



# PEOPLE'S UNION FOR CIVIL LIBERTIES

## Maharashtra State Unit

President : Mihir Desai; General Secretary : Lara Jesani; Treasurer : Alex D'Mello  
Committee Members : Ammu Abraham, Dolphy D'souza, Ramesh Awasthi, Sandhya Gokhale  
Email: [pucl.maharashtra@gmail.com](mailto:pucl.maharashtra@gmail.com)

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### **PUCL Maharashtra strongly objects to the repressive and unconstitutional Maharashtra Special Public Security Bill 2024;**

#### **PUCL Maharashtra demands the proposed law be scrapped in its entirety;**

People's Union for Civil Liberties (PUCL) Maharashtra strongly objects to the Maharashtra Special Public Security Bill, 2024, tabled in the Monsoon session of the Vidhan Sabha on 11<sup>th</sup> July 2024 on grounds that it is repressive, unconstitutional, overbroad, arbitrary and inherently allows for misuse.

PUCL Maharashtra is extremely concerned about the implications of the Maharashtra Special Public Security Bill for civil liberties and rights of the citizens to freedom of speech and expression, association and assembly, and the right to protest peacefully.

It has been claimed that the Bill, approved few days back by the Cabinet of the Eknath Shinde Government, was drafted on the lines of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam (2005) ("Chhattisgarh Act") and the Andhra Pradesh Special Public Security Act (1992). In the state of Chhattisgarh, and Jammu and Kashmir - where similar law being the Jammu and Kashmir Public Safety Act, 1978 was first introduced, it has received extensive criticism for being used to target journalists, lawyers, environmental defenders, citizen activists and adivasi protestors who have dissented against state action. A constitutional challenge to the Chhattisgarh Act is pending before the Hon'ble Supreme Court.

Firstly, the draft of the Maharashtra Special Public Security Bill was not made available in the public domain nor made open to public scrutiny and objections; nor was it vetted by any body of legal experts and practitioners. The tabling of the Bill in haste in the last few days of the Monsoon Session, just two months before the State Assembly elections are to be held, is itself indicative of the opacity of the entire process and suspect motives behind its introduction at this critical time of democratic engagement.

Given that there is already in existence an extremely harsh law for unlawful activities and terrorism in the country - namely The Unlawful Activities Prevention Act, 1967 (UAPA) amended as recently as in 2019 (also draconian in nature); and a stringent State Act - The Maharashtra Control of Organised Crime Act, 1999 to tackle organised crime; the present move of the State Government and its timing seems to be aimed not at dealing with violent or terrorist activities; but in reality to suppress political opponents, public protests, people's movements, and civil society and human rights activists, journalists and lawyers.

The Statement of Objects and Reasons of the Maharashtra Special Public Security Bill of 2024, signed by the Deputy Chief Minister, Devendra Fadnavis, claims that the law is being brought in to address the menace of naxalism in urban areas and tackle frontal organisations of naxal groups by effective legal means. By using the broad and non-descript label of 'urban naxal', which has become a common slur used for any citizen who expresses their opposition to state policy or is not aligned with right wing majoritarian views, the state government through this law, aims to legitimise the criminalisation of dissenting citizens, human rights defenders and political opponents.

The following are the detailed reasons why the provisions of the Maharashtra Special Public Security Bill, 2024 are unconstitutional, overbroad, arbitrary and inherently allow for misuse:

- A) The Bill contains an unacceptably broad and vague definition of “unlawful activity” that includes any action which ‘*constitutes a danger or menace to public order, peace or tranquillity*’; or even ‘*interferes or has a tendency to interfere with the maintenance of public order*’; or ‘*interferes or tends to interfere with the administration of law, or its established institutions and personnel*’. Even the time-honoured practice of *Satyagraha* and any non-violent act of civil disobedience would be hit by such provisions, as also peaceful protests which are in no manner associated with violence or terrorism, but are infact a constitutional right associated with democratic expression of citizens. In any event, these activities are already provided for and could easily be dealt with under the ordinary criminal law.
- B) Moreover, ‘*any action taken by an individual or organisation whether by committing an act or by words either spoken or written or by signs or by visible representation or otherwise*’, could constitute an “unlawful activity” under the Bill. Hence, it includes not just actions but any act of expression, like spoken words, online messages or posts, articles, artworks, demonstrations, placards, even gestures. Even an act or expression of support or solidarity provided by a person or group of persons could constitute an unlawful activity. It follows that all freedoms protected under Article 19 of the Indian Constitution can thus be curtailed - including freedom of speech and expression, association and assembly, press freedoms, academic freedoms etc. Even making a statement, lending of a book, or social media meme prepared or posted by an individual could be considered “unlawful activity” under the Bill. This is wholly dangerous, and can be potentially used against journalists, writers, filmmakers, artists and any citizen expressing their dissent or critiquing the government, in any form or manner.
- C) Under the Bill, an “organisation”, is again very broadly and vaguely defined as meaning ‘*any combination, body or group of persons, whether known by any distinctive name or not, and whether registered under any relevant law or not, and whether governed by any written constitution or not*’. According to this definition, the Government can name as an “organisation” any group of people it aims to target - even if no such “organisation” *per se* exists, for instance a group of so-called urban naxals! This means that the government has the power to bring an entirely fictitious organisation into existence by naming a group of people as belonging to such an organisation.
- D) The Bill provides that an “organisation” can be notified as ‘*being unlawful or having become unlawful*’ even before such notification is placed before an Advisory Board within 6 weeks; and the Advisory Board can take up to three months in deciding whether there is sufficient cause for issuance of the notification. The notification that the government issues regarding declaration of unlawful organisation requires only the grounds to be stated (which is likely to be vague terms around danger to public order), but the Bill provides that the disclosure of any fact can be dispensed with by the Government in public interest, making the entire process non-transparent and making it easy for the Government to outlaw an organisation and target its members, without even providing reasons. Even if such an organisation has formally dissolved itself, it can be prosecuted. The organisation in question is granted an opportunity to make a representation to the government only within 15 days of such notification. Even personal hearing before the Advisory Board is provided only to the authorized office bearer of the organisation, who can be promptly arrested, since being a member *per se* is an offence under the Act. Moreover, no hearing whatsoever is provided before issuing such a notification against the organisation.

- E) Meanwhile, an “unlawful organisation” is defined under the Bill as *‘any organisation which indulges in or has in pursuance of its objects abets, assists or gives aid, or encourages directly or indirectly through any medium, devices or otherwise, any unlawful activity’*. This basically means that any or every organisation, whether fictitious or real, whether directly or indirectly engaging in any of the broad activities defined as “unlawful activity”, could be potentially declared as an “unlawful organisation”. The definition of “unlawful organisation” also mischievously fails to mention that it is required to be declared as unlawful under the Bill.
- F) Owing to such broad definitions provided in the Bill, the government is only required to be of the opinion that an organisation is or has become unlawful. There is no burden of proof whatsoever that is required to be borne by the government in declaring any persons or group and their activities as unlawful. In effect, the Bill gives the government the power to go after any individual or organisation that it perceives as a threat, can declare all its activities (including non-violent activity, speech or communications) as unlawful, and restrict its activities and punish some or all the individuals associated with it. Furthermore, the government will also have the power to bring an entirely fictitious “organisation” into existence, simply on account of a common purpose or shared ideology of a group of individuals, and act against the individuals that it deems to be associated with it, even in the absence of any evidence to substantiate the claim.
- G) According to the Bill, any person who is *‘eligible to be appointed as a judge of the High Court’* may be appointed as a member of the Advisory Board; this would include pro-government lawyers or district judges, since it is a body appointed by the government itself. An organisation can be declared unlawful for a period of one year at a time, by a publication in a local newspaper, and this notification can be extended indefinitely, a year at a time, without disclosing grounds if the government feels it is not in public interest. Thus, the oversight process under the Act is not at all efficacious.
- H) The Bill has also delegated draconian powers to a District Magistrate or Commissioner of Police or any officer authorized by him, who can notify a particular area or a particular building which in his opinion is used for unlawful activities; and then proceed to take possession of it, seize all articles in it and evict all persons in it. No notice or opportunity of hearing is provided before issuing notification in respect of an area or building, instead sweeping powers have been given to notify, raid and take over possession of notified places without recourse to the aggrieved organisation or individuals. Discretionary powers have been given to take possession of moveable property (including moneys, security and other assets found in the notified place) and even forfeit articles in favour of the government after considering representation of the person claiming the same. Even appeal from such order of forfeiture is before the Government itself! This gives rise to a serious apprehension of mass arrests, forfeiture of property and evictions, especially in remote areas where adivasis and forest dwelling communities are protesting against forest diversion and deforestation activities, mining, or high impact, high stake developmental projects that seek to displace them. Meanwhile the Bill gives excessive powers to the Government to issue order for investigation which can act as a warrant empowering the police officer to enter into the premise of any individual and conduct searches, raising actual fear of individuals being targeted for the literature, books, writings they personally collect, keep or hold.
- I) Penalties are so arbitrarily defined in the Bill that a particular act could be variously liable for imprisonment of 2, 3 or 7 years. Mere membership of an unlawful organisation is punishable by 3 years; and even a person who is not a member, but who contributes, solicits contributions

or harbours a member of an unlawful organisation would be punishable by imprisonment of 2 years. What is of great concern is that these offences are defined without any element of *mens rea*, i.e intent. Even a draconian law like the UAPA has the element of *mens rea* included in the definition of offences, by qualifying acts with the phrase “knowingly and intentionally”. The Bill is hence, draconian and grants excessive, arbitrary powers, as it empowers the state to pick up and arrest anyone who protests, writes articles, reports or speaks against the government’s anti-people policies or criticises the government, even if that individual is remotely associated with an organisation it considers unlawful or to declare any group unlawful on a whim and arrest all individuals associated with it.

- J) Meanwhile, the Bill contemplates the framing of Rules. However, the proposed Rules have not been made public, posing serious questions on the manner in which the proposed law will be implemented.

While the Monsoon Session of the State Assembly has come to an end yesterday without the passing of the Bill and consequently the Bill stands lapsed, inspite of the massive civil society and political objections reported in just a matter of days, no formal statement has been issued by the Maharashtra Government assuring that the Bill will not be reintroduced and will be scrapped.

The Bill cannot be allowed to silence the active citizenry and vitiate the democratic ethos of Maharashtra. There are lessons to learn from the Chhattisgarh Act, which has been used against ordinary adivasis forced to attend a meeting, or a doctor whose prescription was found in the kit bag of a Naxalite, or a tailor who unknowingly fulfilled an order of stitching uniforms, or a security guard whose vehicle was seized at gunpoint by Naxalites. When the Act was proposed in Chhattisgarh in 2005, journalists were the first to protest, since it was clear from the language of the Act that even publishing the press release of an unlawful organisation, or reporting on the activities of such an organisation could attract punishment. Such a law if allowed in Maharashtra would only serve as a tool of abuse and repression, and will result in a chilling effect in the state.

In these circumstances, **PUCL Maharashtra urges the State Government to ensure that the Maharashtra State Public Security Bill is not reintroduced in the State Assembly or pursued in any form, and is scrapped in its entirety.** PUCL Maharashtra encourages all rights-minded citizens, including all political representatives, to keep vigil and oppose the Bill, to ensure that such a draconian law is not passed in Maharashtra. In any event, no such Bill should be allowed to be passed in undue haste without inviting and considering the objections/ suggestions of the public, and without subjecting the same to critical review of legal experts to understand its ramifications.

**PUCL Maharashtra urges the State Government to protect democratic principles, uphold constitutional values, and remove all embargo to peaceful protest and free expression in the State, with a view to ensure a healthy and vibrant democracy.**

*Mihir Desai, President*

*Lara Jesani, General Secretary*

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People’s Union for Civil Liberties, National Office  
270-A, Patpar Ganj, Opposite Anand Lok Apartments, Mayur Vihar I, Delhi 110 091  
Phone 2275 0014 PP FAX 4215 1459

**Founder:** Jayaprakash Narayan; **Founding President:** V M Tarkunde  
**President:** Kavita Srivastava; **General Secretary:** Dr. V. Suresh  
E.mail: [puclnat@gmail.com](mailto:puclnat@gmail.com) & [pucl.natgensec@gmail.com](mailto:pucl.natgensec@gmail.com)  
Website : [www.pucl.org](http://www.pucl.org)