

# State Legislative Brief

## MAHARASHTRA

### The Maharashtra Special Public Security Bill, 2024

#### Key Features

- The Bill defines certain activities by an individual or an organisation as unlawful. These include any action or speech that constitutes danger to public order, incites violence, disrupts communication, or encourages disobedience to established law and its institutions.
- The state government may designate an organisation as unlawful for engaging in unlawful activities. The government may take possession of property, and forfeit property and funds of such an organisation.
- The Bill constitutes an Advisory Board to examine the decision to designate an organisation as unlawful. The designation comes into effect only after approval from the Board.
- Offences under the Bill include being a member of an unlawful organisation, attending its activities, promoting its meetings, managing its affairs, or planning or committing unlawful activities. Contributing or soliciting contributions as a non-member will also be punishable.

#### Key Issues and Analysis

- The definition for “unlawful activities” may be over broad. This may place restrictions on speech and expression beyond the limits permitted under the Constitution. It may also infringe upon the right to equality before law and the requirement to have a fair, just, and reasonable procedure to curtail the right to life and liberty.
- The Bill does not require judicial oversight for several government actions. These include designating an organisation as unlawful, and forfeiting its property and funds. It also disallows judicial review in some of these cases. These provisions may go against the principles of natural justice and separation of powers.
- The Advisory Board constituted to examine the decision of designating an organisation as unlawful is not independent of the Executive.
- The Bill lacks certain safeguards against powers of search that are available under other laws.

## PART A: HIGHLIGHTS OF THE BILL

### Context

The Maharashtra Special Public Security Bill, 2024 was introduced in the Maharashtra Legislative Assembly in December 2024.<sup>1</sup> The Bill has been referred to a Joint Select Committee (Chair: Mr. Chandrashekhar Bawankule) for scrutiny. The Bill seeks to provide for effective prevention of certain activities of individuals or organisations. These include any action or speech that constitutes danger to public order, incites violence, disrupts communication, or encourages disobedience to established law and its institutions.

Andhra Pradesh and Chhattisgarh are other states which have enacted similar laws in 1992 and 2006, respectively.<sup>2,3</sup> The Chhattisgarh law was challenged before the High Court on the grounds including lack of legislative competence and violation of fundamental rights.<sup>4</sup> The High Court upheld the law in 2014.<sup>4</sup> The Unlawful Activities (Prevention) Act, 1967 passed by Parliament prohibits activities that: (i) support claim for secession, (ii) disrupt the sovereignty and territorial integrity of India, or (iii) cause disaffection against India.<sup>5</sup>

### Key Features

- **Unlawful activities:** The Bill defines a list of activities by an individual or an organisation as unlawful. These include any act, speech, writing, sign, or visible representation which: (i) constitutes a danger or menace to public order, peace, or tranquillity, (ii) interferes or tends to interfere with public order, administration of law or its established institutions, (iii) overawes public servants or the exercise of lawful powers by them using criminal force, (iv) indulges in or propagates acts of violence or vandalism generating fear and apprehension in public, (v) indulges or encourages use of firearms, explosives, or other devices, (vi) disrupts communication by rail, road, air, or water, (vii) encourages or preaches disobedience to established law and its institutions, or (viii) involves collecting money or goods for such activities.
- **Designation as unlawful organisation:** The state government may designate an organisation as unlawful for engaging in unlawful activities. An organisation under the Bill includes any combination, body, or group of persons irrespective of whether it is registered, or has a distinctive name or a written constitution.

- The process of designating an organisation as unlawful will be as follows. First, the state government will issue a public declaration. Then, an Advisory Board will examine whether there is a sufficient cause for such a declaration. If the Board approves, the government will issue a final order confirming the declaration. If the Board does not approve, the notification must be revoked. The Board will comprise three members who are or have been qualified to be appointed as a judge of the High Court. The government will appoint these members and specify their terms and conditions of service. The organisation may make a representation within 15 days from the date of the notification to the government, which will be placed before the Board. The organisation will also have an opportunity of hearing before the Board.
- The Bill states that the designation as an unlawful organisation will come into effect upon the issuance of the final government order. However, the government may also make the designation effective before the Board has completed its examination. Such an action may be taken if the government considers it necessary, after recording reasons in writing. The designation as an unlawful organisation will remain in force for one year. It may be extended further one year at a time. The government order regarding designation or extension may only be appealed through a petition before the High Court.
- **Actions against assets of an unlawful organisation:** The Bill empowers the state government and its officials to undertake actions against properties and funds of an unlawful organisation. These include: (i) taking possession of places used for activities of an unlawful organisation (referred to as notified places), (ii) evicting persons from such notified places, (iii) forfeiting movable property found in notified places, (iv) forfeiting funds of the organisation, and (v) prohibiting access to funds which are being used or intended to be used for the organisation. The Bill bars the jurisdiction of Courts on these actions, except in case of forfeiture of funds where it only allows a petition before the High Court.
- **Offences and penalties:** The Bill penalises various activities in relation to an unlawful organisation. As a non-member, contributing, soliciting contributions, or harbouring members will be punishable with imprisonment up to two years and a fine up to two lakh rupees. Following activities are punishable with imprisonment up to three years and a fine up to three lakh rupees: (i) being a member, (ii) taking part in meetings or activities, (iii) promoting or assisting in promoting a meeting, (iv) managing or assisting in management, or (v) indulging in unlawful activities of such an organisation. Committing, abetting, or planning unlawful activities of an unlawful organisation will be punishable with imprisonment up to seven years and a fine up to five lakh rupees. All offences will be cognisable and non-bailable.

## PART B: KEY ISSUES AND ANALYSIS

### Need for the Bill

The Bill seeks to prohibit activities by individuals or organisations which disrupt public order in the state. This raises the question whether a separate legislation is needed to regulate such actions. It may be argued that such activities are already covered under the general criminal law provided by the Bharatiya Nyaya Sanhita, 2023 which replaced the Indian Penal Code, 1860. For instance, following are offences under the Bharatiya Nyaya Sanhita: (i) waging, attempting or abetting of war against the Government of India, (ii) unlawful assembly with an object to resist execution of law, or use criminal force to hinder exercise of duty by public servants or deprive persons of right of way, (iii) using criminal force to deter public servants from discharge of duty, (iv) causing danger or obstruction in public way or line of navigation, (v) speech and expression which is prejudicial to public harmony or national integration, (vi) organised crime, and (vii) terrorist acts.<sup>6</sup>

Further, the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the Code of Criminal Procedure, 1973, empowers the government to take preventive actions.<sup>7</sup> For instance, the local administration may: (i) disperse an assembly if it is likely to cause disturbance to public peace or is necessary for public security, (ii) remove any unlawful obstruction from any public place, or (iii) require a person to show cause for keeping peace.<sup>7</sup>

### The Bill may violate fundamental rights

The Bill defines certain activities by an individual or an organisation as unlawful. These include any action or speech that constitutes danger to public order, incites violence, disrupts communication, or encourages disobedience to established law and its institutions. It empowers the state government to designate an organisation as unlawful. It also penalises membership or support to such unlawful organisations. These provisions intersect with fundamental rights to free speech and expression, and forming associations. The Supreme Court has held that any restrictions on these fundamental rights must not go beyond the limits under the Constitution, and must be narrowly defined.<sup>8</sup> It has held that vague and broad grounds could lead to a chilling effect where citizens self-censor their speech to avoid committing an offence.<sup>8</sup> Also, any restriction under law which is vague and unclear may also violate Article 14 (equality before law) and Article 21 (fair, just, and reasonable procedure).<sup>9</sup> This is because it may lead to: (i) innocent people being punished without proper warning, and (ii) subjective or arbitrary decision making by authorities.<sup>9</sup> Restrictions under the Bill may contradict these principles, and hence, may violate the fundamental rights.

Bill:  
Clause 2(f)

The Bill does not provide for judicial oversight over the government's powers to declare an organisation unlawful or take actions against its properties and funds. It also disallows judicial review in certain cases, and lacks procedural safeguards against government powers. These provisions may not meet the requirement of a fair, just, and reasonable procedure under Article 21 of the Constitution.<sup>10</sup> We discuss these issues below.

### **The Bill may be widening the restrictions on speech beyond the limits permitted under the Constitution**

Article 19 of the Constitution allows reasonable restrictions on freedom of speech and expression in the interest of specified grounds including sovereignty and integrity of India, security of the State, public order, morality, or incitement of an offence. Similarly, freedom of forming associations could be restricted in the interests of sovereignty and integrity of India, public order, or morality. The Bill defines unlawful activities to include any action or speech which: (i) constitutes a danger or menace to public order, peace, or tranquillity, (ii) interferes or tends to interfere with the administration of law or its established institutions and personnel, or (iii) encourages or preaches disobedience to established law and its institutions. The terms such as “disobedience”, “interfere”, “tends to interfere” and “menace” are not further defined in the Bill. Hence, the Bill may be widening the restrictions beyond the limits under the Constitution.

The Supreme Court (2015) had observed that failing to define terms could curtail a very large amount of protected and innocent speech.<sup>8</sup> It had struck down the Section 66A of the Information Technology Act, 2000, which restricted speech that causes annoyance, is of menacing character, or grossly offensive, without further defining these terms.<sup>8</sup> The Court held the terms to be vague and open-ended, and therefore void.<sup>8</sup>

### **There is a lack of clear link with the threat to public order in certain cases**

The Supreme Court (1960) has held that restrictions on freedom of speech and expression must have proximate relationship or nexus with the threat to public order, and that remote or hypothetical connection cannot constitute a reasonable restriction.<sup>11</sup> The ground of “danger or menace to peace or tranquillity” under the Bill may only constitute a law-and-order issue (localised disturbances), and may not reach the threshold of threat to public order (wider disturbances that affect community at large). The Court (1966) had observed that “law and order represents the largest circle within which is the circle representing public order and the smallest circle represents the security of the State”.<sup>12</sup> Similarly, it may be argued that the restrictions on actions which “tend to interfere” may only have a remote or hypothetical connection, and may not qualify to be a reasonable restriction.

### **The Bill restricts speech and expression which may not reach the threshold of incitement**

The Supreme Court (2015) has observed that mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of freedom of speech and expression, and that law may curtail this freedom only when it amounts to incitement.<sup>8</sup> The Bill prohibits speech and expression which “encourages or preaches disobedience to law and its established institutions”. A similar provision under the Uttar Pradesh Special Powers Act, 1932 was struck down by the Supreme Court in 1960.<sup>11</sup> The 1932 Act prohibited speech and expression that “instigates any person or class of persons not to pay or defer liability”.<sup>11</sup> In this case, Ram Manohar Lohia, a popular socialist leader, was booked for delivering speeches that instigated cultivators not to pay enhanced irrigation rates to the government.<sup>11</sup> The Supreme Court had observed that it cannot accept the argument that in a democratic set up, there can be no scope for agitational approach or that any instigation to break a bad law by itself constitutes a breach of public order.<sup>11</sup>

Note that the definition under the Bill is wider than the Unlawful Activities (Prevention) Act, 1967 (UAPA) passed by Parliament. The 1967 Act defines unlawful activities as those activities which: (i) support claim for secession, (ii) disrupt the sovereignty and territorial integrity of India, or (iii) cause disaffection against India.<sup>5</sup>

The examples below illustrate some of the consequences of the provisions of the Bill.

**Illustration 1:** A group of students alleges cheating in a public exam and spreads the message through WhatsApp to gather for a demonstration on a public road. This action could amount to ‘danger or menace to peace or tranquillity’ and ‘disrupting communication via road’ and these students may be held to have committed an unlawful activity.

**Illustration 2:** A cultural group organises a satirical play which is critical of actions of the state police and ends with a call for public awareness against police excesses. The play may be held to have ‘encouraged or preached disobedience against established law and its institutions’.

**Illustration 3:** A civil society group runs a campaign over social media to boycott a law as a form of civil disobedience. The group may be held to have committed the unlawful activity of ‘encouraging disobedience against the established law’.

**Illustration 4:** A political party calls for a bandh. The party may be held to have committed the unlawful activities of ‘disrupting communication via rail, road, or air’ and ‘menace to peace or tranquillity’.

## Process for designating an organisation as unlawful

Bill:  
Clauses  
3,4,5,6,7

Under the Bill, the process of designating an organisation as unlawful is as follows. First, the state government will issue a public declaration. Then, an Advisory Board will examine whether there is a sufficient cause for such a declaration. If the Board approves, the government will issue a final order confirming the declaration. If the Board does not approve, the notification must be revoked. We discuss issues with these provisions below.

### No judicial oversight required for designating an organisation unlawful

As per the Bill, the Advisory Board will comprise three members who are or have been qualified to be appointed as a judge of the High Court. Thus, this Board can consist of lawyers who have practised in the High Court for 10 years, and have no judicial experience. The state government will appoint these members as per its discretion, and specify their terms and conditions of service. The Supreme Court has ruled that independence of the Judiciary is part of the basic structure of the Constitution.<sup>13,14</sup> It has also emphasised that executive control over appointments and terms of service and conditions would affect the independence.<sup>13,14</sup> In contrast, under UAPA, a similar Tribunal consists of one sitting Judge of the High Court, nominated by the Chief Justice of the High Court.<sup>15,16</sup>

Further, while the Advisory Board has been given the powers of a Civil Court for summons and examination of evidence and witnesses, the Bill does not deem its proceedings to be judicial. These provisions may imply that the Advisory Board is of the nature of an executive body rather than a judicial body. This would in turn imply a lack of judicial oversight.

### Whether declaration prior to examination by the Advisory Board is appropriate

As discussed above, the process of designating an organisation as unlawful is as follows. First, the government issues a public declaration. Then, the Advisory Board examines the case. If the Advisory Board finds the declaration to be invalid, the government must revoke the notification. Therefore, an invalid government action may cause a serious harm to an organisation such as reputational harm. These consequences may arise even before the organisation has had an opportunity to be heard. This raises the question whether such a mechanism is appropriate.

### Publication of the report of the Advisory Board not required

The Bill does not require publication of the report of the Advisory Board which examines the validity of designation of an organisation as unlawful. In contrast, UAPA requires that the order of the Tribunal, which performs a similar review function, must be published in the Gazette.<sup>15</sup>

### The process for extension of designation as an unlawful organisation may be unclear

The Bill provides that the designation of an organisation as unlawful will be in effect for one year. It may be further extended by one year at a time. However, it does not explicitly require the examination by the Advisory Board for such extensions.

## Actions against assets of an unlawful organisation

Bill:  
Clauses  
9,10,11,12  
14

### No judicial oversight over actions against property and funds, judicial review also disallowed in certain cases

The state government and District Magistrate/Commissioner of Police may take following actions against an unlawful organisation: (i) take possession of places used for activities of the organisation (referred to as notified places), (ii) evict persons from such notified places, (iii) forfeit movable property found in notified places, (iv) forfeit funds of the organisation, and (v) prohibit access to funds which are being used or intended to be used for the organisation. These government actions may infringe upon constitutionally protected rights such as freedom to form associations, right to life and liberty, and right to property. The Bill does not require judicial oversight of such actions. The Bill allows petitions before the High Court against orders of the government only for: (i) designation or extension of designation as an unlawful organisation, and (ii) forfeiture of funds. In all other cases, the Bill bars appeal and stay powers of Courts. These provisions may go against the principles of natural justice and separation of powers.

In comparison, UAPA does not provide for forfeiture of funds and property of organisations designated as unlawful under it.<sup>17</sup> It only permits possession of notified places and prohibition on access to movable property and funds.<sup>17</sup> Further, such actions can be challenged before the Court of the District Judge.<sup>17</sup> Under UAPA, forfeiture of property and funds is only applicable for terrorist activities.

### The Bill lacks safeguards against powers for search that are available under other laws

Under the Bill, the authorised officers will have the powers to: (i) examine the books, (ii) search for money, deposits, and securities, and (iii) make inquiries regarding origins and dealings during the search. For such actions, the government order regarding prohibition on use of funds will be deemed to be the warrant. This is a departure from the standard under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) where such actions

require the issue of warrants from a Judicial Magistrate.<sup>18</sup> Under BNSS, search without warrant may be undertaken if such action is required without undue delay.<sup>18</sup> However, in such a case, the officer must record the grounds of his belief and the cause for search.<sup>18</sup> A copy of this record must be sent to the Judicial Magistrate.<sup>18</sup> In contrast, the Bill does not require any judicial oversight for such actions.

The Supreme Court had observed that as search is an exceedingly arbitrary process in character, stringent conditions have been imposed on them under laws.<sup>19</sup> Unlike other laws, the Bill does not provide safeguards for such searches. For example, the Immoral Traffic (Prevention) Act, 1956, which allows search without a warrant, requires the officer to record the grounds in writing and call upon two or more witnesses to attend the search.<sup>20</sup> BNSS also requires audio-video recording of search.<sup>18</sup> Laws such as the Prevention of Money Laundering Act, 2002, and the Food Safety and Standards Act, 2006 also penalise any vexatious search undertaken by officials.<sup>21,22</sup>

## Minimum rank of investigating officer lower than other laws

Bill:  
Clause  
15(2)

Under the Bill, an officer of the rank of sub-inspector or above may undertake an investigation. The minimum rank of the investigating officer under the Bill is lower as compared to other laws. For instance, the Chhattisgarh Special Public Security Act, 2005 specifies Inspector as the minimum rank.<sup>23</sup> Under the Maharashtra Control of Organised Crime Act, 1999, the minimum rank of the investigating officer is Deputy Superintendent of Police.<sup>24</sup> Under UAPA too, for investigating terrorist activities and terrorist organisations, the minimum rank of the investigating officer is Deputy Superintendent of Police.<sup>25</sup>

1. The Maharashtra Special Public Security Bill, 2024 as introduced in Assembly on December 18, 2024, [https://prsindia.org/files/bills\\_acts/bills\\_states/maharashtra/2024/Bill33of2024MH.pdf](https://prsindia.org/files/bills_acts/bills_states/maharashtra/2024/Bill33of2024MH.pdf).
2. The Andhra Pradesh Public Security Act, 1992, [https://www.indiacode.nic.in/bitstream/123456789/15882/1/act\\_no\\_21\\_of\\_1992.pdf](https://www.indiacode.nic.in/bitstream/123456789/15882/1/act_no_21_of_1992.pdf).
3. The Chhattisgarh Vishesh Jan Suraksha Act, 2005, [https://www.indiacode.nic.in/bitstream/123456789/12663/1/chhattisgarh\\_vishesh\\_jan\\_suraksha\\_act%2c\\_2005\\_no\\_14\\_of\\_2006\\_date\\_07.03.2006.pdf](https://www.indiacode.nic.in/bitstream/123456789/12663/1/chhattisgarh_vishesh_jan_suraksha_act%2c_2005_no_14_of_2006_date_07.03.2006.pdf).
4. People's Union for Civil Liberties vs Union of India, W.P.(C.) No. 2163 of 2009, High Court of Chhattisgarh (Bilaspur Bench), order dated 11 April 2014, <https://highcourt.cg.gov.in/Afr/courtJudgementandAFR/2014/April/WPC2163of2009.pdf>.
5. Sections 2(o), 2(p), 3, The Unlawful Activities (Prevention) Act, 1967, <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>.
6. Sections 147, 189, 132, 285, 196, 197, 111, 113, The Bharatiya Nyaya Sanhita, 2023, <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>.
7. Sections 148, 149, 152, 126, The Bharatiya Nagarik Suraksha Sanhita, 2023, <https://www.indiacode.nic.in/bitstream/123456789/20099/1/eng.pdf>.
8. Shreya Singhal vs Union of India, Writ Petition (Criminal) No. 167 Of 2012, Supreme Court of India, March 24, 2015, <https://indiankanoon.org/doc/110813550/>.
9. Kartar Singh vs State of Punjab, Supreme Court of India, March 11, 1994, <https://indiankanoon.org/doc/1813801/>.
10. Maneka Gandhi vs Union of India, Supreme Court of India, January 25, 1978, <https://indiankanoon.org/doc/1766147/>.
11. The Superintendent, Central Prison vs Ram Manohar Lohia, Supreme Court of India, January 21, 1960, <https://indiankanoon.org/doc/1386353/>.
12. Dr. Ram Manohar Lohia vs State of Bihar and Others, Supreme Court of India, September 7, 1965, <https://indiankanoon.org/doc/1733535/>.
13. Supreme Court Advocates-On-Record vs Union of India, Supreme Court of India, October 16, 2015, <https://indiankanoon.org/doc/66970168/>.
14. Rojer Mathew versus South Indian Bank Ltd and Others., Supreme Court of India, November 13, 2019, <https://indiankanoon.org/doc/36423291/>.
15. Sections 4, 5, The Unlawful Activities (Prevention) Act, 1967, <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>.
16. "Justice Dinesh Sharma to head UAPA tribunal related to the ban on PFI", The Hindu, October 6, 2022, <https://www.thehindu.com/news/national/delhi-hcs-justice-sharma-to-head-uapa-tribunal-on-pfi-ban/article65975244.ece>.
17. Sections 7, 8, The Unlawful Activities (Prevention) Act, 1967, <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>.
18. Sections 96-110, 185, The Bharatiya Nagarik Suraksha Sanhita, 2023, <https://www.indiacode.nic.in/bitstream/123456789/20099/1/eng.pdf>.
19. The State of Rajasthan vs Rehman, The Supreme Court of India, October 14, 1959, <https://indiankanoon.org/doc/842696/>.
20. Section 15, The Immoral Traffic (Prevention) Act, 1956, [https://www.indiacode.nic.in/bitstream/123456789/1661/1/A1956\\_104.pdf](https://www.indiacode.nic.in/bitstream/123456789/1661/1/A1956_104.pdf).
21. Section 62, The Prevention of Money Laundering Act, 2002, <https://dea.gov.in/sites/default/files/moneylaunderingact.pdf>.



22. Section 39, The Food Safety and Standards Act, 2006, [https://www.indiacode.nic.in/bitstream/123456789/7800/1/200634\\_food\\_safety\\_and\\_standards\\_act\\_2006.pdf](https://www.indiacode.nic.in/bitstream/123456789/7800/1/200634_food_safety_and_standards_act_2006.pdf).
23. Section 16(2), The Chhattisgarh Vishesh Jan Suraksha Act, 2005, [https://www.indiacode.nic.in/bitstream/123456789/12663/1/chhattisgarh\\_vishesh\\_jan\\_suraksha\\_act%2c\\_2005\\_no\\_14\\_of\\_2006\\_date\\_07.03.2006.pdf](https://www.indiacode.nic.in/bitstream/123456789/12663/1/chhattisgarh_vishesh_jan_suraksha_act%2c_2005_no_14_of_2006_date_07.03.2006.pdf).
24. Section 23(1)(b), The Maharashtra Control of Organised Crime Act, 1999, [https://prsindia.org/files/bills\\_acts/acts\\_states/maharashtra/1999/1999MH30.pdf](https://prsindia.org/files/bills_acts/acts_states/maharashtra/1999/1999MH30.pdf).
25. Section 43, The Unlawful Activities (Prevention) Act, 1967, <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.