIR No. 26/2018 was registered. During further interrogation, police recovered two plastic stencils having 'Khalistan Zindabad' in Punjabi language and 'Khalistan Referendum 2020' in English language along with two spray paint containers were recovered. He has further stated that after investigation it has been found that all the accused in this case were involved in anti national activities at the behest of foreign handlers i.e. ██████████ who was financing them for subversive activities in Punjab in the name of Khalistan Referendum 2020, which is the main separatist agenda of Sikhs for Justice.

46. In his cross-examination, the witness has denied the suggestion that four accused persons, as mentioned in his affidavit, have nothing to do with SFJ and volunteered that Mr. ██████████ had written a letter dated 25.06.2019 to the Secretary of the State, USA ██████████ stating that the four boys in this case were the campaigners in Punjab for Referendum-2020 and that they were arrested and charged with arson and terrorism. He also denied the suggestion that SFJ has nothing do with the imprints recovered in the case.

47. PW-7, Mr. [REDACTED], PPS, Dy. Superintendent of Police Detective, SAS Nagar appeared and produced his affidavit exhibit PW-7/1. The said witness has deposed in respect of FIR no. 149/2017 registered at PS Sohana District SAS Nagar under Sections 124-A, 153-A, 153-B and 120-B of IPC. The witness had also annexed Annexures-A to R to his affidavit.

48. The witness in his affidavit has stated that secret information was received that at different places in Punjab, objectionable posters have been pasted which contain broad letters text stating "Independence is the only solution' 2020, Punjab independence referendum" followed by small letters "from today 33 years back on account of attack on Darbar Sahib by the Army genocide of thousands of innocent Sikhs was done". The posters also contain the photograph of [REDACTED] along with a photograph of damaged [REDACTED] in 1984. Thus, FIR No. 149/2017 was registered. The witness has further stated that the persons behind the act of pasting these posters were [REDACTED], Legal Advisor of Sikhs For Justice, [REDACTED] and [REDACTED]. Further, during investigation, one [REDACTED] was arrested, who confessed that posters were designed and prepared according to the sample sent by [REDACTED], to whom directions were given by [REDACTED] and [REDACTED]. Phone numbers of [REDACTED] and [REDACTED] were also provided by him to the police. He has further stated that during investigation, it has been established that poster purchase order and details of locations were sent by the accused [REDACTED] to co-accused [REDACTED], who further sent these to [REDACTED] and it has also been revealed that the accused are working for spearheading and promoting "Khalistan Referendum 2020" with the support of the association Sikhs For Justice, foreign based handlers to radicalize Punjab youth and to enlist the support of gangsters and radicals in Punjab who are what SFJ calls, fighting for the 'liberation of Punjab' from the Indian Government.

49. In his cross-examination, the witness has denied the suggestion that accused persons mentioned in his affidavit have nothing to do with SFJ and that they receive no support from SFJ but volunteered that they are working for SFJ. He also denied the suggestion that the contents of para (9) of his affidavit regarding persons named therein organizing youth of Punjab to motivate as well as radicalize them and making them ready for waging a war against India are incorrect. He also denied the suggestion that SFJ has nothing to do with the posters mentioned in the affidavit and stated that SFJ is the organization which is getting these posters made. He also denied the suggestion that [REDACTED] has not signed any purchase order for posters and submitted that the purchase order was signed by [REDACTED].

50. PW-8, Mr. [REDACTED], PPS, Assistant Commissioner of Police, Investigation, Amritsar City appeared and produced his affidavit exhibit PW-8/1. The said witness has deposed in respect of FIR No. 152/2018 registered at PS Sultanwind, Amritsar City under Sections 117, 122, 124-A, 153-A, 153-B, 120-B, IPC, Sections 17/18/19 of the Unlawful Activities (Prevention) Act, 1967, and Sections 25/54/59 of the Arms Act and Section 120-B of the IPC. The witness had also annexed Annexures-1 to 11 to his affidavit

51. The witness in his affidavit has stated that a secret information was received that [REDACTED] was receiving money from abroad for publicity of Khalistan Referendum 2020 and he, in order to create atmosphere of terror in public, while himself preparing cloth banners of Khalistan Referendum 2020, was affixing them on public places in Amritsar City with the help of his accomplices [REDACTED] and [REDACTED]. Thus, FIR No. 152/2018 was registered. During investigation, the aforesaid accused were arrested and 08 banners of 'Khalistan Referendum 2020', spray paint and dye for preparing banners were recovered from their possession. Thereafter, on the basis of disclosure statement of accused persons, other persons were also nominated as co-accused in the case. He has further stated that as per call details of mobile phone numbers of the accused persons, it has been revealed that the accused are working for spearheading and promoting 'Khalistan Referendum 2020' with the support of Sikhs for Justice and enlist the support of gangsters and radicals in Punjab.

52. In his cross-examination, the witness has denied the suggestion that the accused persons received no support from Sikhs for Justice but volunteered that it is evident from Annexure A7 of his affidavit which has payment vouchers attached and Sikhs for Justice letter as also from Annexure A10, which is the letter written by [REDACTED] to the Secretary of State, USA, which establishes their link with the accused. He also denied the suggestion that Sikhs for Justice is not connected with any gangster or radicals in Punjab.

53. PW-9, Mr. [REDACTED], PPS, Dy. Superintendent of Police (Detective), Fatehgarh Sahib, District Fatehgarh Sahib appeared and produced his affidavit exhibit PW-9/1. The said witness has deposed in respect of FIR no. 156/2018 registered at PS Sirhind, Distt Fatehgarh Sahib under Section 120-B of IPC, Sections 25/54/59 of the Arms Act and Section 20 of the Unlawful Activities (Prevention) Act, 1967. The witness had also annexed Annexures- R-1/T to R-14/T to his affidavit

54. The witness in his affidavit has stated that on 07.12.2018 at around 9:40 p.m., a police informer gave secret information to ██████████ that a suspected person is roaming in the area of Railway Road, Humayunpur, Sirhind and from his activities, it seems that this person will commit some untoward incident. The police personnel caught the said person who introduced himself as ██████████. A 0.38 mm pistol was recovered from him during his search. He informed the police that this pistol was given to him at Delhi on the order of ██████████, who is an active member of SFJ. He also told that this pistol would be taken from him by someone at Sirhind. Thus, FIR 156/2018 was registered. The police also recovered 05 live cartridges, three touch screen mobile phones and 6 SIM cards from the accused. During investigation, it was found that one SIM having mobile No. +35-796727452 was given to him by ██████████, who is residing in Cyprus. The witness has further stated that the accused in his disclosure statement before ██████████ said that since longtime, he was in contact with ██████████ and ██████████, who are active members of Khalistan Zindabad Force. He further disclosed that on the order of ██████████, he gave one pistol along with 05 cartridges about 7/8 months ago to above said ██████████ at ██████████ and since then they were in a planning to make terrorist ██████████ to escape from Tihar Jail.

55. In his cross-examination, the witness has denied the suggestion that ██████████ has nothing to do with Sikhs for Justice. He has further stated that as per the statement of witnesses, disclosure statement of other accused and as per the investigation of this case, it is revealed that he is working for Khalistan Jindabad Force (KJF) and Sikhs for Justice (SFJ).

56. PW-10, Mr. ██████████, Dy. Superintendent of Police/Circle Office Khatima, Udham Singh Nagar, Uttarakhand appeared and produced his affidavit exhibit PW-10/1. The said witness has deposed in respect of FIR No. 299/2018 registered at PS Khatima District, Udham Singh Nagar, Uttarakhand under Section 153(B)/505 of IPC and Section 66 of the I.T. Act. The witness had also annexed Annexures- A to E to his affidavit

57. The witness in his affidavit has stated that during the investigation of FIR No. 299/2018, it came to light that the two accused persons ██████████ and ██████████ had created a What's app group '20-20 Khalistan Referendum' & 'Bhindra Commando' and both were the group admin. Objectionable material was being posted on this group and disseminated to the members thereof. He has further stated that the reference to '20-20 Khalistan Referendum' makes it clear that the accused persons had a connection with and/or inspired by Sikhs For Justice.

58. In his cross-examination, the witness has admitted that he is familiar with Khalistan Referendum and that he had seen the website of Sikhs For Justice. He has further stated that he has noticed Khalistan 2020 on the website. He has further stated that he had also seen the website Referendum 2020.org and found that the ideology of both Sikhs for Justice and Referendum 2020 is the same. He denied the suggestion that the Khalistan Referendum website and whatsapp group is not of Sikhs for Justice. He also denied the suggestion that Referendum2020.org is not the website of Sikhs for Justice. He has further stated that there may be many groups of Khalistan Referendum. However, as per his investigation in the case referred to in his affidavit, there are two groups namely 2020 Khalistan Referendum and Bhindra Commando. He denied the suggestion that these two groups are not associated with SFJ.

59. PW-11, Mr. ██████████, IGP-ATS for State of Punjab appeared and produced his affidavit exhibit PW-11/1. The said witness has been nominated as the Nodal Officer from the State of Punjab for all matters connected with the outfit 'Sikhs For Justice' (SFJ), for its declaration as Unlawful Association vide Notification dated 10.07.2019. The witness had also annexed Annexures- 1 to 45 to his affidavit.

60. The witness in his affidavit has stated that SFJ is the progenitor of the campaign 'Sikh Referendum 2020' and ██████████, legal advisor of SFJ launched the said campaign in a rally organized in June, 2014 in New York. SFJ organized another rally in November, 2014 to gather support for Referendum-2020. He further stated that SFJ is presently propagating Sikh Referendum-2020 in a very big way on social media as well as on the ground by holding meetings across USA and other countries where efforts are being made to mobilize and assemble Sikh diaspora in large numbers. He has further stated the SFJ on one of their facebook accounts has uploaded a map with the title "proposed Map of Republic of Khalistan". This proposed map shows States of Punjab, Haryana, Himachal Pradesh, Delhi and adjoining areas of neighboring states of Rajasthan as Khalistan. He has further stated that on 06.09.2018, ██████████ uploaded a video branding the then Home Minister of India as a Dehshatgard (terrorist). The witness has also narrated the propaganda made by the respondent Association through websites and social media; its connection with ISI, Pakistan and other terrorist/gangsters/radical elements and the details of criminal cases against the sympathizers and handlers of the respondent Association.

61. In his cross-examination, the witness has denied the suggestion that [REDACTED] has no jurisdiction beyond giving legal advice to Sikhs for Justice but volunteered that website SikhsforJustice.org has been registered in his name and he is the owner of the website. He also denied the suggestion that all that is posted on the tweets and Facebook posts, etc. are [REDACTED]'s personal views that have nothing to do with Sikhs for Justice but volunteered that when we speak of [REDACTED], he speaks for Sikhs for Justice only because Referendum 2020 is the brain child of Sikhs for Justice. All the posts in support of Referendum 2020 are either by [REDACTED] or his supporters quoting [REDACTED]'s videos. He also denied the suggestion that the website of Sikhs for Justice is Referendum2020.org but volunteered that SikhsforJustice.org is the website and Referendum 2020 is one of their campaigns. [REDACTED] is the owner of the website SikhsforJustice.org and Referendum 2020 is part of the campaign for Sikhs for Justice. He stated that he had seen the website SikhsforJustice.org and that there is mention of burning of Indian flag. He further stated that in Annexure 1 of his affidavit by way of evidence, the events being sponsored by Sikhs for Justice are given. One of the events is burning of Indian flag. He admitted that the website SikhsforJustice.org is registered in the name of the law firm of [REDACTED]. He further admitted that on the website SikhsforJustice.org, there is no justification of the Pulwama attack but volunteered that [REDACTED] has justified the Pulwama attack in his statements on the social media. He denied the suggestion that on the website there is nothing whereby SFJ calls for the police to disobey orders but volunteered that Mr. [REDACTED] is giving statements time and again on public platform and social media which are being circulated in India through Whatsapp groups, which have an implied reference to disobedience. It is his voice and the witness can recognize his photograph also. He is trying to threaten police officers because he knows there are many police officers whose families or children are abroad. He also denied the suggestion that Annexures 9 & 10 at page 67 of his affidavit have nothing to do with the organization Sikhs for Justice. He also denied that the accused persons named in para 19 of his affidavit have nothing to do with SFJ but volunteered that they are the core members of SFJ and they are seen with Mr. [REDACTED] in all the rallies. He also denied the suggestion that Sikhs For Justice has nothing to do with the video mentioned in para 9 of his affidavit and that all the posts expressed by [REDACTED] are its personal views but volunteered that he has been communicating with different authorities on behalf of Sikhs For Justice on the letterhead of Sikhs for Justice, including writing a letter to the Prime Minister of Pakistan. He also denied the suggestion that Sikhs For Justice is not connected with gangsters, radicals and criminals in Punjab but volunteered that they are hand in glove with them. He also denied the suggestion that the persons named in para 24 of his affidavit are not the foreign handlers of Sikhs For Justice and that the persons named in para 31 of his affidavit have nothing to do with Sikhs For Justice. He also denied the suggestion that Sikhs for Justice has nothing to do with the incidents mentioned in paragraphs 45, 46, 52, 53 and 54 of his affidavit. He further denied the suggestion that on the website SikhsforJustice.org, there has never ever been any call for violence, burning of flag, for committing any crime or justification for Pulwama attack but volunteered that [REDACTED]'s ulterior motive is to create violence in Punjab. There is an undercurrent to incite violence. They are supporting gangsters and called upon them to not die as a gangster as no one will then remember you and that you should join the cause and die as a martyr. Then you will always be remembered.

62. PW-12, Mr. S.C.L. Das, Joint Secretary, Ministry of Home Affairs, Government of India had appeared and produced his affidavit exhibit PW-12/1. The said witness has deposed regarding the procedure adopted in issuance of Notification dated 10th July, 2019 as also in respect of intelligence inputs and reports, copies of which were placed before the Tribunal in two sealed covers.

63. In his affidavit, the witness has stated that the Notification dated 10th July, 2019 is based on the information, material and inputs received from the Government of Punjab, Government of Uttarakhand, National Investigation Agency and the Central Intelligence Agencies with regard to involvement of Sikhs For Justice in unlawful activities. He has further stated that the information and inputs receives from the aforesaid, inter alia, clearly indicate that SFJ's (i) indulgence in activities which are inimical to the security, integrity and sovereignty of the country; (ii) involvement in anti-national and subversive activities in Punjab and elsewhere, intended to destroy the sovereignty and territorial integrity of India; (iii) close association with extremist outfits and activists; (iv) support to the ideology of accession and violent forms of extremism and militancy in Punjab and elsewhere attempting to carve out a so called State of 'Khalistan' out of the territory of Union of India; (v) aid and abetment to the activities aimed at secession of a part of India from the Union; (vi) support to separatist groups fighting for this purpose in India and abroad by indulging in activities, articulations and online campaigns intended to disrupt the sovereignty and territorial integrity of India and (vii) actively promotes enmity between communities/groups which is detrimental to communal harmony and peace in the country. He has further stated that since the unlawful activities of SFJ were found to be continuing unabated, a Note was prepared for the consideration of the Cabinet Committee on Security. Thereafter, the Cabinet Committee on Security considered the proposal contained in the above note, and

in the meeting held on 10th July, 2019 took the decision to declare SFJ as an unlawful association. Accordingly, the requisite Notification was made and published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-Section (ii) vide S.O. 2469 (E) dated 10th July, 2019. He has further state that the intelligence inputs from the intelligence agencies/IB bear ample testimony to SFJ's involvement in unlawful activities. He has further stated that the so-called 'Referendum 2020' is reportedly to begin in November, 2019 with culmination in 2020 and preparations for this have already been begun. Pakistan is actively supporting SFJ through its intelligence agency i.e. ISI on the Sikh Referendum 2020 campaign.

64. In his cross-examination, the witness has stated that he had seen the website of Sikhs For Justice and also the intelligence reports from the Central agencies giving broad details about the registration of this particular website, namely, sikhsforjustice.org and its contents. He has further stated that one American citizen by the name of [REDACTED] is the leader of Sikhs for Justice. He has further stated that he do not recollect as to who is the leader of the organization Sikhs for Justice as per the official records of the organization in America. He has further stated that SFJ is claimed to have been started as a legal advocacy group advocating perceived rights of Sikhs across the globe and volunteered that from the material accessed and examined, it is amply clear that this organization has as its core objective a secessionist agenda *vis-a-vis* the Indian Union and advocates not only a secessionist ideology impacting prejudicially on the sovereignty and integrity of India but also disrupting communal harmony and peace through its subversive activities. He accepts that there are references to Operation Blue Star in the material relating to SFJ and stated that condemnation of the actions of the Government and the Army in Operation Blue Star is a crime. He also volunteered that it is an offence if it is done in a manner and with the purport of inducing and inciting serving and retired members of the Police and Armed forces for disaffection against the Indian State. He has also stated that there is threat to the sovereignty, integrity and unity of India on account of Sikhs for Justice in Punjab as their activities have that potential. He has further stated that he do not recall if there is any explicit call to violence on the website of Referendum 2020, but the outlines of its secessionist agenda and carving out a separate State from Indian Union is quite explicitly stated in the website.

65. In addition to the above prosecution witnesses, no public witness had appeared to depose before the Tribunal or filed any affidavit.

66. The respondent Association has not examined any witness in support of their case despite sufficient opportunity having been granted for this purpose. In fact, the respondent Association filed an affidavit dated 12.12.2019 of [REDACTED] in response to the application filed by the Union of India seeking his cross-examination wherein, in para-2, it is stated as under:

“That as coordinator of Sikhs For Justice, I hereby state that for personal reasons I will be unable to give oral evidence before this Hon'ble Tribunal. I further state that I have given instructions to our advocates to close evidence from the side of SFJ without any oral evidence.....”

67. Thus, there was no oral evidence put-forth by the respondent Association. They only filed an affidavit dated 22.11.2019 of Mr. [REDACTED], Coordinator for SFJ, placing on record documents relating to SFJ and its activities. Mr. [REDACTED] also did not appear for his cross-examination in respect of the affidavit filed, as noted above.

68. Moving on to the oral arguments addressed by learned counsel for the parties, Mr. [REDACTED], senior counsel for the Union of India commenced his arguments by referring to sub-sections (o) and (p) of Section 2 of the Act which define “Unlawful Activity” and “Unlawful Association” respectively. It was argued that activities which are intended or support any claim to bring about the cession of a part of the territory of India or which incites any individual or group of individuals to bring about such cession or secession and also activities which intend to question or disrupt the sovereignty and territorial integrity of India are unlawful activities and any association which has as its object any activity which is punishable under Section 153A or Section 153B of the Indian Penal Code or which encourages or aids persons to undertake any such activity is an unlawful association. Learned senior counsel further referring to Sections 3, 4 and 9 of the Act argued that activities of the respondent Association are admittedly in the nature of perpetuating a claim to cede a part of the territory of India into a separate state and thus intended to disrupt the sovereignty and territorial integrity of India and such activities of the respondent Association are “unlawful activities” within the scope and ambit of sub-section (o) of Section 2 of the Act and by virtue thereof, respondent Association is liable to declared an “unlawful association” in terms of sub-section (p) of Section 2 of the Act. Learned senior counsel referred to the contents of the notification dated 10th July, 2019 as also the details furnished in the background note filed by them pursuant to Rule 5 of the Rules wherein the activities indulged in by

the respondent Association are detailed as also the FIRs registered against the members and handlers of the respondent Association based in India and abroad. Learned senior counsel argued that the material placed by them on record has virtually been uncontested by the respondent Association since most of the documents placed on record are the creation of the respondent Association itself and hence, they are left with no defense to argue.

69. While referring to the evidence adduced by the Union of India through its 12 witnesses, learned senior counsel specifically referred to the affidavit of PW-2, Ms. [REDACTED]. Referring to Annexure-B to the affidavit, which is a copy of case FIR No. RC-02/2019/NIA/DLI dated 15.01.2019 registered under Sections 13, 17 & 18 of the Act read with Sections 120B, 124A, 153A, 153B and 505 of the Indian Penal Code, learned senior counsel pointed out that the said case has been registered based on credible information that certain entities and individuals based in India and abroad such as 'Sikhs For Justice' have entered into a criminal conspiracy with other terrorist organization and gangs and have started a concerted campaign in the name of "Punjab Referendum 2020 for Khalistan" and are raising funds and carrying out secessionist activities on ground as well as on social media with an intention to instigate the members of Sikh community to agitate for the secession of the State of Punjab from the Union of India, undermining the sovereignty, unity and territorial integrity of India. The suspected offence further notes that these secessionist and radical elements including but not limited to [REDACTED], the legal advisor of Sikhs for Justice have been inciting disaffection among the Sikh community towards the Government of India through their insurrectionary, insinuating and seditious activities. Learned senior counsel next referred to page-7 of the affidavit which is a printout from the website www.referendum2020.org which has a display of Punjab Referendum 2020. Page-8 of the affidavit refers to the observation 'Khalistan' and 'Stop Indian Terrorism'. Page-9 of the affidavit which again is from the same website reads, 'Free Punjab and Indian Occupation', 'Punjab Referendum 2020 for Khalistan'. Page-10 again makes the same reference to 'Khalistan' and 'Referendum 2020 for Khalistan'. Learned senior counsel next referred to page-11 which is a discourse on self-determination and makes a reference to 'self-determination', 'secession', and 'disintegration'. Learned senior counsel next referred to page-16 of the affidavit, Annexure-G which is a form available on the website of Sikhs For Justice, intended to enable people to donate money. Learned senior counsel submits that the funds generated by the respondent Association through this illegal propaganda are channelized through operatives in India for inciting hatred and violence in Punjab and many cases in this behalf have been registered. Annexure-H on page 17 are the incriminating social media (twitter) post by [REDACTED], which are incinatory in character and a direct attempt to incite secessionism and violence. Learned senior counsel next referred to page 19 & 20 of the affidavit which is a printout from the Twitter account of [REDACTED], wherein he is inciting people "to burn the tricolor that Indian army hoisted at Sri Darbar Sahib complex in June, 1984". Learned senior counsel next referred to page-21 which again is a Twitter post by [REDACTED] wherein he has attributed the attack on the Chinese Consulate in Karachi as having been planned in Afghanistan and aided by the Indian spy agency. Learned senior counsel next referred to page-23 which again is a Twitter post by [REDACTED] dated 12.01.2019 wherein he has noted that "American Sikh Group offers 1 million for victims of RAW terrorist attack on Chinese Consulate". Further, reference in the same Twitter post is, "Sikh Referendum 2020 will stop India's terrorism". Page 24 of the affidavit is again a Twitter post by [REDACTED] dated 13.01.2019 wherein he has noted, "tiranga shot down by pro-khalistan to protest republic day 2019 raising tricolor at darbar sahib by Indian army", with a torn Indian flag underneath.

70. Learned senior counsel next referred to page-27 of the affidavit which is a Twitter post by [REDACTED] dated 15.01.2019 wherein, referring to a twitter post of a celebrity, threats have been extended by SFJ to the said celebrity with the remarks, "your call khooon ka badla khooon resulted in 1984 Sikh genocide. SFJ is waiting for your foreign visits to hold you accountable." Learned senior counsel also referred to certain Twitter posts by [REDACTED] where he has issued calls to the Sikhs soldiers to burn the tricolor and support Sikh Referendum 2020:

- "Twitter post dated 20.01.2019 referring to SFJ protest on Republic Day 2019 at Washington DC and also making a call to burn the tricolor";
- "Twitter post dated 23.01.2019 where [REDACTED] made a call to watch live on January 26 burning of the tricolor";
- "Referendum 2020 will end India's occupation of Punjab, voting in November, 2020" (page-32 to 38, Annexure-I);
- Glorification of known terrorist involved in political assassinations and nexus with Kashmiri militants; and

- Spreading misinformation about Pulwama attack and claiming the army to be a legitimate military target.

71. Learned senior counsel next referred to Annexure-J of the affidavit which is a printout from the website referendum2020.org wherein there is a direct call by the respondent Association to the Punjab Police to not obey Captain Amarinder's order and support Punjab Referendum 2020. Annexure-K is Facebook post by SFJ regarding London declaration on 12.08.2018 at Trafalgar Square, London regarding Punjab Independence Referendum 2020. Based on the contents and annexures to the aforesaid affidavit, learned senior counsel for the Union of India argued that the activities of the respondent Association are not clandestine but open and visible in public domain. It is an open affront to the authority of the State and all these activities of the respondent Association are 'unlawful activities' on the face of it intended to question and disrupt the unity and territorial integrity of India and, hence, respondent Association has rightly been declared as an 'unlawful association'.

72. Learned senior counsel next referred to the affidavit of PW-11, Mr. [REDACTED] wherein on page-22 the domain registration details of the respondent Association have been furnished. The said document shows that the domain name sikhsforjustice.org is registered in the name of Pannu Law Firm Attorneys and the administrative contact is [REDACTED] which shows that [REDACTED] is the main protagonist of Sikhs For Justice. Referring to Annexure-1 of the affidavit, learned senior counsel pointed out that there is an open call by Sikhs for Justice for Khalistan and Referendum 2020. The FB post on page-29 of the affidavit is a call for liberating Punjab from India. He next referred to page-38 of the affidavit which is a post dated 06.09.2018 wherein the Home Minister of India has been referred to as a terrorist. He next referred to Annexure-4 on page-39 of the affidavit which shows that [REDACTED] and his associates misuse fake letter of Indian Military Intelligence Report on Sikh soldiers serving in Indian army and tried to propagate this letter. Learned senior counsel argued that false propaganda was being conducted by Sikhs for Justice saying that Sikhs in the Indian Army and their families were being targeted by India for propagating Khalistan. Learned senior counsel next referred to Annexure-5 at page-44 of the affidavit regarding SFJ letter to open 'Referendum 2020 Information Centre' in Lahore during 549th Birth Anniversary of Guru Nanak Dev ji. He next invited attention to Annexure-7 to the affidavit on page-47 which is a letter dated 27.02.2019 written by [REDACTED] to the Prime Minister of Pakistan, a copy whereof is posted on the facebook and thus made available to the world at large with the subject, "Pro Khalistan Sikh Diaspora stands in solidarity with Pakistan". The letter refers to the Indian Air strikes at Balakot and assures support for Pakistan by the pro-Khalistan Sikhs from North America, Europe, Australia and elsewhere. It also makes a reference to Referendum 2020 and extends solidarity with the cause of Pakistan in Kashmir. It would be worthwhile to reproduce the contents of the letter, which read as under:

"February 27 2019

Honorable Imran Khan

Prime Minister of Pakistan

Government of Pakistan

Islamabad, Pakistan

info@pmo.gov.pk

Re: February 26th Indian Air Strike at Balakot.

Sub: Pro-Khalistan Sikh Diaspora Stands In Solidarity With Pakistan.

Honorable Prime Minister Khan:

"Sikhs For Justice (SFJ) is an international advocacy group spearheading the peaceful and non-violent secessionist campaign for independence of Punjab from Indian occupation through Referendum 2020. Punjab Independence campaign is based on Sikhs' right to self-determination as guaranteed under Article 1 common to the UN Charter, International Covenant on Civil and Political Rights and International Covenant on Economic and Cultural Rights.

In the wake of Indian Prime Minister Modi's growing jingoism after Pulwama attack and ensuing Balakot air strike, we are writing to assure you that at this critical juncture, Pro-Khalistan Sikhs from North America, Europe, Australia and elsewhere stand in solidarity with Pakistan – the land where founder of our religion Sri Guru Nank Dev Ji was born and breathed his last.

Prime Minister Khan, Sikhs have many sacred places in Pakistan including Sri Nankana Sahib, Sri Kartarpur Sahib, Sri Panja Sahib and Sikhs around the globe appreciate the hospitality and care demonstrated by Pakistan to the Sikh community and their religious places.

While we hope that better sense would prevail upon India and she would resolve the Kashmir and Punjab issues by holding Referendum instead of resorting to violence against freedom seeking people or waging war against Pakistan, however, if India ever attacked Pakistan, the Pro-Khalistan Sikhs will extend full support to Pakistan and will stand shoulder to shoulder in thwarting any Indian attack.

Sikhs have a long history of standing against the aggressors and we strongly feel that during this crisis, its our moral duty to defend Pakistan at the international forums in every manner possible.

Thank you for your time and consideration

Sincerely yours

██████████

Attorney at Law (New York)

██████████ – *Sikhs For Justice*”

73. Learned senior counsel for the Union of India next referred to Annexure-9 on page-65 of the affidavit of PW-11 wherein India has been referred to as a terrorist state and also SFJ opposing the Prime Minister's visit to UK in April, 2018 by stating, “SFJ to challenge Modi – Face of Indian terrorism” – Date: April 2018, Location – Parliament Street, London. Annexure-10 at page-67 records the threat extended by SFJ to the Indian Army Chief by saying that he will face legal action if any attempt is made to violently crush Khalistan movement. Annexure-11 on pages 69 refers to 19 FIRs registered against ██████████ affiliated to ██████████, who is sought to be shown by SFJ as a victim of the Indian State. Learned senior counsel pointed out that ██████████ is a terrorist organization and stands banned under the Act. It is submitted that SFJ is working in association with ██████████ and considering the nature of activities in which the respondent Association and its handlers are involved and their collusion with members of the other banned organizations, there is ‘sufficient cause’ for the Union of India to ban the respondent Association.

74. Learned senior counsel for the Union of India next referred to Annexures-12 & 13 at pages 73 to 77 of the affidavit of PW-11, Mr. ██████████ which are the facebook posts of SFJ activists ██████████ and others showing up in the India versus England world cup cricket match at Edgbaston, Birmingham wearing T- shirts of Referendum 2020 and also waived Khalistan flag. Learned senior counsel submitted that the group comprising ██████████ and others raised slogans of Khalistan Zindabad during the match. It is submitted that police had to be called in and the accused were arrested and subsequently released without registration of any case. Learned senior counsel next referred to Annexure-15 at page 125 of the affidavit, which is the gist of video uploaded on facebook by California based SFJ activist ██████████ threatening ██████████, Cabinet Minister, Government of Punjab and also SFJ activist attacking ██████████, President of Delhi Sikh Gurudwara Prabandhak Committee. Learned senior counsel submitted that the members and sympathizers of the respondent Association believe in the cult of violence and extend open physical threats to all right thinking people, including Sikhs, who are opposed to the concept of Khalistan. Learned senior counsel next referred to Annexure-17 on page 129 which is the gist of ██████████'s video reply dated 24.09.2018 to Chief Minister of Punjab Capt. ██████████ wherein ██████████ has challenged Capt. ██████████ to remove his security personnel for two days and look around in Punjab and he would see Referendum 2020 volunteers in every village and city and that they could remove him from the post of Chief Minister in two days. In the same video, ██████████ also exhorted the youngsters and both civil/police officers to support Referendum 2020 campaign for establishment of Khalistan. Learned senior counsel next referred to Annexure-21 on page-135 wherein the Prime

Minister of the Country has been referred to as a human rights violator and it is claimed that the only solution for Punjab is Khalistan 2020 Referendum. Annexure-22 on page-136 is a transcription of [REDACTED]'s video dated 13.06.2019 wherein he has warned the Chief Minister of Punjab Capt. [REDACTED] and DGP [REDACTED]. In one part of the video [REDACTED] has stated that, "I already conveyed that our activists are campaigning for Referendum 2020 in Punjab in which nothing is illegal. Last year also, I told you that if you keep torturing our activists, you will be forced to remain in the boundaries of Punjab. You saw that [REDACTED], who considers himself as DGP was not able to leave London. In the same way [REDACTED] was also forced to leave California the same day". In the subsequent part of the video, he stated that, "till now, we have only raised finger at you. Don't force us to file the same cases of human right violation on your family members that you are trying to file against our activists. This is very loud and clear that Referendum 2020 campaign is a democratic campaign and we want you to follow the law. If there is going to be any chances from your side, then every one of you will face the consequences including You, [REDACTED] and the Punjab Government". Learned senior counsel submits that [REDACTED] is habitual of extending threats to the lawful authorities of the State and habitually incites violence and disobedience by the civil/police officials.

75. Learned senior counsel thereafter referred to Annexure-29 on page-156 of the affidavit of PW-11 which is a letter written by [REDACTED] as a Legal Advisor for Sikhs For Justice to the Ambassador of China to Pakistan dated 12.01.2019 wherein while condemning the November, 23 attack on the Chinese Consulate in Karachi, Pakistan, SFJ has termed it as the handiwork of the Indian Intelligence Agency, RAW. In the same letter, expressing solidarity with the victims of the attack, SFJ offered to donate Pak rupees 1 million for the families of the security personnel who died during the November, 23 attack on the Chinese Embassy. Learned senior counsel submitted that the respondent Association is espousing the cause of Khalistan and Referendum 2020 at the International Forums and the anti-India sympathizers, who bolster their agenda of a separate state of Khalistan. Annexure-30 on page 158 is a facebook notification of the respondent Association appealing to the residents of Punjab, wherein they have noted that, "officers of Punjab police, who had carried out fake encounters or had tortured the Sikh youth supporting Referendum 2020 and named [REDACTED] and [REDACTED] and called upon the people that if they have any information regarding family members of these police officers residing in America, Canada, Europe, England, Australia or New Zealand etc., then that information should be shared with [REDACTED]. Learned senior counsel argued that this is an open threat to the authority of the State and intended to unsettle the hierarchical setup of State. Learned senior counsel next referred to Annexure-37 to page 168 which is a facebook post by [REDACTED] wherein he has stated that Pulwama attack is not an act of terrorism but a legitimate military target in armed conflict between Indian forces and Kashmiri militants. Learned senior counsel argued that this post by [REDACTED] is indicative of his association and support for other militant organizations in the country which tends to endanger the sovereignty and territorial integrity of India. Learned senior counsel next invited attention to Annexure-38 on page 170 which are photographs of free 'Punjab', 'Kashmir' and 'Anti War rally in front of United Nation Headquarters on 28.02.2019'. Annexures-40 and 41 are the facebook posts by the respondent Association relating to the Kartarpur Corridor and Khalsa Sajna Diwan on 14.04.2019 at Gurdwara Panja Sahib. The said annexures relate to the respondent Association sponsoring 10,000 pilgrims from Punjab for Referendum 2020 Convention at Kartarpur Sahib - A bridge to Khalistan and the respondent Association to launch registration of Team 2020 on April 14 from Panja Sahib, Pakistan for Khalistan Referendum. The whatsapp number of SFJ Lahore office (text only) is also provided on the twitter post at page-178 of the affidavit. Learned senior counsel next invited attention to Annexure-44 at page-184 which is the facebook post by [REDACTED] urging the Sikh community in Punjab to boycott the Lok Sabha Elections, 2019. The salient points in the said post exhort the Sikh community in Punjab to not accept the Indian Constitution; Freedom of Punjab; and establishing an independent state of Khalistan.

76. Learned senior counsel next referred to Annexure-45 on page 185 which is a letter written by Gurpatwant Singh Pannu as a legal advisor of the respondent Association dated 25.06.2019 to the Secretary of State and the American Ambassador, United States, Department of State with the subject:, "Report on torture of Khalistan Referendum 2020 campaigners and criminalization of pro-Khalistan political union by Government of India". It is claimed in the letter that the Indian authorities are exaggerating stories and fabricating evidence to implicate Referendum 2020 supporters in terrorism cases. The letter goes on to narrate certain incidents wherein the accused persons were charged under the Indian Penal Code. Learned senior counsel submitted that the letter establishes the link between the respondent Association and the cases registered in India. It leaves no doubt at all that the FIRs registered in India are against the associates and sympathizers working for the respondent Association and respondent Association is actively collaborating and inciting the people in Punjab to disrupt the sovereignty and integrity of India.

77. Learned senior counsel on behalf of Union of India while reiterating the submissions with respect to the unlawful activities of the respondent Association referred to the preliminary submissions filed on behalf of the respondent Association wherein the respondent Association had also sought *in limine* quashing of Notification dated 10th July, 2019. Referring to para 35 of the preliminary submissions, learned senior counsel argued that the right of self determination claimed by respondent Association and their reference to the human rights violation by India specially with respect to the people of Kashmir is a direct affront to the sovereignty and integrity of India. Learned senior counsel submitted that the respondent Association claims some kind of parity with the Kashmiri separatists and they herald terrorist as freedom fighters. Referring to para 40 of the preliminary submissions, he drew attention to the following averments: “....SFJ is completely convinced that the Indian state carried out Genocide of Sikhs through India in November 1984 after assassination of late P.M of India Indira Gandhi and the extra judicial killing of Sikhs in Punjab from 1984 to 1998 in the name of counter insurgency. The said actions which could be characterized as genocide as a result of which tens of thousands of Sikhs were massacred extra judicially and without any justification.SFJ also believes that Sikhs have a right of self-determination under established principles of International Law as enshrined in UN Charter and International Covenant on Civil and Political Rights. SFJ believes in realization of right of self-determination through peaceful and democratic means and will continue to engage in activities that are nonviolent, peaceful and democratic”. It is submitted that these submissions itself fulfill the ingredients of Section 2(o) of the Act and, thus, the action of the Union of India in declaring the respondent Association as an ‘unlawful association’ is legal and within the parameters prescribed under the Act.

78. Learned Solicitor General next submitted that there are three kinds of evidence which has been brought on record by the Union of India, viz. posts on behalf of the respondent Association on social media i.e. facebook, whatsapp, twitter etc. which have been elucidated in the affidavits Ms. ██████████ (PW-2) and Mr. ██████████ (PW-11); evidence brought on record by way of various FIRs registered against the members, sympathizers and handlers of the respondent Association in Punjab, Uttarakhand and by NIA; and thirdly intelligence reports placed before the Tribunal in sealed covers. He referred to para 13 of the affidavit filed by Mr. ██████████ (PW-12) wherein the original reports and inputs containing intelligence reports and inputs on unlawful activities received from intelligence agencies have been submitted in a sealed cover for perusal. It was submitted that these documents may be carefully perused as collateral evidence in support of the substantive evidence placed by way of social media posts, affidavits of the twelve witnesses and the evidence by way of FIRs registered in Punjab, Uttarakhand and by NIA. Learned Solicitor General, thus, submitted that despite number of opportunities having been granted by the Tribunal, this is a case of no defense evidence and nothing has been placed on record which could question the action taken by the Union of India in declaring the respondent as an ‘unlawful association’. Thus, it is submitted that in view of the submissions made, the Notification dated 10th July, 2019 issued by the Union of India banning the respondent Association with immediate effect deserves to be upheld.

79. Mr. ██████████, learned senior counsel for the respondent Association at the outset submitted that Referendum 2020 be neither read as a demand for a separate home for the Sikhs nor as an incitement for waging a war against the State. Learned senior counsel referred to the decision of the Hon’ble Supreme Court in ***Kedar Nath Singh Vs. State of Bihar, 1962 Supplementary (2) SCR 769*** to submit that mere words are not enough to invite the charge of sedition and that provisions like Section 124A IPC stand toned down in the face of Article 19(1)(a) of the Constitution. It is submitted that “saying” is not akin to waging a war and it must be connected with other evidence or criminal activity to read any deeper into the acts. Learned senior counsel submitted that small activities by any association cannot be termed as ‘unlawful activities’ within the meaning Section 2(o) of the Act unless the activities have led to any significant damage to the unity and integrity of India. It is submitted that there has been no repercussion to the social media posts relied upon by the Union of India and that Referendum 2020 is a peaceful exercise even though it might be obnoxious to the State. It is submitted that an obnoxious speech cannot be termed as a criminal activity and free speech must prevail as long as no one sports a gun against the State. Learned senior counsel submitted that the words and social media posts relied upon by the Union of India are acts within the meaning of free speech as protected by Article 19 (1) (a) of the Constitution of India.

80. Learned senior counsel next referred to the decision of the Hon’ble Supreme Court in ***Balwant Singh & Anr. Vs. State of Punjab (1995) 3 SCC 214*** to submit that mere exhortation without the commission of any criminal offence is not actionable. Referring to para 12, he submitted that the conviction and the sentence of the appellants in this case was set aside with the observation that “*raising of some slogans only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in public can neither attract the provisions of Section 124A or of Section 153A IPC. Some more overt act was required to bring that home the charge*”

*on the two appellants”. Learned senior counsel next referred to the decision of the Hon’ble Supreme Court in **Bilal Ahmad Kallu Vs. State of Andhra Pradesh (1997) 7 SCC 431** to submit that the appellant in this case also was acquitted with the Hon’ble Supreme Court observing that “*the decisive ingredients for establishing the offence of sedition under Section 124A IPC is the doing of certain acts which would bring to the government established by law in India hatred or contempt etc. In this case, there is not even a suggestion that the appellant did anything against the government of India or any other government of the State*”.*

81. Learned senior counsel, thus, argued that merely inciting the feeling of one community or group without any reference to any other community or group can neither attract Section 124A nor Section 153A of the IPC. Learned senior counsel submitted that courts have toned down such Sections upholding the right of freedom of speech and that the tree of democracy has to be considered as a whole. Learned senior counsel submitted that the averments against the respondent Association are identical to the two cases cited above and, hence, in the absence of any repercussion to the activities attributed to the respondent Association, the Notification dated 10th July, 2019 is liable to be quashed.

82. Learned senior counsel next argued that the Union of India has not been able to establish any connect between Referendum 2020 with the random and unconnected criminal offences in respect of which FIRs have been registered in Punjab, Uttarakhand and by the NIA. It is submitted that the FIRs registered in India are random FIRs against random people and none of these FIRs establish any connect with the respondent Association. It is submitted that the connection being sought to be established by the Union of India has to be real, tangible and substantial. Thus, it is submitted that the FIRs and the accused persons named therein have no connection whatsoever with the respondent Association and such individuals acts of random people cannot be relied upon by the Union of India to invoke Section 4 of the Act to ban the respondent Association. Learned senior counsel for the respondent Association next argued that the social media posts cited by the Union of India are bereft of any call for violence. It is submitted that these are innocent posts and are more of words of anguish for the acts of the Government in 1984. So far as the posts attributed to [REDACTED] are concerned, learned senior counsel submitted that these are his individual views and not of the respondent Association and in any case there has been no repercussion to any of his posts on social media in India. He submitted that his call for flag burning did not lead to any flag burning in India; his post that Pulwama was a legitimate military target also did not lead to any consequence; his post that RAW was behind the attack on the Chinese Consulate in Karachi also had no impact; and his post for the civil and police officials to disobey the orders of the authority also did not lead to any repercussion at all and, therefore, cognizance need not be taken of such posts to declare the respondent as an ‘unlawful association’ as defined in sub-section (p) of Section 2 of the Act.

83. Learned senior counsel for the respondent Association lastly submitted that the respondent Association as a whole has remained a moderate association and none of their actions has put the unity and integrity of India in peril. It is submitted that the call for self-determination for the Sikh people is something which is permissible in International Law and groups may make application in a fanciful and aggressive way and the Referendum 2020 also is being sought under the UN Supervision. It is, thus, submitted that there is no basis with the Union of India to invoke Section 3 of the Act to issue the Notification dated 10th July, 2019 banning the respondent Association with immediate effect and the evidence brought on record by the Union of India does not establish sufficient cause for the government to ban the respondent Association.

84. I have carefully considered the submissions made by the learned Solicitor General of India and the learned senior counsel for the Union of India as also the learned senior counsel representing the respondent Association. I also carefully gone through the evidence brought on record and also perused the material submitted by the Union of India in sealed cover. The Tribunal under sub-section (3) of Section 4 of the Act is required to decide whether or not there is sufficient cause for declaring the Association to be unlawful, based on the material placed before it. The reference to the Tribunal under sub-section (1) of Section 4 was accompanied by a Note on the respondent Association which detailed the background, objectives and activities of the respondent Association. It also detailed the associates with whom the respondent Association has been working. It has been stated that respondent claims itself to be an advocacy group based in New York, USA and also maintains its offices in Canada and UK. Their modules and activities in India are being operated by their foreign based handlers, for which reliance is placed on the FIRs registered in India. The respondent Association is claimed to be propagating Referendum 2020 on the social media as well as on ground and has also launched the website www.referendum2020.org which is replete with pro-Khalistani posts and anti-India insinuations. The website propagates right of self-determination under International Law for the people of Punjab. It is stated that the respondent Association is encouraging and aiding activities for secession of a part of the Indian territory from the Union of India and with the said object, has

commenced registration of volunteers online across the world and these activities are intended to escalate its subversive activities against India. The respondent Association is also stated to be actively using and engaging itself on social media to garner support from Punjab based Sikh youth for Referendum 2020 campaign and their members are awaiting India based supporters/operatives to circumvent the ban on the respondent Association by continuing to promote the so-called Referendum 2020 in India. The activities of the association have been highlighted and the cumulative result of their acts are stated to be an effort to undermine the territorial integrity of India while inciting disaffection amongst the Sikh community towards the Indian government and the Indian State. It is also claimed that the respondent Association is trying to work in tandem with other separatist organizations active in Kashmir and elsewhere and that it also has a connect with ISI through its front organizations such as Dayal Singh Research and Cultural Forum, Khalistan Liberation Force, Khalistan Gadar Force, Babbar Khalsa and Gopal Singh Chawla, a Pakistan based terrorist are named as the other separatists in the anti-India entities with whom the respondent Association is collaborating to disrupt the territorial integrity of India. The details of the FIRs registered in India have also been furnished. These cases are stated to be still pending and in some of the cases the charge-sheets are yet to be filed.

85. The Union of India has examined twelve witnesses who have deposed about the activities of the respondent Association as well as the cases registered in India which are stated to have a direct connect with their handlers who are based abroad and are known members and sympathizers of the respondent Association. PW-2, Ms. [REDACTED] has proved the FIR registered by NIA, Delhi, viz. RC-02/2019/NIA/DLI dated 15.01.2019 against certain entities and individuals based in India and abroad who have entered into a criminal conspiracy with other terrorist organizations and gangs and have started a concerted campaign in the name of Punjab Referendum 2020 for Khalistan and are raising funds and carrying out secessionist activities on ground as well as on social media with an intent to instigate members of Sikh community for ceding the State of Punjab from Union of India. The witness has also proved the social media posts of the respondent Association where the respondent Association has openly aligned itself to Referendum 2020 and has been proved to be the primary moving force behind the said Referendum, which has, at its core, the objective to disrupt the unity and integrity of India. The call for a referendum to cede a part of the territory of India in itself is a crime. The intent of the Act itself is to put reasonable restrictions in the interest of the sovereignty and integrity of India. These reasonable restrictions include restriction on freedom of speech and expression; right to assemble peacefully and without arms; and right to form associations or unions. The respondent Association has been proved to be indulging by its speeches and social media expressions and communications, in acts which are detrimental to the unity, integrity and sovereignty of India. Referendum 2020 being propagated by the respondent Association is itself restricted and is an unlawful activity under the Act and does not have any sanction under any law. The Union of India has substantively proved, through material brought on record by way of background note and evidence of witnesses, that the acts of the respondent Association in promoting hatred against a certain community by way of social media posts which are intended to divide people who have peacefully and lovingly lived together for centuries. The evidence brought on record by the Union of India has gone un rebutted and no contrary evidence has been brought on record by the respondent Association to show that the acts alleged against them are not committed by them. The submissions made by the learned senior counsel for the respondent Association that these utterances, acts and social media posts have had no repercussions in India and that they are innocent in character cannot be accepted since it was with great difficulty and at a huge cost that the State of Punjab was very recently rid of terrorist activity and any attempt at this stage to revive or foment any activity which threatens the unity and territorial integrity and sovereignty of India must be nipped in the bud at the threshold itself. The case laws cited by the learned senior counsel refer to isolated incidents wherein FIRs were registered under Section 124A and 153A of IPC wherein the accused persons were acquitted for their acts not leading to any repercussions. The facts in hand are a well planned conspired attempt to engage in activity which is statutorily barred under the Act and is a clear affront to the authority of the State which is duly bound to uphold the unity, integrity and the Constitution of India. The evidence brought on record by the Union of India is stark and clear and the same has gone unchallenged despite opportunity. The acts, utterances and social media posts attributed to SFJ and its activists and sympathizers, which have duly been provided on record, are divisive in character and are a pointer to a divisive mindset and a divisive intent. The only conclusion which can be read from the evidence brought on record and noted above is that the respondent Association has the sole objective to propagate and work against the interest of India by indulging in activities which threaten the sovereignty and integrity of India and are intended to cause disaffection against India within the meaning of sub-section (o) of Section 2 of the Act and, thus, the Association is liable to be declared as an 'unlawful association' within the meaning of sub-section (p) of Section 2 of the Act.

86. From the aforesaid discussion it is clear that the unlawful activities of the respondent Association are disruptive in character and threaten the sovereignty, unity and territorial integrity of India. The evidence brought on record also proves that the respondent Association is working in collusion with anti-India entities and forces to fulfill their objectives by indulging in unlawful activities. Thus, the Central Government had 'sufficient cause' to take action under Section 3(1) and 3(3) of the Act for declaring Sikhs For Justice as an 'unlawful association'. The Notification dated 10th July, 2019 issued by the Union of India under sub-sections (1) and (3) of Section 3 of the Act declaring Sikhs For Justice (SFJ) to be an 'unlawful association' is hereby confirmed. The reference is answered in the affirmative.

Before parting, I would like to place on record my appreciation for the assistance rendered by Mr. ██████████, Solicitor General of India, Mr. ██████████, Sr. Advocate, Mr. ██████████, Mr. ██████████, Ms. ██████████, Ms. ██████████, Ms. ██████████, Mr. ██████████, Mr. ██████████ and Ms. ██████████, Advocates on behalf of the Central Government. I also place on record my appreciation of the assistance rendered by Mr. ██████████, Sr. Advocate, Mr. ██████████, Ms. ██████████, Mr. ██████████ and Md. ██████████, Advocates for the respondent Association throughout the conduct of the proceedings of the Tribunal.

JUSTICE D. N. PATEL

UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

JANUARY 06, 2020

[F. No. 17014/18/2019-IS-VII]

PUNYA SALILA SRIVASTAVA, Jt. Secy.