Insecurity By Law

A critique of the Maharashtra Special Public Security Bill in the Context of India's Banning Regime

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Introduction

A revised draft of the Maharashtra Special Public Security Bill was tabled in the Vidhan Sabha on 10 July 2025 and was passed the same day, exactly a year after the original text of a Bill, claiming to curb the 'menace of Naxalism in urban areas', was first tabled. A year ago, on 11 July 2024, a Shiv Sena-BJP coalition government in Maharashtra under the Chief Ministership of Eknath Shinde, tabled the Maharashtra Special Public Security Bill, 2024 on the penultimate day of the Assembly session. The 'Object and Reason' of the Bill claims that the threat of Naxalism is no longer confined to remote, rural or forested regions, and has penetrated urban areas through a network of affiliated frontal organisations, which play a crucial role in sustaining armed insurgency by providing logistical support, shelter, and safe havens for underground cadres. Citing materials allegedly seized from Maoist sources, the government claims that 'safe houses' and 'urban dens' exist within several cities across the state. It further claims that similar public security legislations enacted in states like Chhattisgarh, Telangana, Andhra Pradesh, and Odisha, have effectively prevented the 'unlawful activities' of 'such organizations' while a deficit of such a law in Maharashtra exists. The political narrative surrounding the Bill, primarily shaped by members of the ruling state government, centres on tackling the nebulous and politically charged category of the 'Urban Naxal', a term frequently mobilised to delegitimise political dissent, and lately popularized by sections of the media as a criminal tag, despite being an extra-legal category.

The Bill wasn't passed in July 2024 and was subsequently reintroduced on 18 December 2024 after Devendra Fadnavis of the BJP took over as the CM, and was referred to a 21-member Joint Select Committee, later increased to 25, tasked with examining its provisions and presenting a report. The Committee, chaired by Revenue Minister Chandrashekhar Bawankule, held five meetings between March and June 2025. In its first meeting, it invited suggestions and proposed amendments from sitting legislators, Members of Parliament from Maharashtra, former legislators, the public, and various civil society organizations. 12,500 submissions were received from civil society groups, particularly democratic rights organizations, many of which offered detailed, clause-by-clause critiques highlighting the Bill's potential implications for people's rights. Concerns were also raised that the existing legal frameworks already confer expansive powers upon the state. The proposed Bill does not exist in a legal vacuum unlike the claim of the government; it overlaps with the already wide-ranging scope of the Unlawful Activities (Prevention) Act, 1967 (UAPA), its duplication in the form of Section 113 in the Bharatiya Nyaya Sanhita (BNS), as well as the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), a stringent state-specific law.

While the Committee extended the deadline for receiving such inputs, the final version of the Bill, as amended and adopted by the Joint Committee, incorporates only three changes- one in the title, the second in the composition of the Advisory Board, and the third regarding the rank of the

investigating officer. This version of the Bill has been passed by the Vidhan Sabha on 10th July and the Vidhan Parishad on 11th July amidst the opposition submitting a dissent note and staging a walk out. The Bill now awaits the Governor's assent.

One of the changes introduced in the Bill is the inclusion of the term 'Left Wing Extremism' in its title and preamble. The earlier version of the Bill described it as a measure to 'prevent certain unlawful activities of individuals and organizations'. The revised version frames its objective as the 'prevention of certain unlawful activities of Left Wing Extremist organizations or similar organizations and for matters connected therewith or incidental thereto'. The Joint Committee has argued that this modification narrows the scope of the legislation. However, since the Statement of Objects remains unchanged, the actual ambit of activities that may be brought under the Bill's purview appears unaffected. Although 'Left Wing Extremism' (LWE) is not a legally defined category, it has been used officially to refer to Maoist groups. The Ministry of Home Affairs (MHA) established a dedicated LWE Division in 2006 to address Maoism and Maharashtra has always been identified as one of the affected states. All so-called LWE organizations and their 'fronts' have already been banned under the UAPA. The Bill, in addition to LWE organizations, also identifies similar organizations, which means that its scope will not be limited to the LWE groups already banned under the UAPA. The potential of the Bill to draw 'similarities' and bring dissenting groups within its ambit is evident in the broad and vague formulations on which it is based.

The Bill defines the offence of 'unlawful activity' in broad and vague terms, granting the State Government discretionary power to proscribe organizations by declaring them 'unlawful' based on their alleged involvement in such activities. It further enables penal action against individuals on the basis of association with these organizations, effectively operating on the logic of guilt by association. The Bill also empowers the government to notify and take possession of premises, as well as to attach, seize, or forfeit property purportedly linked to banned organizations. However, these powers substantially overlap with those already available under the Unlawful Activities (Prevention) Act (UAPA), which has a much wider scope. Unlike the UAPA, which regulates a wider range of activities and organizations, the present Bill primarily functions as a proscription law focused on banning entities and criminalizing individual conduct associated with these groups. The Maharashtra Bill, therefore addresses only one aspect of the UAPA. The question is, why is the government enacting a separate law when the UAPA already exists and enables authorities to do much more than impose a mere ban? A straightforward answer might be that the Public Security Bill will allow state government to exercise powers otherwise available only to the Central Government under the UAPA. However, even this rationale appears insufficient when we recall that the Criminal Law Amendment Act, 1908 (CLA) remains on the statute books, and already empowers state governments to ban organisations. Why then enact a new law instead of invoking the CLA?

The answer, this report suggests, lies in scrutinizing the Bill's intent in the wake of Maharashtra's contemporary political landscape and the powers granted under the Special Public Security Acts (PSAs), of which the Maharashtra Bill is an example. Equally important is the need to examine this development against the backdrop of constitutional jurisprudence on the right to association under

Article 19(1)(c). This report thus situates the Maharashtra Bill within a broader genealogy of 'laws that ban', and focuses on its present-day implications, treating it not as an isolated statute but as part of a legacy designed to restrict associational freedoms. While the Constitution permits 'reasonable restrictions' on the right to association, the growing body of national and state-level legislations, particularly the UAPA and PSAs, has transformed these limited exceptions into expansive instruments of control. These laws do more than restrict, they redefine the very boundaries of the right to association through their power to ban. This report explores the 'how' and 'why' of the politics of banning in the here and now of the Maharashtra Bill.

Article 19(1)(c)- Right to Association	All citizens shall have the right to form associations or unions or co-operative societies
Article 19(4)- Reasonable Restriction	Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause

The report is divided into four specific chapters. The first chapter unravels the social history and the political economy of the state legislations in Andhra, Madhya Pradesh, and Chhattisgarh to demonstrate how the contemporary builds upon the past. The second chapter uncovers the overlapping provisions of the gamut of laws related to banning, to decipher what is new in the present context. The third chapter offers a comparative analysis of the procedures and the powers of these legislations and examines the ease of banning that each successive legal strategy introduces. The fourth chapter collates the insights of the report and weaves them into the larger question of 'why ban?'

Chapter 1
The Long Shadow of History

The state enacted public security legislations reflecting the state's evolving strategies to regulate and criminalise political resistance have carried the imprint of long-standing conflicts over land, justice, and power. The *Andhra Pradesh Public Security Act* of 1992, followed by similar legislations in Madhya Pradesh, Chhattisgarh and now Maharashtra, mark a persistent trend in how the Indian state has responded to political dissidence, especially when it emerges from its margins- geographical, economic, and ideological. From the forests of Bastar to now the modern cities such as Mumbai, a typical figure of the 'Naxal'- rural and armed- has been reframed to include activists, journalists, students, and civil society organisations. The shift in imagination from the 'guerrilla in the jungle' to the so-called 'Urban Naxal' is not accidental but deeply political. It signals an expanding frontier of suspicion and control, legitimised through legal instruments that blur the line on the one hand between law and ideology, and the legitimate exercise of freedom and criminality on the other. This chapter traces the histories, contexts, and implications of the Public Security Acts in Andhra Pradesh, MP and Chhattisgarh to demonstrate how these legislations have effectively truncated the right to association and criminalized associational freedoms.

The Andhra Pradesh Public Security Act, 1992

The Andhra Pradesh Public Security Act (AP PSA)emerged in the background of Naxalite movement in Andhra Pradesh which began in the 1960s against feudal land relations and upper caste dominance. The state had witnessed right from the start, multiple uprisings in different parts, like the Telangana Peasant Rebellion and Srikakulam uprising as a response to caste and class conflicts. The Andhra Pradesh government's response to these uprisings were marked by intense hostility and use of repressive measures. For instance, the Andhra Pradesh Suppression of Disturbances Act, enacted in 1948, granted power to 'any Magistrate, and any Police Officer to fire upon persons contravening certain orders in disturbed areas' and certain offences under this Act were punishable with death. Similarly, in 1983, the state tried to liberalise arms licensing to enable people to protect themselves from Naxals and decided to issue arms licences to 'men of character, standing and education'. This step of the TDP government was severely criticised and opposed by the general public and bureaucracy alike. Many interpreted this move as a deliberate attempt of the state government to strengthen the position of the landlord class in the rural areas, for the new policy would benefit only the rich. In view of the public criticism, the government could not go ahead with the new policy.

In 1989, the state established the Greyhound Force, a police special force unit, especially trained in jungle warfare to counter the Maoists. It is a special force that has always worked with impunity. It influenced the creation of other such forces in different states- Orissa's Special Operations Group, Maharashtra's C-60, West Bengal, the Counter Insurgency Force and the CoBRA battalion of the Central Reserve Police Force in Chhattisgarh. A 1992 report by Human Rights Watch documented

serious human rights violations by security forces in Andhra Pradesh, drawing parallels with the situations in Punjab and Kashmir. The report noted instances of torture, extrajudicial killings, and intimidation affecting both suspected militants and civilians, with some villages facing collective punishment. It also highlighted concerns over systemic impunity, with personnel involved in counterinsurgency operations allegedly receiving rewards and promotions. The abuses were attributed primarily to the Andhra Pradesh state police, with support from central forces such as CRPF and BSF.

The AP PSA is situated within this broader context of measures that preceded and inspired it. When examined as part of a nexus of extraordinary measures, it reveals a discernible pattern in the state's strategy of addressing the Naxal movement, not merely by criminalizing the specific acts of the movement, but by constructing a criminal identity around the movement itself. An identity which would be imputed to any act of political opposition, based on the logic of guilt by association with Naxalism. Hence in 1992, when the Act was introduced by the N. Janardhan Reddy Government, it immediately banned not only the People's War group (PWG) but along with it eight other organisations including All India Revolutionary Students Federation (AIRSF), Federation of Workers of Singareni Coal Mines, (Singareni Karmika Samakhya or SIKASA), Radical Students Union (RSU), Peasants and Workers Association (Rythu Coolie Sangham), Radical Youth League (RYL) and Revolutionary Workers' Federation (Viplava Karmika Samakhya or VIKASA), which were agricultural labourers unions, tribal organisations, mine workers unions, and student organisations.

The ban on these organizations started a spiralling effect enabling the government to target legitimate activities, including the right of lawyers to represent members of the banned groups. In 1996, two advocates registered with the Andhra Pradesh State Bar Council approached the High Court on the ground that they were illegally detained in Itarsi, Madhya Pradesh, and harassed by the police personnel for their alleged involvement with the banned People's War Group (PWG). The lawyers stated that the police admitted in their response that the advocates were being watched before the detention took place, on suspicion of their ideological leanings towards CPI (ML) and PWG; also because they have been representing 'extremists' in court. The court responded in Siddaiah And Anr. vs State Of Andhra Pradesh And Ors. (1997) by stating that representing banned organisations or even ideological leaning towards them cannot be formed as a basis for their association and current involvement in illegal activities cannot be proved on the basis of past membership in a banned organisation (para 17(2)). This principle of not implicating 'past membership' was soon going to disappear as evolving trajectory and jurisprudence on such laws was to prove.

In 2012, the Revolutionary Democratic Front (RDF) was banned under the AP PSA, alleged to be a front for the CPI (Maoist). The government accused the RDF of promoting Maoist ideology, interfering with the administration of the law, upsetting the maintenance of public order and inciting violence against the state. At the time RDF was banned it had no formal structure in the state and had Varavara Rao and Ganti Prasadam as its only two members. During the First All India Conference successfully organised by RDF in Hyderabad, the AP government banned the public rally alleging that some Maoists were present in the conference and that the rally would 'disturb'

the law and order situation of the state. Under instructions from the state government, Andhra Pradesh police also arrested a team of 35 cultural activists from Chhattisgarh on false charges and prevented them from attending the conference. The only activity conducted by RDF after the Conference was a round-table meeting that raised concerns against the massacre of 20 adivasis in Bijapur district of Chhattisgarh.

There have been enough cases criminalising 'alleged membership' without any substantial basis. In a case of 1999, police intercepted someone based on what they claimed as 'credible information' while the person was undergoing medical treatment in Hyderabad. It was reported that the accused identified himself as a District Committee Secretary at Kondamodu Junction and confessed to having worked with Maoist fronts like RSU, RYL, and Youth League. He was accused of being involved in certain killings and was charged under Section 8(1) of the Act, besides the Explosive Substances Act (ESA). Following the trial, all the charges were dropped except for Section 5 of the ESA. However, in 2024, upon submitting additional evidence it was found that the accused was illegally detained by police on 30 November 1999, in Hyderabad and falsely shown as arrested on 2 December, at Kondamodu Junction. The accused's wife filed a habeas corpus writ, and in response the investigating officer claimed the arrest happened only on 2 December, the day after the writ was filed. The trial court failed to consider these crucial documents for almost 25 years. These charges were not only fabricated but had obvious loopholes that were not immediately taken into consideration.

More cases based on allegations lacking proper evidence have been witnessed not just against prominent activists and intellectuals but also common people. In a 2009 case, a woman who was a school cook, was charged by the Session Court under Section 8 of the APPSA along with Section 5 of the Explosive Substances Act after being detained for 20 days during a Naxalite inquiry. She was acquitted of the charges under PSA shortly but was sentenced to a rigorous imprisonment for a year under ESA. In 2023, the High Court acquitted her of the remaining charges citing lack of evidence and prosecution's sole reliance on police witnesses. In another case, in 2018, two former students of University of Hyderabad, were arrested by Andhra Pradesh Police on suspicion of plotting the murder of vice-chancellor of the University to avenge the suicide of Dalit scholar Rohith Vemula. The police claimed that the two suspects received training in Bastar where they were suspected to have met Haribhushan, the secretary of Telangana State Committee of CPI (Maoist). They were charged under Section 8(i)(ii) of the AP Act, along with sections of Explosive Substances Act, Arms Act and Sections 10, 13 and 20 of UAPA. Both Prudviraj and Chandan were allegedly abducted by the policemen in plain clothes from their home and the arrest was not disclosed for almost four days. The petitioners argued that the police fabricated the allegations and aimed at defaming student activists of the University. They requested bail, asserting they were not part of any banned group, and mere possession of leftist literature does not prove any maoist affiliation. However, the court dismissed the petition on the basis of prima facie evidence stating that under the UAPA, the court doesn't need to confirm guilt, only form an informed opinion based on prime facie material.

In 2022, a petition challenged the seizure of the printing of a book titled 'Sayudha Shanthi Swapnam' on life and thoughts of Akkiraju Hara Gopal (state leader of People's War Party). The petitioners charged under Section 8(2) of the Telangana Public Security Act, argued that mandatory

procedure under PSA and CrPC was not followed, and the book contained no objectionable content. The Telangana High Court quashed the case on the grounds of lack of evidence as well as procedural violations which included lack of reasoning in the notification issued under PSA, not publishing the notification in the Gazette as required by law, and non-compliance with Section 165 CrPC. The HC also noted that sealing an entire printing press that employed 44 workers, without justification, is infringing the freedom of expression and right to livelihood.

The pattern of use reveals a troubling misuse of the law, not just against political adversaries and dissenters under the guise of maintaining public order, but also in occasionally against commoners.

Chhattisgarh Special Public Security Acts, 2005

In 2005, an Act was passed in Chhattisgarh under similar pretext of growing Naxal violence in the state. The Chhattisgarh Act carried forward the legacy of an MP Act enacted in 2000, called the Madhya Pradesh Special Area Security Act. The first public reference to such an Act being conceived was made on 5 September 2005 by the then Chhattisgarh Home Minister, Ramvichar Netam, during a public meeting convened in the wake of a Naxal attack that led to the deaths of 24 security personnel. The Minister announced that the government was considering the promulgation of the 'Chhattisgarh Special Public Safety Ordinance' to curb the escalating violence. The necessity and scope of such a legislative measure were not clearly defined at the time. The 2004 amendment in the UAPA had already been carried out under which all the Naxal organisations were banned. The Act was introduced by the BJP government in the state without making the Bill available for public discussion.

That CSPSA was essentially meant to target the civil society in Chhattisgarh which had been constantly raising voice against the human rights violations in the name of counter Maoist-insurgency, was made abundantly clear when Dr. Binayak Sen, vice-president of PUCL, human rights activist and a paediatrician was charged in 2007. Sen was also involved in public health projects for the adivasis and contract labourers in Chhattisgarh. He, along with Kolkata based businessman Piyush Guha, was convicted under CSPSA, which he had been critical of since the beginning, along with sedition and sections of UAPA, in 2010 by a session courts. In his appeal to the Chhattisgarh High Court for suspension of sentence, the High Court dismissed Sen and Guha's appeal. It held that while the right to oppose the state policies comes under the ambit of Article 19 (1)(a), which guarantees the right to freedom of speech and expression, this right however, does not extend to inciting public disorder or disaffection towards the state. For these charges, the HC also relied on confiscated documents. Later, the Supreme Court granted them bail but never gave a proper reason for the order. Many such people and organisations have highlighted the issue of extrajudicial killings, sexual violence and forceful acquisition of land in Chhattisgarh. The consequence of this law has also translated into repressive conditions for journalists in Chhattisgarh. The act has been used against local reporters, threatening their rights and also press freedom in the area.

In 2014, the Chhattisgarh High Court dismissed the PIL filed by People's Union for Civil Liberties (PUCL) challenging the validity of the Chhattisgarh Special Public Security Act, 2005. PUCL

argued that a special law is needless when UAPA covers a much larger ambit in relation to the concerns of public security. The HC dismissed the petition by stating that the State has got the legislative competence to enact such laws. It also stated that the definition of 'unlawful activity in the Act is not vague (paras 34, 35), and that the Act does not violate Article 19(1)(c).

The CSPSA has been used against activists and organisations that have been protesting for the rights of adivasi communities in Chhattisgarh. Most recently in November 2024, the Chhattisgarh government declared the Moolvasi Bachao Manch (MBM) as an 'unlawful organisation' under CSPSA, claiming that it was a threat to public order. The reasons cited were that the organisation opposed development works of the Union and state government in 'Maoist-affected areas', and that it mobilised the public against the setting up of security camps on their lands. Four days after the ban on MBM, two minor girls, Madkam Dhanni (17) and Madkam Jogi (15) were arrested and kept under detention for 15 days, without the grounds of detention being made clear to them. In response to the *habeas corpus* petition filed by Budhram Madkam, father of Madkam Jogi, the police claimed that Jogi was 19 not 15 and had been sent to Jagdalpur jail. While the police claimed that they had no information on Dhanni, she was was released from Bijapur Police Lines and Jogi remained in custody.

In May 2025, the Chhattisgarh HC upheld the ban on MBM, dismissing the plea challenging the notification under CSPSA. The court stated that the representation is still pending before the 'Advisory Board' and the petitioner may seek appropriate remedies only after the final decision. When the petitioner raised the concern that even the reason for the ban had not been shared with MBM, the the Court responded that these reports are 'confidential' and 'if national interest has to be protected, nothing is to be told'.

Maharashtra Special Public Security Bill, 2024

The Maharashtra Bill, which has been designed specifically to target the 'spread of Naxalism in urban areas,' as evident in its 'Object and Reasons', is an offshoot of a popular narrative, a social media hashtag- the 'Urban Naxal', popularised by filmmaker Vivek Agnihotri. In his essay for the Swarajya in 2017, he defined the Urban Naxals as the 'invisible enemies' of India, who either have been caught or are 'under the police radar for working for the movement and spreading insurgency against the Indian state.' He exclusively defines them as 'urban intellectuals, influencers or activists of importance'. In May 2018 he released his book titled *Urban Naxals: The Making of Buddha in a Traffic Jam.* He has often described this term through his films that take the recourse of dry and predictable tropes of a thriller plot to unmask the secret nexus of academics, intellectuals, NGOs and organisations that make up the world of 'Urban Naxals'. For example, his 2012 film *Buddha in a Traffic Jam*, which never saw a theatrical release, follows the story of a business school professor spreading 'Naxal propaganda' among students, until one student confronts and resists him upon discovering his alleged identity as an Urban Naxal. Similarly, Agnihotri's later films, such as *The Kashmir Files*, also depict this supposed nexus as a source of violence and a threat to national security.

Particularly in the wake of Elgar Parishad in 2017, the term became a common political lexicon used to describe anti-establishment protesters and dissenting voices. The term 'Urban Naxal' formed the backstory for the FIR filed against the people implicated for the Bhima Koregaon case, it even became a synonym for the case itself. The people in the case were accused of inciting violence through speeches, and of being linked to a larger Naxal conspiracy of overthrowing the government. It was not by any accident that the term was used against these people. The profile of the BK accused matches Agnihotri's caricature of poets, activists, academicians, intellectuals and dissenters who 'infiltrate' the urban spaces with Naxalite propaganda. He explains for his readers in his essay the multiple strategies employed by Naxals in order to accomplish their 'urban objectives', one of them includes 'creating cultural unrest with the help of propaganda platforms like Kabir Kala Manch (KKM)'. Kabir Kala Manch is an anti-caste forum intended to bring the attention of Dalit and working class people against communalism and caste violence. KKM has long been linked to alleged Maoist connections and its members have been targeted and incarcerated multiple times even before the famous Bhima Koregaon arrests. In 2012, under the UAPA, eleven people including three members of Kabir Kala Manch were picked up by the Maharashtra Anti-Terrorism Squad for allegedly aiding and abetting Naxal activities and possessing 'objectionable literature'. The Bombay HC granted bail to six of them in 2013, stating that these people could be sympathisers of Maoist philosophy but can't be called active members of the banned CPI-Maoists. The judge remarked that 'speaking about corruption, social inequality, exploitation of the poor etc. and desiring that a better society should come into existence, is not banned in our country'.

The parallels between the Urban Naxal hysteria in popular culture based on conspiracies and the state government's anxieties are almost comical, if they weren't so tragically serious. In May 2023, Maharashtra Chief Minister Devendra Fadnavis appealed to ABVP and other youth organisations to prevent infiltration of Urban Naxals in universities- '*Intelligence inputs suggest that they are attempting to enter universities, and my appeal is to stop them*'- clearly, building on the same conspiracy as Agnihotri. The term 'Urban Naxal' and its connotations become important considerations especially when popular culture is translated into legal imagination quite literally. The Maharashtra Special Public Security Bill (Mh SPSB) is the latest example.

The government claimed that it had taken the suggestion of the Ministry of Home Affairs regarding the implementation of adequate legal mechanisms to counter such organisations. However, notably in 2022, responding to a RTI query by India Today TV, the Left Wing Extremism division of the Union Ministry of Home Affairs responded that it had no information regarding 'Urban Naxals' or their activities. It is also of relevance that over the past 20 years, incidents of Left-Wing Extremism (LWE)-related violence have declined by 52%, according to the data released by the Maharashtra government in July 2023 which counters its own claims of inadequacy of existing laws.

In the political narrative surrounding the Bill, it is ostensibly intended to address gaps in existing laws. According to the Maharashtra Inspector General of Anti-Naxal Operations, the current Bill intends to plug the loopholes in the existing laws like UAPA dealing with Naxals. He explained that UAPA requires direct involvement in acts of violence, which limits its reach and fails to convict the 'urban maoists', like the case of G.N. Saibaba who was given bail even though he 'propagated Maoists ideology' (based on the literature found in his possession). Thus, he stated that there is a

need to bring in a definition of unlawful activities which is different from the definition of unlawful activities in the UAPA.

The desirability of such a law for the government is thus apparent- it provides a legal instrument to target forms of dissent that are inconvenient for those in power, and for which the use of UAPA, which has earned the connotation of an anti-terror law, is not always convenient. As subsequent sections will elaborate, the law is calibrated to cast a wider net. Tellingly, just days before the Bill was expected to be reintroduced in the Assembly in July 2025, a Shiv Sena member of the Legislative Council referred to 'people walking with the Constitution on their heads, promoting environmental awareness and atheist cultural groups' as 'Urban Naxals'. The intent behind the Bill could hardly be more transparent.

Chapter 2
Clones of One Another, Only Growing Bigger

A curious feature in the evolution of state public security legislations is the near-verbatim replication of provisions from earlier enactments, many of which are already subsumed by UAPA. With select provisions of the UAPA now incorporated into the Bharatiya Nyaya Sanhita (BNS), this pattern of legislative mimicry takes on puzzling turn. A closer look at the development of these laws reveals two recurring tendencies: first, a sequential replication of prior statutes, and second, a conflation of the definitions of 'unlawful activity' and 'terrorist act' from the UAPA, to define the scope of PSAs. This chapter unravels this evolving landscape trying to understand the rationale for introducing successive laws in this domain, with attention to the widening scope of provisions in the proposed Maharashtra Bill. In doing so, it highlights how these state enactments often go beyond the already overbroad framework established by the UAPA in defining and criminalizing 'unlawful activity.'

'Unlawful Activity': the cross between Public Security Acts and UAPA

The Unlawful Activities (Prevention) Act (UAPA) was enacted in 1967. It emerged as a legislative extension of the Sixteenth Amendment to the Constitution, which had been passed in 1963. This Amendment marked a significant shift in expanding the state's authority to impose restrictions on fundamental freedoms. It introduced the phrase 'sovereignty and integrity of India' as a 'reasonable restriction' under Article 19 of the Constitution. This addition created a new ground for imposing restrictions on the rights to freedom of speech, assembly, and association. The same phrase was also inserted into the Third Schedule of the Constitution. This changed the wording of the oath of office for various constitutional positions. In line with this constitutional shift, the UAPA was enacted to criminalize activities 'posing a threat to the sovereignty and integrity of India', along with the power to ban organizations. Originally in 1967, it defined 'unlawful activity' in expansive terms to include, *first*, any act that 'intends' or 'supports any claim' to bring about or 'incite' secession or cession, or *second*, act that 'disclaims, questions, disrupts/intends to disrupt' the 'sovereignty and territorial integrity of India'. The provision for banning associations under the Unlawful Activities (Prevention) Act, 1967, mirrored powers that already existed under the Criminal Law Amendment Act, 1908, which enabled provincial governments during the colonial period, and state governments post-independence, to declare organisations unlawful. The difference, however, was that the new central legislation, UAPA, in addition to providing the power to ban associations, also defined and penalised 'unlawful activity', hence its scope went beyond proscription, to create new categories of criminal offences. The CLA was a proscription law which applied to associations that 'interfered, or had as their object 'the interference, with the administration of law or the maintenance of public order, or which constituted a danger to public peace' (S.16).

UAPA had largely been lying defunct except for brief phases of its use like in the early 1990s against organizations that incited the demolition of Babri Masjid, such as VHP, and organizations advocating separatism in Kashmir such as Jamaat-e-Islami Hind. The law was re-activated in 2004 when it was amended thoroughly to import provisions from the erstwhile counter-terror laws like

TADA and POTA. UAPA has been amended successively since 2004, each time expanding its ambit. Two specific insertions made in the 2004 amendment are particularly significant. First, a *third* dimension was added to the definition of 'unlawful activity,' extending it to include acts that cause disaffection, or are intended to cause disaffection, against India. Second, a new offence of 'terrorist act' was introduced.

On the other hand, the Public Security Acts (PSAs), of which the Maharashtra Bill is a recent example, first appeared in the form of the Andhra Pradesh Public Security Act, 1992. This law was later enacted in identical terms in Madhya Pradesh in 2000 and subsequently replicated in the Chhattisgarh Special Public Security Act (CSPSA) in 2005. These laws in defining their criminal ambit formed a cusp between UAPA and CLA. The orientation of the PSAs is primarily directed toward public order offences framed as 'unlawful activity,' which differs from the conception of 'unlawful activity' under the UAPA, where the emphasis lies on criminalizing acts related to threats to territorial integrity. However, with the introduction of a *third* dimension to 'unlawful activity' under the UAPA, related to targeting disaffection, and considering that the UAPA already empowers the state to ban unlawful associations engaged in offences punishable under Sections 153A and 153B of the IPC, a substantial overlap existed between the PSAs and the UAPA in terms of the conduct they seek to criminalize.

The PSAs define 'unlawful activity' in broader terms. They criminalize not only specific actions but also the mere 'tendency' towards such actions, thereby lowering the threshold for an action to become criminal. Acts not intended to effect an action can also be interpreted as having a 'tendency' for the same, which makes intention to commit a crime a non-requirement under the PSAs. Additionally, they employ vague categories such as 'indulgence,' 'encouragement,' and 'interference' as constitutive of criminal conduct (see Table 1). On the very wide spectrum of what counts as 'unlawful activity', constitutionally recognized legitimate civil activities may be termed as unlawful. For instance, 'menace to public order' and 'tendency to interfere with maintenance of public order or with the administration of law', can include a non-violent public protest, 'indulging in vandalism' could also see a student who draws graffiti on buildings being implicated under the law, or 'acts generating apprehension in the public' or 'disrupting communications by road' could outlaw a dharna. These laws also penalize acts like 'preaching/encouraging disobedience to law,' which effectively opens the door to criminalizing non-violent forms of political expression, such as civil disobedience or legitimate criticism of legislation.

The CSPSA, in 2005, introduced certain modifications in view of the resurrection of UAPA in 2004 (see Table 1).

a) A part of the definition of 'terrorist act' inserted through the 2004 amendment in UAPA, which related to the offence of 'overawing the government with criminal force' (S.15), was added to the definition of 'unlawful activity' in CSPSA, expanding its criminal scope substantially. This provision until then was not part of the other state PSAs.
b) Until this point, both UAPA and the earlier PSAs employed the term 'unlawful association.' The CSPSA marked a shift by adopting the terminology of 'unlawful organizations,' a move that appeared aimed at creating a cosmetic distinction from the UAPA while substantively remaining the same.

c) CSPSA also introduced non-membership based alliances with unlawful organizations as criminal. This was a step ahead of UAPA. Even though UAPA had a substantively broad view of what counts as an association, it did not criminalize non-member activities as a specific category. However, contribution or assistance of any kind to an unlawful association under UAPA is an offence, regardless of membership. This effectively takes care of the non-member category.

The Maharashtra Bill (Mh SPSB) brings up a similar situation as it inherits the wide-ranging provisions from CSPSA under its definition of UA. The Bill, however, makes two omissions from CSPSA.

d) The provision omits the term 'terrorism' from the list of violent activities that are criminalized as 'unlawful activity.' This may be read as another instance of a cosmetic departure from the UAPA, widely regarded as an anti-terror law, intended to suggest differentiation. However, this omission has little substantive impact on the scope of conducts that may be penalized under the clause.
e) It removes the requirement that 'force' must be used in the collection of money or goods intended to support an unlawful activity, thereby expanding the scope of criminalization to include even voluntary or non-coercive contributions.

Table 1: Definition of Unlawful Activity

AP PSA/MP Act S. 2(e)	**CSPSA S. 2(e)**	**Mh SPSB S. 2(f)**	**UAPA S. 2(o)**	**UAPA (S.15)/ BNS (S.113)**
(i) which constitute a danger or *menace to public order*, peace and tranquillity; or (ii) which interferes or *tends* to interfere with maintenance of public order; or (iii) which interferes or *tends* to interfere with the administration of law or its established	(i) which constitute a danger or *menace to public order*, peace and tranquillity; or (ii) which interferes or *tends* to interfere with maintenance of public order; or (iii) which interferes or *tends* to interfere with the administration of law or its established institutions and personnel; or	(i) which constitute a danger or *menace to public order*, peace and tranquillity; or (ii) which interferes or *tends* to interfere with maintenance of public order; or (iii) which interferes or *tends* to interfere with the administration of law or its established institutions and personnel; or	(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of	Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to

institutions and personnel; or (iv) of *indulging* in or propagating, acts of violence, terrorism, vandalism or other *acts generating fear and apprehension* in the public, or indulging in or *encouraging*, the use of firearms, explosives or other devices or disrupting communications by rail, road; or (v) of *encouraging or preaching disobedience* to established law and its institutions; or (vi) of collecting money or goods forcibly to carry out any one or more of the unlawful activities mentioned above	(iv) which is designed to overawe by criminal force or show of criminal force or otherwise to any public servant of the State/Central Government in exercise of the lawful powers of such public servant and Forces; or (v) of *indulging* in or propagating, acts of violence, terrorism, vandalism or other *acts generating fear and apprehension* in the public, or indulging in or *encouraging*, the use of firearms, explosives or other devices or disrupting communications by rail, road; or (vi) of *encouraging or preaching disobedience* to established law and its institutions; or (vii) of collecting money or goods forcibly to carry out any one or more of the unlawful activities mentioned above	(iv) which is designed to overawe by criminal force or show of criminal force or otherwise to any public servant of the State/Central Government in exercise of the lawful powers of such public servant and Forces; or (v) of *indulging* in or propagating, acts of violence, vandalism or other *acts generating fear and apprehension* in the public, or indulging in or *encouraging*, the use of firearms, explosives or other devices or disrupting communications by rail, road, air or water; or (vi) of *encouraging or preaching disobedience* to established law and its institutions; or (vii) of collecting money or goods to carry out any one or more of the unlawful activities mentioned above	India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India	strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country- …. or (b) overawes by means of criminal force or the show of criminal force or attempts to do so or…

Unlawful Associations and Organisations:

As discussed in the previous section, in an apparent attempt to create distinction from the UAPA, the terminology adopted in Public Security Acts (PSAs) from 2005 onwards replaced the term 'unlawful association' with 'unlawful organization'. However, the definitional scope remained materially unchanged. The UAPA defines an *unlawful association* as 'any combination of individuals or body of individuals'. Similarly, the Andhra Pradesh and Madhya Pradesh Acts define *association* under Section 2(b) as 'any combination, body or group of persons, whether known by

any distinctive name or not, whether registered under any law or not, and whether governed by any written constitution or not'. This open-ended formulation has been retained in the CSPSA and subsequently in the Maharashtra Bill, but the terminology has switched to *unlawful organization*. Thus, both UAPA and the PSAs effectively retain the power to proscribe any group of individuals, regardless of any organizational structure, and enables the government to connect people who haven't formed an organisation by assigning them a common objective that is vague and unsupported by any hard evidence. Entities can be banned if they are found to be associated with the broad and ambiguously defined category of 'unlawful activity' under these legislations.

Penalties for Unlawful Association/organization:

A key feature of the PSAs is that, although *unlawful activity* is defined as an offence committed by an individual, the penal provisions are primarily triggered when such activities are undertaken in relation to or on behalf of an unlawful association. This stands in contrast to the UAPA, which penalizes both *unlawful activities* also as standalone offences, irrespective of associational affiliations, along with actions/attempts committed in furtherance of or in connection with unlawful associations. Penal consequences under UAPA are tethered in a dual manner.

The PSA originally had two class of offences, both taken from the CLA 1908 (S.17)- the offence of membership and the offence of assistance. Two more were added (second and the fourth category, see Table 2) CSPSA onwards in the aftermath of UAPA 2004 amendment. The Maharashtra bill, taking over from CSPSA, provides for four classes of offences: the first penalises a member taking part in activities of unlawful organisations, contributing or collecting funds for the organisation. The second deals with acts done by non-members concerning the same acts mentioned in the first. The third casts a wider net on any act of management or assistance done concerning the unlawful organisation by members and non-members. It also covers the promotion of their meetings through any medium or device. This could very well be used to target people who share posters or pamphlets of events or organisations that could be deemed unlawful. The last section penalises conspiracies, attempts and actual commissions of unlawful activity.

Table 2: Penalties for Unlawful Activities in relation to Associations/Organizations

Offence	AP PSA/MP Act	CG PSA	Mh SPSB	UAPA
Acts done while being a member	3 years term + fine (**S 8.1**)	3 years term + fine (**S 8.1**)	3 years term + upto 3 lakhs fine (**S 8.1**)	2 years term+ fine [**S.10(a)**]
Acts done without being a member	NA	2 years term + 2 years (**S 8.2**)	2 years term + upto 2 lakhs fine (**S 8.2**)	Not a specific category but covered under "contribution or

				assistance of any kind to an unlawful association"
assistance/ abetment	3 years term + fine (**S 8.2**)	3 years term + fine (**S 8.3**)	3 years term + upto 3 lakhs fine (**S 8.3**)	2 years term+ fine [**S.10(a)(iii)(iv)**] 5 years term + 7 Lakh fine (**S 13.2**)
attempt/ actual commission of UA	NA	Upto 7 Years term + fine (**S 8.5**)	Upto 7 Years term + upto 5 Lakhs fine (**S 8.4**)	Death or life term+ fine if the act results in death [**S.10(b)(i)**] and upto life term in case of any other kind of damage [**S.10(b)(ii)**]

It must be noted that both UAPA and the PSAs penalize mere *membership* of an unlawful association or organization, without requiring proof of the individual's involvement in any actual act or even attempts. In 2011, a distinction was made by the Supreme Court in *Arup Bhuyan* between active and passive membership, ruling that mere membership without active involvement in activities of association, will not incriminate an individual. A Bombay High Court order granting bail to members of Kabir Kala Manch, citing the 2011 SC order had emphatically stated that passive membership cannot be envisaged within the meaning of membership based association under UAPA as that would make the law violative of freedoms under Article 19 and hence would be struck down (para 32). However, in 2023 through the Arup Bhuyan Review order, the Supreme Court overturned its 2011 decision and upheld the constitutionality of S. 10(a)(i) of the UAPA, which criminalizes mere membership of a banned organization and ruled that the provision of criminalizing membership is consistent with the aim of the UAPA, aligned with the permissible constitutional restrictions on speech and association in the interest of 'sovereignty and integrity of India' (para 14.6). In the light of the 2023 order, it is likely that the scope of CLA would also include criminalizing passive membership.

UAPA has a broader statutory scope, as it criminalizes 'unlawful' both in relation to individuals independently and with associations. The operational logic of the PSAs is different as unlike the UAPA, the PSAs do not prescribe penalties for 'unlawful activity' *per se*, unless it is connected to an unlawful organization. The ambit of criminality under the PSAs for 'unlawful activity' is broader, owing to the expansive definition of the term. As a result, a wider range of associational activities can be brought within its fold, solely on the basis of this definition. CLA, 1908, as well, like the PSAs, defines penalties for individuals, related to membership of and assistance to unlawful associations, but unlike PSAs, CLA does not define 'unlawful activity'. Instead, it defines an 'unlawful association' as 'which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts' (S.15). While this definition is not without its ambiguities, it establishes a relatively limited ambit of criminality when compared to the broad and indeterminate scope of 'unlawful activity' found in the PSAs.

Chapter 3
The 'ease of doing banning': Procedures and Powers

The procedural architecture set out under the PSAs, and the UAPA, grants wide-ranging powers to authorities, including the police and district magistrates. It is important to note that many of the powers granted under these state laws are similar to those available to the police, district magistrates, and other authorities under the regular law, the Bharatiya Nagarik Suraksha Sanhita (BNSS). However, the issue is not simply a matter of *who* holds these powers, but *what* they are empowered to do. The real concern lies in the far-reaching and characteristically vague definition of 'unlawful activity', which significantly broadens the scope of state action. Poorly defined legal categories open the door to arbitrary or excessive application, allowing conduct protected under the Constitution to be treated as grounds for punitive action. For instance, a piece of graffiti critical of a government policy, if interpreted as inciting disobedience, could become the basis for penal measures not only against the individual but also the affiliated organisation. This could trigger search, seizure, surveillance, attachment, or forfeiture of property or other intrusive measures, whose justification becomes questionable when the underlying conduct, in relation to which these powers are being exercised, is constitutionally permissible. This chapter focuses on these powers and the nature of authorities empowered under them in the business of banning.

Declaration and Notification of an organization as unlawful:

UAPA confers powers on the Central Government to declare an organisation unlawful on the basis of its 'opinion'. It does not need to provide any demonstrable evidence at the time of declaration, and can do so by just issuing a notification in the Official Gazette. While the law requires that the grounds for such a declaration be specified, it also empowers the Government to withhold those grounds citing public interest. The ban becomes effective only if it is confirmed by a UAP Tribunal comprising of a High Court Judge appointed by the Government, which reviews the ban within six months, calling for an inquiry in which the aggrieved association is heard. This mechanism, however, operates post-facto as the proviso permits the executive to enforce the ban immediately upon publication in the Gazette, without confirmation from the Tribunal, if it records urgency to do so, in writing. In effect, this allows the Government to suspend the Fundamental Right to association, protected under Article 19(1)(c) of the Constitution, through an executive fiat, bypassing prior judicial scrutiny, at least for six months. A ban once confirmed stays in effect for five years with the central government having the power to cancel it at any time on considering an application from an aggrieved party (See Table 3).

Table 3: Banning Unlawful Organizations/Associations			
	AP PSA/MP Act/ CG PSA	**Mh SPSB**	**UAPA**
Basis of the ban	Unlawful in the 'opinion' of the government for its involvement in 'unlawful activity', specific reason can be withheld in 'public interest' (S.3)	Unlawful in the 'opinion' of the government for its involvement in 'unlawful activity', specific reason can be withheld in 'public interest' (S.3)	Unlawful in the 'opinion' of the government for its involvement in 'unlawful activity' or activity punishable under S.153A/153B of IPC, specific reason can be withheld in 'public interest' (S.3)
Constitution of the Judicial Body reviewing the ban	Persons qualified to be High Court judges, can possibly include lawyers (S.5)	High Court judge (sitting or retired), retired district judge and government legal counsel (Government pleader in High Court) (S.5)	High Court judge (S.5)
Role of the Judicial Body	Advisory Board reviews a ban only if the aggrieved association appeals	Ban to be confirmed by Advisory Board within three months	Ban to be confirmed by UAP Tribunal within six months
Duration of Ban	One year duration, can be extended indefinitely, no procedural clarity on whether Advisory Board reviews before each extension (S.3)	One year, can be extended indefinitely, no procedural clarity on whether Advisory Board reviews before each extension (S.3)	5 years since 2013(S.6) Fresh notification for ban on/before expiry through the Tribunal
Appeals	Revision petition can be filed against a ban order in High Court within 30 days (S.12)	Revision petition can be filed against a ban order in High Court within 30 days (S.12)	No such provision. Writ petitions challenging violation of Article 19 can be filed in High/Supreme Court

PSAs confer on the State Government powers analogous to those vested in the Central Government under the UAPA, allowing it to declare associations/organisations unlawful on the basis of its *opinion* of their involvement in 'unlawful activity'. This section is largely a verbatim reproduction of UAPA's corresponding provision. However, unlike UAP Tribunal presided over by a High Court judge, PSAs have provision for review by an *Advisory Board*. The original draft of the Maharashtra Bill also had the same provision, leaving the door for appointments of individual lawyers potentially aligned with the government's interests, to be on the Advisory Board. The revised draft, however, has addressed this concern and made provision for judicial oversight. The Bill now includes an Advisory Board consisting of a Chairperson who is or has been a High Court Judge, a retired District Judge, and a Government Pleader of the High Court, appointed by the State Government. Given the history of UAP Tribunals, it would be mistaken to assume that the mere presence of judicial representation on oversight committees offers meaningful relief. The point rather, is that the constitutional principle of Separation of Powers has merit as a possible check against institutional overreach. Judicial oversight mechanisms, even if imperfect, are grounded in that principle.

A significant departure from the UAPA lay in the procedural role of the Advisory Board under the earlier PSAs, particularly those enacted from Andhra Pradesh's 1992 Act to Chhattisgarh's 2005 Act (CSPSA). Under these, a ban came into effect immediately upon notification, without requiring prior confirmation by the Advisory Board. The Board was constituted only if the proscribed association challenged the declaration. This conditional and post-facto scrutiny diluted the safeguards of the judicial oversight against executive overreach, though the proviso of appointing persons only qualified to be judges, not actually judges, the nature of Advisory Body can be hardly termed judicial. This structure has been altered in the Maharashtra Bill, which aligns itself with the UAPA framework. Under the Bill, a ban requires the confirmation of the Advisory Board to be implemented, except in cases where urgency is cited. In cases where the ban becomes effective immediately, *post facto* conformation of the Board is still required.

The duration of ban is longer in UAPA, which originally stipulates a two-year term for the validity of the ban but was amended to five years in 2013. PSAs typically impose bans for a period of one year, which can be extended indefinitely, one year at a time. The provision for extension of a ban under the PSAs merely requires 'reviewing the positions', without clarifying whether such a review must involve the Advisory Board. Given that the clause enabling indefinite extension, has existed since 1992, a period during which the Advisory Board did not have a determinative role in the ban becoming effective, it suggests that even under the Maharashtra Bill, the extension may operate solely through executive action, without taking the Advisory Board route. In the absence of explicit procedural safeguards, such renewals risk the possibility of perpetual proscription without fresh justification. Viewed in light of the provision for extendable bans, the PSAs including the Maharashtra Bill effectively can make the right to association a permanent casualty.

Though UAPA Tribunal decisions have demonstrated that bans are almost invariably confirmed, and that fresh notifications are routinely issued before the expiry of the statutory limit. PUDR's earlier reports on ban on SIMI under UAPA, show that rather than functioning as an internal check on executive action, which the Tribunal is intended in theory, it has largely facilitated the process of banning. A review of Tribunal proceedings reveals a pattern of dispensing with fundamental

procedural safeguards, permitting the admission of confessions made to the police, evidence that would typically be inadmissible in a criminal trial, as well as the use of secret evidence that is withheld from the proscribed association, concluding often without summoning key investigating officers or witnesses. But the design of the UAPA still incorporates a bureaucratic check upon the expiry of the duration of ban on 'unlawful association', the same is absent in relation to banning 'terrorist organizations'. The Central Government may notify an organisation as a terrorist organisation through inclusion in the First Schedule, and unlike bans on unlawful associations, this listing has no expiry period. While there is a provision under for seeking de-notification, including a right to review through a Review Committee, there is no automatic sunset clause, the listing continues unless actively removed by the Government.

The PSAs and the Maharashtra Bill, by providing for indefinite annual extensions of bans on unlawful associations without a fresh notification, effectively collapse the distinction that the UAPA itself maintains between *unlawful associations* and *terrorist organisations*, and undermine the graduated structure of restrictions envisaged under the UAPA. This critique should not, however, obscure the fact that the definition of 'terrorist act' under the UAPA is so vague and expansive that it enables the potential inclusion of dissenting or oppositional groups within the ambit of *terrorist organisations*, with equal ease just as such groups may be declared *unlawful associations* under UAPA or under state-specific PSAs. In effect, the very elasticity of legal categories, whether 'unlawful' or 'terrorist', permits their deployment against a wide spectrum of political or civil society actors. What is of essence is the procedural rigmarole that Tribunals bring about. One of the Tribunals in 2012, in deciding the ban on SIMI had recommended extending the duration of bans from two to five years, citing the high costs associated with constituting and operating such Tribunals. A longer ban period reduces the frequency of Tribunal sittings. In 2013, the law was amended increasing the duration of ban from two to five years.

In contrast, the Public Safety Acts (PSAs), with their non-prescriptive framework for extending bans and absence of any prescribed procedure for such extensions, eliminate even these minimal fiscal and procedural burdens. They bring about administrative convenience, making the exercise of banning easier and less accountable.

Notification, Possession and Forfeiture of Property

Powers to notify, attach, and forfeit property under the PSAs follows the other special laws, yet with a difference. Authorities are empowered to notify, take control of, attach, or forfeit properties considered unlawful even under ordinary law. However, the understanding of what constitutes 'unlawful' differs significantly between ordinary criminal procedure, governed by the BNSS, and extraordinary laws like the UAPA and the PSAs. This distinction is crucial. Under the BNSS, the focus is on property acquired through unlawful *means*. In contrast, the UAPA and PSAs operate on the basis of association with activities deemed 'unlawful', based on their definitions of 'unlawful activity', which include acts that are not criminal offences under the ordinary law, but become so through inclusion under these extraordinary legislations. For example, if an organisation is declared unlawful for participating in or organising road-blocking demonstrations to draw attention to a

cause, and these actions constitute an 'unlawful activity' if the government is of the *'opinion'* that it is a 'menace to public peace', the personal property of individuals involved in the demonstrations, can be brought within the ambit of unlawful property and subjected to seizure or forfeiture.

Equally important is the question of how these powers are exercised, particularly in relation to judicial oversight. The BNSS requires court confirmation and procedural checks before property can be seized/forfeited, establishing judicial scrutiny over executive action, as the principle of criminal law goes. Provisions for judicial oversight are seen to be diluted in UAPA to a large extent, and under the PSAs, to an even greater extent, as seen in the provisions of the Maharashtra Bill. The result is a significant expansion of executive discretion- an underlying philosophy of these laws- which prioritise state power over constitutional protections (See Table 4).

Table 4: Powers conferred upon authorities

Mh SPSB	**UAPA**	**BNSS**
Powers to notify and take possession of places used for purpose of unlawful activities		
S. 9 (1) - If an organisation is declared *unlawful*, the **District Magistrate or Commissioner of Police notifies** any place believed to be used for its activities. **S. 9(2) -** Once a place is notified, **DM/Commissioner of Police or any authorized officer takes possession** and evicts any person present. A report is sent to the Government immediately. **S. 9(3) -** The Government retains possession of the notified place as long as the ban on the organisation continues, unless it decides otherwise.	**S. 8 (1) -** If an organisation is declared *unlawful* **the Central Government notifies** any place believed to be used for its activities. **S.8 (6) -** A police officer (not below sub-inspector) or central govt. authorised person may search and detain anyone entering or present in the notified place for the purpose of search. **S. 8(7) -** If someone enters or stays in the place against orders, they can be removed by an authorised officer, in addition to any legal consequences.	**No provision for unlawful activities/associations/organizations.** **With respect to unlawfully acquired property:** **S. 116 & 117 - The Court may direct a police officer** (not below Sub-Inspector) to trace, identify property suspected to be unlawfully acquired. Officer can seize it, or attach it (with restrictions on dealing with it). **This action must be confirmed by the Court within 30 days, or it will become invalid.** **S. 120 – Court declares** such property as proceeds of crime **S. 118 - Court may appoint the District Magistrate** or their nominee as Administrator of the property identified u/s 116.

Movable property found in notified place		
S. 10 (1) - District Magistrate/Commissioner of Police (or authorized officer) take possession of movable property (money, securities, assets, etc.) from the notified place and prepares a list in the presence of two respectable witnesses.	**S. 8(2) - District Magistrate** (or authorised officer) prepares a list of all movable property found in the place, in presence of two respectable witnesses. Certain personal items (e.g. clothing, bedding, tools, food) are excluded.	**With respect to unlawfully acquired property:** S. 116 & 117
S. 10(2) - District Magistrate/Commissioner of Police orders forfeiture to the Government of articles used by unlawful organization	**No specific powers of forfeiture** **S. 8(3) - District Magistrate** believes may prohibit the use of listed items.	**S. 120 - Court orders forfeiture** after hearing (or even ex parte, if no reply to the notice) of property as proceeds of crime
S. 10(6) - Appeal against forfeiture can be **made to the Government** within 30 days; Government must give an opportunity of hearing and its order is final.	**S. 8(8) - Court of the District Judge shall decide after hearing all parties**. An aggrieved person within 30 days, **approach the District Judge** to: declare that the place was not used for unlawful purposes, or set aside orders passed.	**S. 120**- Court considers hearing before forfeiture
Powers to forfeit funds of an unlawful organisation		
S. 11 (1) - **Government declares** money/securities/assets (regardless of ownership) **as forfeited** if they are being used or likely to be used by an unlawful organization.	No specific powers of forfeiture of funds of Unlawful Organizations. **S.7- Central Government passes an order prohibiting** the funds of unlawful associations. Provisions related to funds of Terrorist Organization/Gang allows for forfeiture to the Government (S. 24, 25, 33)	**Powers with respect to unlawfully acquired property:** **S. 120** – **Court forfeits** property **S. 120 (3) -** Once declared proceeds of crime, the property stands forfeited to the Central Government free from encumbrances.

S. 11(2) - Order can be served on the person holding such assets, who must then hand them over to a designated officer. Govt can authorize officers to **search and seize assets** (especially money or securities).	**S. 7(1) & (2) -** Authorizes officer may enter premises, search and examine books, prohibitory orders are passed, **no seizure** **S.25.1 -** Officer investigating **terrorist activities can order seizure**/attachment of properties which may be the proceeds of terrorism, subject to confirmation by designated authorities	**S. 117** – Seizure or attachment by police**; requires court confirmation** within 30 days.
S. 11(3) - Before forfeiture, the person in whose custody the assets are, must be given notice and 15 days to respond. **Govt must consider** the response before final order.	**7(4) -** Affected person may **approach District Judge** within 15 days to contest the prohibition	S. **119** – Show-cause notice to explain source of property before forfeiture.
S. 11(12)- Govt may review orders suo-moto or on application, but must give hearing to affected party before passing new orders.	(No explicit review power; judicial review must be initiated separately)	

Under the Mh SPSB, the power to notify and take possession of properties allegedly linked to unlawful associations is concentrated in the hands of executive authorities**-** the District Magistrate or Commissioner of Police. These authorities are empowered not only to seize immovable and movable property but also to order forfeiture, with only a limited right of appeal to the government itself. Similarities exist with UAPA, except that it's the Central government which notifies property as 'unlawful' as opposed to the DM under the PSA. PSAs grant greater control through possession and forfeiture of properties belonging to organizations– a power which is more applicable under UAPA in relation to terrorist organizations/gangs. While also favouring concentration of power in the hands of the executive, in its design at least, the UAPA incorporates a limited layer of judicial review, for instance, an aggrieved person may approach the District Judge to challenge notifications or orders of seizure. The BNSS stands in contrast to both through court monitored procedures for seizure and forfeiture, requiring judicial confirmation and hearing before forfeiture orders can be passed.

The powers to forfeit the funds of unlawful organisations under Mh SPSB, as with other PSAs, are heavily skewed toward executive control. The Bill empowers the government itself to declare any money, securities, or assets, irrespective of actual ownership, as forfeited, solely on the basis of their

alleged use or intended use by an unlawful organisation. This forfeiture process is initiated, executed, and reviewable entirely within the executive domain**,** with only a brief notice and response mechanism before the final order is passed. All responses to notices and appeals are considered by the executive itself. UAPA does not contain specific provisions for forfeiting funds of unlawful associations**,** though it enables the Central Government to prohibit the use of such funds. Its forfeiture powers are primarily reserved for terrorist organisations, which have been extended under PSAs to unlawful organizations. Were it not for the special procedures under special laws, under the ordinary framework, these processes, as demonstrated under provisions of BNSS, would be carried out through court-supervised procedures where seizure or attachment by police be confirmed by a court, and a hearing must be conducted before a final forfeiture is ordered. With a limited scope for aggrieved party to approach the district judge under UAPA, and the absence of such a provision under the PSAs with only internal government review, the PSAs emerge as laws with a certain executive-bureaucratic ease for those who use it, creating a regime with minimal oversight**.**

The executive-heavy procedural architecture of the PSAs mirrors the CLA 1908, which interestingly is already in place to give effect to these powers, but with the ambit of criminality of 'unlawful activity' not as wide as the PSAs, the corresponding scope of the use of CLA's power is less compared to the PSAs.

Chapter 4
"A solution in search of a problem"

To return to the initial question of 'why this law', a closer scrutiny of the scope of the Public Security Acts (PSAs), and specifically through the Maharashtra Bill, in the context of pre-existing powers - under UAPA and CLA- allows us to draw a few clear conclusions.

First, the Mh SPSB allows UAPA-like powers to be exercised by the state government, which the CLA does not fully enable. The CLA's relatively restricted scope, repealed provisions and narrower definition of 'unlawful association' lacks the conceptual breadth of 'unlawful activity', rendering it inadequate for the purpose. In comparison, the Bill introduces broader categories of offences and impose harsher penalties, creating a more expansive punitive regime at the state level. *Second*, it brings about procedural elasticity. Bans can be extended without constituting new Boards. While the UAPA nominally embeds a procedural check of re-imposing the ban through a fresh tribunal order, in practice however, executive determinations are rarely overturned. The Bill builds on this model by weaving in administrative ease at the level of the design of the law itself, by formalising the bypassing of procedures, reducing fiscal costs, bringing about bureaucratic convenience. *Third*, by liberalising the definition of 'unlawful activity', the Bill provide further scope for collapsing the boundaries between dissent, disruption, and danger. It also casts the net wider on associational freedoms as it brings a wider spectrum of activities under its definitional purview.

Fourth, it replicates the punitive architecture of the provisions of UAPA dealing with 'terrorist act'. Just as organisations designated as 'terrorist' under the UAPA face a near permanent ban of an indefinite nature, the Bill similarly allows for indefinitely extendable bans on unlawful associations, without requiring a fresh notification or independent judicial confirmation. Moreover, Mh SPSB, like other PSAs, incorporates mechanisms such as forfeiture of property and prohibition on the use of assets, mirroring the powers conferred under the UAPA for offences related to terrorist acts. In doing so, the PSAs introduces the same degree of severity that was, reserved for terrorism-related provisions under the UAPA. Though it shouldn't mean that these procedures are justified in the context of UAPA, which works with an ever-expanding definition of a 'terrorist act' capable of encompassing a wide range of constitutionally protected expression and association. But the use of UAPA does necessitate a context and bring about the scrutiny that using an anti-terror law would, which the PSAs can well sidestep. A critique has accompanied the UAPA, that the terrorist tag is often misapplied to disrupters. Consider the bail orders of Delhi High Court to student protesters in the wake of anti-CAA protests. Delhi HC stated had clearly that 'the more stringent a penal provision, the more strictly it must be construed' and asked for the legislative intention of the UAPA to be scrutinized by the executive before using the law. Such orders necessitate a certain background for UAPA to be used. The Maharashtra Bill can avoid that. In effect, it can preserve the severity of UAPA's terrorism related provisions while evading the scrutiny that the term 'terrorism' brings, making it a more versatile instrument of executive control. It can function as a catch-all law.

The question is, all this for what? That is explained by the Maharashtra context and the 'Objects and Reasons' of the Bill, which cater to the narrative of the 'Naxal menace in urban areas'. The fiction of 'Urban Naxal' is what the Bill is determined to codify into a manufactured legal truth. This intent is not unrelated to the fact that in the recent bail hearings in the Bhima Koregaon case, in each instance where bail was granted on merit, courts have consistently observed that the Investigating Agency has failed to produce any prima facie material indicating the accused's involvement in a terrorist act under the UAPA, despite submitting a voluminous chargesheet. The repeated citing of glaring absence of substantive evidence, while scrutinizing claims under UAPA, cannot be seen as unrelated to the impetus behind bringing another law with lowered threshold.

A critique of what these legislations do through their provisions to the democratic rights of individuals and the groups, however, should not obscure the primary issue, i.e., banning as an authorized state power. The debate over the extent of ambiguity and procedural discretion embedded within specific provisions of these legislations, and the resulting degrees of arbitrariness and executive overreach, is a secondary question. The constitutional fact that the right to association is not absolute does not translate into an authorization for banning associations. The Constitution does not mandate the act of banning per se. What it permits are *reasonable restrictions* on the exercise of this right in the interest of public order, sovereignty and integrity of India, or the security of the State, etc. which become the basis for these legislations.

Banning, however, has come to function as a coercive measure on associational freedom, justified on the presumption that it satisfies the test of *reasonableness* and serves as an effective tool for protecting constitutionally recognized state interests, such as public order. The Supreme Court, way back in the early days, in *State of Madras v. V.G. Row* (1952), had laid down that assessing the reasonableness of a restriction involves a range of considerations such as "*the duration and the extent of the restrictions, the circumstances under which and the manner in which their imposition has been authorised…The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict*". It had further specified that the test of reasonableness "*should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases*".

If legislative measures imposing restrictions on associational freedom are scrutinized against this standard, most, if not all, would fail to withstand such scrutiny. *V.G. Row* nullified S. 15(2)(b) of the CLA 1908, and one of the grounds involved the lack of the decision to ban being 'duly tested in a judicial scrutiny'. UAPA's Tribunal hearings fall far from the 'due judicial test', one that in any case is absent for 'terrorist organizations/gangs'. UAPA doesn't provide for revision petitions to be filed in High Courts/Supreme Court appealing against ban orders and dispenses with the requirement of judicial inquiry in the name of a single-person Tribunal constituted by a High Court judge. Any challenge against a ban confirmed by the Tribunal can be appealed only through a writ petition in constitutional courts, which is not the same as a legislation having inbuilt processes for due judicial tests. In *Jamaat-E-Islami Hind v Union of India* (1994), the Supreme Court had overturned a UAPA Tribunal's confirmation of a ban, citing inadequacy of supporting material before the Tribunal to

justify declaring an association unlawful, it pointed out that the association's witnesses were cross-examined, while the State's witnesses were not. The Court emphasized the need for adequate factual evidence for banning. This judicial scrutiny to ascertain whether the measure adopted against right to association is reasonable or not, is not what UAP Tribunals, though expected, actually undertake.

The PSAs have the provision for appeal in High Court against orders of ban confirmed by Advisory Boards, but it is the confirmation of ban by Advisory Boards that, within the design of the law, passes as a judicial proceeding, with the Advisory Board functioning as a civil court. Unsurprisingly so, when PUCL in its constitutional challenge to the CSPSA argued for invalidity of ban orders for the lack of confirmation from Advisory Board, the High Court refused to consider it. Six organisations had been declared unlawful CSPSA by a notification issued on 12 April 2006, and had been extended for another year through a subsequent notification. But the Advisory Board was constituted only in May 2007, more than a year after the initial declaration. The High Court acknowledged the delay in constituting the Advisory Board but argued that since subsequent notifications had been validly issued and confirmed and no revision petition was filed by the affected parties, the ban order cannot be struck down (paras 64- 76).

Within these legislations (S.17 Mh SPSB, S. 41 UAPA, S. 18) an association, once proscribed, is never truly deemed to have ceased to exist, even after a formal act of dissolution, if there is any continuing activity by its members or communication among them. This creates a situation in which individuals once associated with a banned organization can never disassociate themselves from it. Any future interaction between former members, or any individual act that could be tenuously linked to the broad and vague definitions of 'unlawful activity', risks implicating not just the individual, but the entire proscribed group and others loosely affiliated with it. This perpetual state of surveillance forecloses the possibility of normalcy returning to the lives of those placed under scrutiny. The *Arup Bhuyan review* judgment (2023) further cements this, it renders an individual's past membership of an unlawful association a permanent liability, one that cannot be undone by disengagement or political inactivity. The law treats past association as an enduring mark of guilt operating through a permanent 'once upon a time' guilt by association logic.

In comparison to the jurisprudence on the right to expression, though not without its own limitations, speech-related freedoms have a relatively advanced jurisprudence, despite the equally expansive list of 'reasonable restrictions' available to the state. Courts have articulated principles that offer sensible protection to free expression. In contrast, the jurisprudence on associational freedom is weak and has next to no engagement with the question of why the right to association holds fundamental value within the broader framework of democratic and civil liberties, which has made it easier for coercive measures like banning to slip through, becoming an acceptable form of state-imposed restriction on associational life.

The relative neglect of associational freedoms finds explanation when viewed in context of what it means for the democratic fabric of society. Unlike the right to expression, which is often framed in individualistic terms, the right to association is inherently collective, it embodies the fundamental capacity of people to come together, to share, to organize, and to act in concert. It is through associations that civil society builds solidarity, articulates demands, resists domination, and

generates alternative visions of political life. In that sense, associational freedoms are not merely about the liberty of a group in a *democracy*, but about the conditions through which the *demos*, i.e., the people, can assert themselves in a model of self-rule, which democracies essentially are. They allow people to influence, guide, and hold accountable the structures of power that govern them. The possibility of collective power is precisely what makes associational freedoms discomforting for those in power. They become the grounds on which people's movements are built. It is this possibility, the *demos* reclaiming and guiding the *cracy* (rule) that renders associational rights more susceptible to erosion and the politics of banning a *modus operandi* of the state.

PUDR calls upon the Governor of the State of Maharashtra to withhold assent to the Bill and demands that the State Government withdraws the Bill.