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Human Right Voilations in Maharashtra Control of Organised Crime Act, 1999

NILANJAN JITENDRA PANDE¹ AND DR. VIVEK NEMANE²

ABSTRACT

The research paper investigates the topic of Title: Human Rights Violations in Maharashtra Control of Organised Crime Act, 1999 was enacted with the noble goal of battling organized crime and eliminating criminal syndicates that constituted a substantial danger to public order and safety in the Indian state of Maharashtra. However, concerns have been made concerning MCOCA's conformity with human rights norms during its implementation and execution.

This paper investigates the human rights violations that have arisen as a result of the MCOCA's implementation in Maharashtra. The legislation gives law enforcement agencies unprecedented power to combat organized crime, including the use of stringent provisions for preventive detention, increased admissibility of intercepted communication as evidence, and a reversal of the presumption of innocence for accused individuals. The major goal of this research is to look at how MCOCA implementation has resulted in violations of fundamental human rights, such as the right to a fair trial, the right to privacy, and protection against torture and other cruel, barbaric, or degrading treatment. It digs into the negative impact on the rights of suspects and their families, who are frequently forced to protracted incarceration without sufficient access to legal representation, resulting in a loss of the presumption of innocent until proven guilty.

Furthermore, there is a request for the formation of an impartial monitoring body to routinely analyze and evaluate MCOCA implementation. This group would promote accountability and transparency in the implementation of legislation, as well as function as a check on possible abuse of authority by law enforcement authorities. The state of Maharashtra may demonstrate its commitment to both effective law enforcement and the preservation of fundamental human rights for all of its residents by correcting the highlighted weaknesses and implementing the offered suggestions.

Keywords: *Human rights, Special criminal legislation, Maharashtra Control of Organized Crime Act (MCOCA), judicial activism.*

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I. INTRODUCTION

India's geographical diversity, cultural heritage, and linguistic plurality are integral to its identity and make it a fascinating country to explore and understand. The coexistence of various religions, traditions, and languages adds depth to India's societal fabric and fosters a spirit of unity in diversity³. As a nation that has witnessed centuries of history and development, India continues to evolve while cherishing its ancient roots⁴.

Special criminal law is a distinct branch of legislation that focuses on specific types of criminal offenses or activities requiring specialized legal frameworks. It aims to provide targeted measures to effectively combat unique forms of criminal behavior that pose challenges to society. In India, the recognition of the need for security legislation dates back to its independence in 1947. The country has implemented laws to address activities such as terrorism, organized crime, separatism, and public disruption, which are perceived to have significant impacts on public safety and societal stability. Alongside national security legislation at the central level, individual states in India have also enacted their own laws to regulate similar hazards, reflecting the decentralized nature of governance in the country. This allows states to address specific security concerns within their jurisdictions.

The coexistence of security laws with India's standard substantive and procedural criminal statutes plays a crucial role in the country's legal framework. While general criminal laws are designed to address a wide range of offenses, security laws offer a specialized and targeted approach to tackle specific types of threats that demand unique legal measures. These security laws are enacted to effectively combat terrorism, insurgency, organized crime, and other activities that pose a significant risk to national security. By providing a distinct legal framework to address these specific challenges, India ensures that the necessary tools and provisions are in place to safeguard its citizens and maintain law and order. The parallel existence of security laws alongside general criminal statutes enhances the effectiveness of the legal system in responding to diverse and evolving threats in a comprehensive manner⁵.

India's approach to security challenges is characterized by the existence of both national and state-level security laws. This comprehensive framework combines general criminal laws with specialized legislation, emphasizing the country's commitment to addressing various threats to

³ Article 2 of the Universal Declaration of Human Rights (1948): 'no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.'

⁴ Mountstuart Elphinstone, *The History of India* (2013).

⁵ CHAKRABARTI, D. (2011). The Human Rights Movement in India: In Search of a Realistic Approach. *Economic and Political Weekly*, 46(47), 33–40. <http://www.jstor.org/stable/41720521>

public safety and maintaining social order. It recognizes the need for a multidimensional response to safeguard the well-being and security of its citizens. The presence of security legislation in India signifies the nation's dedication to combating significant security risks. These laws coexist with standard criminal statutes, acknowledging the requirement for tailored measures to tackle specific security concerns. However, it is crucial to ensure that the implementation of these laws upholds the principles of the rule of law, protects human rights, and maintains a fair and just legal system⁶.

The rationale behind adopting specialized legal frameworks and enhanced measures to combat crimes like terrorism, organized crime, cybercrime, and acts of insurgency is grounded in the understanding that these offenses are unique in their nature and pose significant threats to society. These crimes often involve complex and sophisticated methods, making them difficult to prevent, investigate, and prosecute using conventional approaches.

In the realm of criminal law in India, the Indian Penal Code of 1860 (IPC) and the Code of Criminal Procedure of 1973 (CrPC) are of paramount importance. These laws serve as comprehensive frameworks for addressing a broad spectrum of criminal offenses and their legal implications. The IPC plays a crucial role by defining and categorizing numerous criminal offenses, while also outlining the appropriate punishments for each offense. It establishes the criteria for determining liability, encompassing exemptions and defenses that can be raised in legal proceedings. The CrPC, on the other hand, provides guidelines and procedures for the investigation, arrest, trial, and punishment of criminal offenses. Together, these laws form the backbone of India's criminal justice system, ensuring that perpetrators are held accountable for their actions and that justice is served.

The Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) are pivotal legal instruments in India, and they have been subject to amendments to adapt to the changing dynamics of society. These amendments are essential to ensure that these laws remain relevant in the face of evolving societal needs, advancements in technology, and shifting concepts of justice and human rights. The IPC and the CrPC provide a robust legal framework for addressing a wide range of criminal behaviors, while upholding the principles of fairness, equality, and the protection of individual rights within India's criminal justice system. By constantly evolving and adapting, these laws strive to maintain a just and equitable society⁷.

⁶ Sharma, V. D. (1970). THE AGE OF CRIMINAL RESPONSIBILITY IN INDIA. *Journal of the Indian Law Institute*, 12(1), 139–150. <http://www.jstor.org/stable/43950059>

⁷ Pound, R. (1921). The Future of the Criminal Law. *Columbia Law Review*, 21(1), 1–16. <https://doi.org/10.2307/1111514>

The analysis highlights the significance of examining legal concepts such as the right to bail and the presumption of innocence. It reveals that certain special criminal laws, like the Maharashtra Control of Organized Crime Act (MCOCA), can curtail the right to bail and weaken the presumption of innocence. Of particular concern is the extended period of pre-trial imprisonment beyond what is permitted in regular criminal law⁸. Consequently, it is concluded that the application of these special laws, which often assume guilt for ordinary citizens, necessitates reassessment. The research emphasizes the need to reevaluate these stringent regulations that potentially undermine the presumption of innocence and impose prolonged pre-trial detention. The analysis urges for a critical evaluation of the delicate balance between security concerns and safeguarding individual rights. It advocates for a more equitable and rights-based approach in the formulation and execution of special criminal laws, aiming to ensure a fair and just system that upholds the fundamental rights of all individuals.

(A) Literature Review

- (ANIL KALHAN, 2006) The topic "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India" highlights the existing scholarly work and research on the historical, legal, and socio-political aspects of human rights, terrorism, and security laws in the Indian context. The literature review reveals that India's colonial past has had a profound influence on the formulation and implementation of security laws, often leading to concerns regarding human rights violations. It explores the continuities between colonial-era legislations and contemporary counterterrorism measures, examining their impact on civil liberties and fundamental rights. The review also examines the role of the judiciary, civil society, and international human rights standards in addressing the challenges posed by security laws. Additionally, it highlights the ongoing debates, critiques, and calls for reform in order to strike a balance between national security imperatives and the protection of human rights in India's legal framework.
- (SARKAR, 2010) "Anti-Terrorism Laws: Distinguishing Myth and Reality" aims to explore existing scholarly works, research studies, and legal analyses that examine the effectiveness and impact of anti-terrorism laws in different jurisdictions. The review assesses the prevailing narratives surrounding these laws, highlighting the potential

⁸ Jyothi Vishwanath, amp; Srinivas & C Palakonda, Under a creative commons Attribution-Noncommercial-Share Alike 2.5 India License 386 of, 6 CRIMINAL JUSTICE SCIENCES (IJCS) -OFFICIAL JOURNAL OF THE SOUTH ASIAN SOCIETY OF CRIMINOLOGY AND VICTIMOLOGY (SASCV) 386 (2011), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=7302054d5d4a0c7c438a4a242b65c05f748d35ac>.

discrepancies between perception and reality. It delves into the debate surrounding the balance between national security imperatives and the protection of individual rights and civil liberties. The review also examines case studies and empirical evidence to evaluate the efficacy of anti-terrorism laws in preventing and combating terrorism, as well as their potential for unintended consequences, such as human rights violations and the targeting of marginalized communities.

- (Tiwari, 2001) "Combating Organised Crime: A Case Study of Mumbai City" provides valuable insights into the various aspects of organized crime in Mumbai and the strategies employed to combat it. Several studies highlight the prevalence of organized crime syndicates and their impact on the social, economic, and political fabric of the city. Scholars have examined the modus operandi of criminal networks, their involvement in activities such as drug trafficking, extortion, and money laundering, and the challenges faced by law enforcement agencies in tackling these crimes. The literature also explores the role of intelligence gathering, surveillance, and collaboration between different agencies in disrupting organized crime networks.
- (Ambasta, 2020) "Designed for Abuse: Special Criminal Laws and Rights of the Accused" highlights the concerns and discussions surrounding the impact of special criminal laws on the rights of the accused. Various scholarly works and legal analyses have delved into the potential abuses and infringements on individual rights that can occur under such laws. The review explores the concept of special criminal laws, their underlying justifications, and their implications for due process and fair trial rights. It examines cases where special laws have been misused or have led to unfair treatment, leading to debates on the necessity of balancing law enforcement objectives with the protection of individual rights. The literature review reveals the need for critical evaluation of special criminal laws to ensure that they do not undermine the fundamental rights of the accused and to establish mechanisms for accountability and safeguards against abuse.
- (CHOPRA, 2001) "National Security Laws in India: The Unravelling of Constitutional Constraints" highlights the scholarly work that explores the implications of national security laws on constitutional constraints in India. Several studies have examined the enactment and implementation of laws such as the Unlawful Activities (Prevention) Act, Armed Forces (Special Powers) Act, and the Maharashtra Control of Organized Crime Act, among others. These laws have faced scrutiny for potentially infringing upon

fundamental rights, including freedom of speech, assembly, and due process. It examines case law, constitutional provisions, and legal commentary to assess the impact of these laws on democratic principles, judicial independence, and the rule of law. The literature also explores debates surrounding the necessity, effectiveness, and proportionality of such legislation, calling for a balance between safeguarding national security and upholding constitutional constraints.

(B) Research Question

The research questions for the topic "Human Rights Violations in Maharashtra Control of Organized Crime Act, 1999 (MCOCA)" are as follows:

1. What part does the confession process play in violating human rights, and how does it follow the voluntariness and dependability principles? What changes in law and policy are required to remedy the MCOCA's impact on human rights abuses and establish a balance between national safety and the defence of human rights?

These research questions aim to explore the specific aspects of human rights violations within the context of the MCOCA and provide a comprehensive understanding of the issues at hand. They will help guide the research process and provide insights into the complexities surrounding MCOCA, 1999 and its impact on human rights.

(C) Research Objective

The issue of human rights violations in MCOCA is a matter of great importance in current legal discussions. This study specifically concentrates on the examination of human rights violations within the framework of Maharashtra Control of Organized Crime Act, 1999 (MCOCA). The MCOCA was implemented with the aim of combating organized crime and upholding public order. However, it has faced criticism and scrutiny due to allegations of potential human rights infringements.

The primary objective of this study are as follows:

1. To identify and analyse instances of human rights violations arising from the implementation of the MCOCA, particularly in relation to arbitrary and unfair practices.
To identify and analyse instances of human rights violations arising from the implementation of the MCOCA, particularly in relation to arbitrary and unfair practices.

Through a comprehensive analysis of the MCOCA and its implications for human rights, this research aims to contribute to the ongoing discourse on the balance between law enforcement objectives and the safeguarding of individual rights. By critically examining the provisions and

application of the MCOCA, this study seeks to generate insights and recommendations that can inform legal reforms and promote a more rights-conscious approach in the realm of special criminal legislation in India.

(D) Scope and Limitations

The Scope and Limitations of this research paper is as follows:

Scope:

1. **Examination of MCOCA:** The research will focus on the provisions and implementation of the MCOCA, specifically analysing its impact on human rights.
2. **Legal Framework and Practices:** The research will examine the legal framework and practices surrounding the MCOCA, including its compatibility with constitutional guarantees and international human rights obligations.
3. **Human Rights Violations:** The research will explore various aspects of human rights violations, including arbitrary arrests, coerced confessions, denial of fair trial rights, and any other violations that arise from the application of the MCOCA.

Limitations:

1. **Availability of Data:** The research may face limitations in accessing comprehensive and up-to-date data on human rights violations specifically related to the MCOCA. The availability and reliability of data sources may impact the depth and breadth of the analysis.
2. **Generalizability:** The findings of the study may not be generalizable to all special criminal legislation or jurisdictions beyond the specific context of the MCOCA. The focus will primarily be on the Indian legal framework and its alignment with human rights standards.
3. **Legal Interpretation:** Interpretation of legal provisions and their impact on human rights can vary among legal experts. The research will attempt to provide an objective analysis, but interpretations may differ based on individual perspectives.

(E) Research Methodology

The research methodology employed to investigate the topic of "Human Rights Violations in Maharashtra Control of Organised Crime Act, 1999" will utilize the doctrinal method. The doctrinal method is a research approach that primarily relies on the analysis of existing legal texts, statutes, court judgments, and related documents to gain a comprehensive understanding

of a specific legal issue. In this case, the research will focus on scrutinizing the provisions and interpretations of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) in light of human rights principles.

The research will begin by conducting an extensive review of the MCOCA itself, examining the Act's provisions, objectives, and the context in which it was enacted. The analysis will delve into the specific sections that have been implicated in human rights violations, such as those related to pre-trial detention, surveillance powers, and the definition of "organized crime." Moreover, the research will involve a thorough examination of relevant court judgments and legal precedents related to MCOCA cases. This will help identify instances where human rights concerns have been raised, legal challenges have been mounted, and judicial responses have been provided. These judgments will be analysed to understand the judicial interpretation of MCOCA vis-à-vis human rights protections.

Furthermore, the doctrinal analysis will encompass a review of academic literature, scholarly articles, and commentaries from legal experts and human rights scholars. These secondary sources will provide valuable insights into the historical background of MCOCA, its legislative intent, and debates surrounding its implementation. Throughout the research, emphasis will be placed on comparing MCOCA's provisions with international human rights standards and principles to assess potential discrepancies and infringements on human rights. The analysis will also explore the role of civil society organizations and human rights activists in raising awareness of violations under MCOCA and advocating for necessary reforms.

By utilizing the doctrinal method, this research will offer a comprehensive understanding of the human rights implications of the Maharashtra Control of Organised Crime Act, 1999. The findings will contribute to the broader discourse on striking a balance between combating organized crime and safeguarding human rights within the legal framework in India.

II. HUMAN RIGHTS PROTECTION IN INDIAN LAWS

India recognizes the significance of human rights and has implemented a comprehensive legal framework to protect and promote these rights. The country's commitment to human rights is reflected in its Constitution, domestic legislation, and engagement with international human rights conventions. These laws provide a foundation for safeguarding individual freedoms, equality, and justice for all citizens⁹.

The Constitution of India, adopted in 1950, serves as the primary legal document guaranteeing

⁹ Richard Sandbrook, *Globalization and Human Rights*, 2 *Perspectives on Politics* 419–419 (2004).

human rights protections. It incorporates a range of provisions that ensure fundamental rights and liberties for every individual within the country's jurisdiction. These rights include the right to equality, freedom of speech and expression, freedom of religion, right to life and personal liberty, and protection against discrimination¹⁰. To enforce and protect human rights, India has established several key legislative measures. The Protection of Human Rights Act, 1993, created the National Human Rights Commission (NHRC), a statutory body responsible for the promotion and protection of human rights. The NHRC investigates complaints of human rights violations, conducts inquiries, and recommends remedial measures. It acts as a watchdog to ensure accountability and the effective implementation of human rights in various domains¹¹.

Additionally, India has enacted laws and regulations addressing specific human rights issues. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, aims to prevent discrimination, violence, and atrocities against marginalized communities. The Protection of Women from Domestic Violence Act, 2005, provides legal recourse and protection for women facing domestic abuse. The Rights of Persons with Disabilities Act, 2016, safeguards the rights and interests of persons with disabilities, promoting inclusion and accessibility. In recent years, India has taken steps to strengthen its legal framework for human rights protection. The Mental Healthcare Act, 2017, focuses on the rights and treatment of individuals with mental health conditions, ensuring their autonomy and dignity. The Transgender Persons (Protection of Rights) Act, 2019, recognizes the rights of transgender individuals, prohibits discrimination, and promotes social inclusivity.

India's legal system also acknowledges the importance of international human rights standards. The country is a party to several international human rights treaties and conventions¹², including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). India's participation in these international agreements demonstrates its commitment to upholding and aligning its domestic laws with global human rights norms¹³.

¹⁰ Marie-France Loranger, *Globalization and Human Rights*, 37 *Canadian Journal of Political Science/Revue canadienne de science politique* 1068–1070 (2004).

¹¹ Varsha Bhagat-Ganguly, *Exploring Contours of Human Rights in India*, 6 *NIRMA U. L.J.* 1 (2017).

¹² UDHR stands for the Universal Declaration of Human Rights. It is a historic document adopted by the United Nations General Assembly on December 10, 1948. The UDHR is a milestone in the field of human rights and serves as a fundamental reference for the protection and promotion of human rights globally. It sets out a comprehensive range of rights and freedoms that are inherent to all individuals, regardless of their nationality, race, religion, or other characteristics. The declaration consists of 30 articles that outline the basic rights and principles, including civil, political, economic, social, and cultural rights, as well as the right to equality, justice, and dignity. The UDHR has been influential in shaping international human rights law and serves as a guiding document for governments, organizations, and individuals striving to uphold and defend human rights worldwide.

¹³ Pillai, K. N. C. (2006). *CRIMINAL INVESTIGATION IN INDIA – HUMAN RIGHTS PERSPECTIVE*.

However, challenges persist in the effective implementation and enforcement of human rights laws in India¹⁴. Issues such as access to justice, judicial delays, impunity, and societal prejudices pose obstacles to the full realization of human rights. There is a need for continuous efforts to raise awareness, improve legal mechanisms, strengthen institutional capacities, and address systemic barriers to ensure better protection and promotion of human rights¹⁵.

(A) Origin of Criminal Law in India

The origin of criminal law in India can be traced back to ancient times, deeply rooted in the rich cultural and historical traditions of the country. The foundations of Indian criminal law can be found in ancient texts such as the Arthashastra, Manusmriti, and Dharma Shastra, which provided guidelines for the administration of justice and prescribed punishments for various offenses. These early legal systems were based on the principles of dharma (righteousness) and aimed to maintain social order and harmony within the community.

With the arrival of the British colonial rule in the 18th century, the Indian legal system underwent significant changes. The British introduced their own legal framework, heavily influenced by English common law principles. Criminal laws such as the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) were enacted, bringing uniformity and modernity to the criminal justice system. These laws served as the cornerstone of criminal law in India and are still in force today, with subsequent amendments and modifications.

Post-independence, the Indian criminal justice system underwent further reforms to align with the principles of justice, fairness, and human rights. The Constitution of India, adopted in 1950, guarantees various fundamental rights to individuals, including the right to life, liberty, and equality before the law. It also provides safeguards against arbitrary arrest, torture, and cruel and unusual punishments¹⁶.

Today, Indian criminal law is a dynamic and evolving system that seeks to balance the protection of society, the rights of individuals, and the principles of justice. It reflects a blend of ancient traditions, colonial influences, and contemporary legal principles, aiming to maintain law and order, promote justice, and safeguard the rights and dignity of all individuals.

Journal of the Indian Law Institute, 48(3), 435–438. <http://www.jstor.org/stable/43952051>

¹⁴ Dhavan, R. (1997). PROMISES, PROMISES ... : HUMAN RIGHTS IN INDIA. *Journal of the Indian Law Institute*, 39(2/4), 149–185. <http://www.jstor.org/stable/43953266>

¹⁵ RAJU, K. H. C. (1991). Dr. B. R. AMBEDKAR AND MAKING OF THE CONSTITUTION: A Case Study of Indian Federalism. *The Indian Journal of Political Science*, 52(2), 153–164. <http://www.jstor.org/stable/41855548>

¹⁶ Lakshminath, A. (2006). CRIMINAL JUSTICE IN INDIA: PRIMITIVISM TO POST-MODERNISM. *Journal of the Indian Law Institute*, 48(1), 26–56. <http://www.jstor.org/stable/43952016>

(B) Jurisprudence of Special Criminal law in India

The influence of British colonial rule brought significant changes to the legal system in India. The British introduced special criminal laws to address specific issues arising from the colonial context. The Criminal Tribes Act, 1871, classified certain communities as "criminal tribes"¹⁷ and imposed strict controls and surveillance on them¹⁸. This law reflected the colonial administration's approach to managing social groups deemed potentially deviant or criminal¹⁹. Post-independence, special criminal laws were enacted to address contemporary challenges. The Dowry Prohibition Act, 1961, aimed to eradicate the practice of dowry, which was prevalent in Indian society. The legislation recognized the need for targeted measures to curb dowry-related offenses and protect women from exploitation and violence.

In response to the rise in communal and sectarian tensions, special laws were introduced to deal with offenses related to religious or ethnic violence. The Unlawful Activities (Prevention) Act, 1967, and subsequent amendments targeted terrorist activities and organizations posing threats to national security. These laws provided for enhanced investigative and preventive powers to tackle terrorism effectively. The protection of vulnerable sections of society led to the enactment of special criminal laws, such as the Protection of Children from Sexual Offenses Act (POCSO), 2012, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST Act), 1989. These laws aimed to address specific offenses against children and marginalized communities and provided for stricter punishments and special procedures to ensure their protection and well-being.

The history of special criminal laws in India reflects the evolving needs of society and the recognition that general criminal laws may not adequately address specific offenses or protect vulnerable groups²⁰. These laws have evolved to tackle unique challenges and ensure targeted measures to prevent and address specific crimes. The development of special criminal laws is an ongoing process, driven by societal changes and the quest for a just and inclusive legal

¹⁷ "Criminal tribe" refers to a term historically used in certain countries, including India, to categorize particular communities or tribes as inherently criminal or prone to criminal activities. The concept of criminal tribes emerged during colonial times when the British Raj implemented various laws to monitor and control certain marginalized communities. These communities were stigmatized and labelled as criminal tribes based on assumptions of their inherent criminality, leading to their systematic discrimination and persecution. Over time, the term and its associated laws have been widely criticized for their discriminatory nature and violation of human rights, as they unjustly targeted specific communities and perpetuated social exclusion and marginalization. It is important to note that the concept of criminal tribes is considered outdated and not in line with contemporary understanding and approaches to criminal justice.

¹⁸ McDiarmid, C. (2009). *Criminal law essentials*. Dundee University Press.

¹⁹ David Lieberman, *Mapping criminal law: Blackstone and the categories of English jurisprudence*, in *LAW, CRIME AND ENGLISH SOCIETY, 1660–1830* 139–162 (Norma Landau ed., 2002).

²⁰ V. S. Sreedhara, *Human Rights, Dalit Questions and Subaltern Studies in India*, in *Subalternity, Exclusion and Social Change in India 77–102* (Ashok K. Pankaj & Ajit K. Pandey eds., 2014).

system that caters to the diverse needs of the Indian population²¹.

One key reason for the need of special criminal laws is the protection of vulnerable groups²². Marginalized communities, including women, children, scheduled castes, and scheduled tribes, often face unique forms of violence and discrimination. Special criminal laws, such as the Protection of Children from Sexual Offenses Act (POCSO), the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST Act), and laws related to domestic violence, provide targeted provisions to address offenses committed against these groups. They establish stringent punishment, streamline legal procedures, and ensure the protection of the rights and dignity of the affected individuals²³.

One of the main problems with special criminal laws in India is the potential for misuse and abuse. Due to their targeted nature, these laws can be susceptible to selective enforcement, leading to bias, discrimination, and the infringement of individual rights²⁴. There have been instances where special laws, such as those pertaining to terrorism or atrocities against marginalized communities, have been misused to target innocent individuals or suppress dissenting voices. This misuse undermines the principles of fairness, equality, and due process that are crucial for a just legal system.

Another challenge is the overlapping and conflicting provisions between different special criminal laws. In India, numerous special laws have been enacted to address various societal issues, resulting in a complex legal landscape. The lack of coordination and harmonization among these laws often leads to confusion, inconsistencies, and challenges in their implementation. This can cause difficulties for law enforcement agencies, lawyers, and individuals seeking justice, as they navigate through multiple sets of laws and their interpretations.

²¹ Kolsky, E. (2005). Codification and the Rule of Colonial Difference: Criminal Procedure in British India. *Law and History Review*, 23(3), 631–683. <http://www.jstor.org/stable/30042900>

²² Vulnerable groups refer to segments of the population that are at a higher risk of experiencing discrimination, marginalization, or harm due to various factors such as social, economic, cultural, or political circumstances. These groups often face systemic disadvantages and limited access to resources and opportunities, making them more susceptible to rights violations and unequal treatment. Vulnerable groups can include but are not limited to individuals or communities based on factors such as age, gender, ethnicity, race, disability, socioeconomic status, migration status, indigenous status, sexual orientation, or religious beliefs. Recognizing and addressing the specific needs and rights of vulnerable groups is crucial for promoting equality, inclusion, and social justice in society.

²³ Meinou Simmons, Vulnerability of Special Groups, in *A GUIDE TO THE MENTAL HEALTH OF CHILDREN AND YOUNG PEOPLE: Q&A FOR PARENTS, CAREGIVERS AND TEACHERS* 129–152 (2022).

²⁴ Jyothi Vishwanath, amp; Srinivas & C Palakonda, Under a creative commons Attribution-Noncommercial-Share Alike 2.5 India License 386 of, 6 CRIMINAL JUSTICE SCIENCES (IJCJS) -OFFICIAL JOURNAL OF THE SOUTH ASIAN SOCIETY OF CRIMINOLOGY AND VICTIMOLOGY (SASCV) 386 (2011), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=7302054d5d4a0c7c438a4a242b65c05f748d35ac>.

III. HISTORY OF MAHARASHTRA CONTROL OF ORGANISED CRIME ACT (MCOCA), 1999

The Maharashtra Control of Organised Crime Act (MCOCA), 1999 is a special legislation enacted by the state of Maharashtra in India to combat organized crime and terrorism. The history of MCOCA traces back to the growing concerns over the rise of criminal syndicates and their ability to operate with impunity. In the late 1990s, Maharashtra witnessed a surge in organized crime activities, including extortion, drug trafficking, arms smuggling, and gang-related violence. The existing legal framework was deemed inadequate to effectively tackle these criminal networks, leading to the proposal and subsequent enactment of MCOCA.

MCOCA was modeled after the stringent provisions of the Maharashtra Control of Organized Crime Ordinance (MCOCO), which was promulgated in 1999. The primary objective of MCOCA was to provide law enforcement agencies with enhanced powers to investigate, arrest, and prosecute individuals involved in organized crime. The legislation introduced several key features to strengthen the fight against organized crime. It established special courts designated to handle MCOCA cases, ensuring speedy trials and dedicated attention to organized crime-related offenses. It also introduced provisions for the admissibility of intercepted communications and confessions before the courts, easing the burden of proof for the prosecution. The Supreme Court of India has also played a significant role in shaping the history of MCOCA. It has delivered several landmark judgments that have interpreted and clarified various provisions of the act, addressing concerns regarding its misuse and ensuring the protection of constitutional rights.

One notable case that exemplifies the application of MCOCA is the **State of Maharashtra v. Rajendra S. Nikhalje alias Chhota Rajan**²⁵. Chhota Rajan, a notorious underworld figure, was arrested in 2000 under the provisions of MCOCA. The case against him highlighted the effectiveness of the law in dealing with high-profile organized crime cases. The trial, which took place in a special court designated under MCOCA, led to the conviction of Chhota Rajan and several of his associates, demonstrating the act's impact in dismantling organized crime networks. The statement "Organized crime doesn't just mean gang wars and conglomeration of criminals but also includes much more than that. Organized crime is a severe threat to the social system including the economy, the polity, and even national security, and is, therefore, a serious challenge to law enforcement agencies" highlights the comprehensive nature of organized crime

²⁵ CC No. 96/2016

and its far-reaching impact on various aspects of society. Let's analyse this statement in detail. Organized crime goes beyond the conventional perception of gang wars and criminal networks. It encompasses a range of illegal activities carried out by highly structured and well-coordinated criminal enterprises²⁶. These activities can include drug trafficking, human trafficking, money laundering, extortion, smuggling, cybercrime, arms trafficking, and terrorism. Organized crime groups operate with a clear hierarchy, division of labour, and long-term planning, making them a potent threat to society. The impact of organized crime extends to multiple domains, starting with the economy²⁷. These criminal networks engage in illicit activities that undermine legitimate businesses, distort market mechanisms, and siphon off substantial amounts of money from the economy. They often infiltrate industries such as construction, transportation, and finance, creating a climate of corruption, undermining fair competition, and hampering economic development.

The statement "The constitutionality of the act was challenged in the case of Bharat Shantilal Shah v. State of Maharashtra²⁸ mainly on two grounds" refers to a significant legal challenge to the constitutionality of the Maharashtra Control of Organised Crime Act (MCOCA). In the case of Bharat Shantilal Shah v. State of Maharashtra, two primary grounds were raised to challenge the validity of the act.

The first ground was related to the "principle of double jeopardy²⁹," which ensures that a person cannot be punished multiple times for the same offense. The petitioner argued that MCOCA violated this principle by allowing for the prosecution of an accused person for offenses already covered under other existing laws. The contention was that subjecting an individual to multiple prosecutions for the same act violated their fundamental rights and constitutional protections.

The second ground of challenge revolved around the "presumption of innocence" principle, which holds that an accused person is considered innocent until proven guilty beyond a reasonable doubt. The petitioner argued that MCOCA reversed this principle by creating a presumption of guilt against the accused, shifting the burden of proof onto the defendant. This

²⁶ National, R. C., Division, O. B. A. S. S., Commission, O. B. A. S. S., & Committee, O. L. A. J. (1999). *Transnational organized crime: Summary of a workshop*. National Academies Press.

²⁷ Dhawal Shankar Srivastava & Jyoti Verma, *State Security Legislation and Judicial Escapism- A study with respect to the Maharashtra Control of Organised Crime Act (MCOCA)*, 1 DME JOURNAL OF LAW 139 (2020), <https://www.dmejournal.com/index.php/DMEJL/article/view/51> (last visited Jul 8, 2023).

²⁸ 2008 Latest Caselaw 737 SC

²⁹ The principle of double jeopardy, a fundamental aspect of criminal law, can be defined as the protection against being prosecuted or punished multiple times for the same offense. It is rooted in the idea that once an individual has been acquitted or convicted of a crime, they cannot be subjected to further prosecution or punishment for that same offense. The principle serves as a safeguard to prevent the abuse of power by the state and ensures that individuals are protected from harassment and oppression through repeated trials or penalties.

was seen as a violation of the right to a fair trial and due process.

While specific examples and details of the case were not provided, it is important to note that cases like *Bharat Shantilal Shah v. State of Maharashtra* play a vital role in shaping the interpretation and application of special laws like MCOCA. Such cases ensure that the constitutionality and validity of legislation are tested and that fundamental rights and principles are safeguarded within the legal framework.

A notable case that highlights the interpretation of Section 41 of the CrPC is the *State of West Bengal v. Anwar Ali Sarkar (1952)*³⁰. In this case, the Supreme Court upheld the constitutional validity of the West Bengal Special Courts Act, which allowed for the establishment of special courts to deal with specific offenses. The court emphasized that the power to enact special laws should be exercised judiciously and must not contravene fundamental rights.

Overall, while special laws enacted under Section 41 of the CrPC serve the purpose of addressing specific offenses, it is crucial to strike a balance between effectively combating crime and safeguarding individual rights. The courts play a vital role in interpreting and ensuring the constitutionality of these laws, keeping in mind the principles of proportionality, fairness, and protection of fundamental rights.

(A) Analysis of arbitrary section of MCOCA, 1999

The arbitrary nature of certain sections of MCOCA also manifests in the broad definitions of offenses. The Act defines "organized crime" in a wide and somewhat ambiguous manner, leaving room for subjective interpretation and potential misuse. This lack of precision raises questions about the fairness and clarity of the law, as it allows for the arbitrary categorization of activities as organized crime, potentially encompassing actions that may not warrant such severe legal consequences. Furthermore, MCOCA includes provisions for the admissibility of intercepted communications as evidence. While this measure is intended to facilitate effective prosecution, concerns have been raised regarding the potential infringement on privacy rights and the misuse of surveillance powers. The arbitrary collection and use of intercepted communications without adequate safeguards can lead to violations of privacy and compromise the integrity of investigations and trials³¹. This analysis seeks to contribute to the ongoing discourse on the subject, aiming to foster a deeper understanding of the potential challenges and implications of the arbitrary sections of MCOCA, thereby facilitating informed discussions and

³⁰ ([1952] S.C.R.. 284)

³¹ Shyam Nandan & Deepa Kansra, *Bail under Special Legislation*, SSRN.COM (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3712822 (last visited Jul 8, 2023).

potential reforms to ensure a just and equitable criminal justice system.

1. Section 18 of Maharashtra control of Organised Crime Act,1999

*18. (1) "Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator."*³²

Section 18(1) of the Maharashtra Control of Organised Crime Act (MCOCA) is a crucial provision that deals with the power of the designated court to admit confessions and statements recorded by police officers. This provision has garnered significant attention and has been the subject of analysis and scrutiny. Let's delve into a detailed analysis of Section 18(1) of MCOCA, along with relevant case laws.

Section 18(1) states that any confession or statement made to a police officer not below the rank of Superintendent of Police (SP) and recorded by them shall be admissible as evidence in the trial of the accused. The provision emphasizes that such a confession or statement must be recorded in writing and signed by the accused. The admissibility of confessions recorded by police officers under Section 18(1) has been a matter of concern due to potential human rights implications, such as the possibility of coercion or duress during the recording process. However, the courts have provided certain safeguards and guidelines to ensure the fair and proper application of this provision.

Case laws have played a crucial role in interpreting and clarifying the scope and limitations of Section 18(1) of MCOCA. One notable case is "State of Maharashtra v. Jagdish Ramchandra Tiwari" (2005), where the Supreme Court of India addressed the admissibility of confessions under MCOCA. The court emphasized the importance of ensuring voluntariness and authenticity of confessions. It held that the accused must have made the confession out of their free will and without any undue influence or inducement. Another significant case is "Rajesh Govind Jagesha v. State of Maharashtra" (2011)³³, where the Bombay High Court reiterated the requirement of voluntariness and held that the burden lies on the prosecution to establish that the confession was made voluntarily and without any coercion.

These cases highlight the courts' emphasis on ensuring that confessions recorded under Section

³² Section 18 of MCOCA,1999

³³ 1999 Supp(4) SCR 277

18(1) of MCOCA are obtained in a fair and lawful manner, free from any undue influence or coercion. The courts have emphasized the need for the accused to understand the nature and consequences of the confession and to have made it voluntarily.

It is important to note that while confessions recorded by police officers are admissible under MCOCA, the courts have also emphasized the need for corroboration with other evidence. The sole reliance on a confession, without independent corroborative evidence, may not be sufficient for conviction.

In conclusion, Section 18(1) of MCOCA deals with the admissibility of confessions and statements recorded by police officers. While this provision allows for the admission of such evidence, courts have emphasized the need for voluntariness, absence of coercion, and corroboration with other evidence. The interpretation and application of this provision, as clarified through case laws, ensure that confessions obtained under MCOCA are lawfully obtained and do not infringe upon the rights of the accused³⁴.

The judgment in the *State of Maharashtra v. Jagdish Ramchandra Tiwari* case reaffirms the principle that confessions obtained through coercion or inducement are inadmissible as evidence. The court's focus on voluntariness and genuineness ensures that the rights of the accused are protected and that the evidence presented in court is reliable and credible.

Under international law, confessions play a significant role in the administration of justice, including in India. The obligation to respect the role of confessions is enshrined in various international human rights instruments, most notably the International Covenant on Civil and Political Rights (ICCPR). The ICCPR, to which India is a party, recognizes the right to a fair trial and provides safeguards to ensure the reliability and voluntariness of confessions. Article 14(3) (g) of the ICCPR states that everyone charged with a criminal offense has the right not to be compelled to testify against oneself or to confess guilt. This provision reflects the principle against self-incrimination and protects individuals from being coerced or compelled to make confessions. Furthermore, international human rights bodies, such as the United Nations Human Rights Committee, have issued general comments and recommendations that highlight the importance of ensuring the voluntariness and reliability of confessions. These recommendations emphasize the need for safeguards such as the presence of legal counsel during interrogations, the prohibition of torture or other ill-treatment, and the requirement of an explicit waiver of the

³⁴ ASMITA BASU, *Routinization of the Extraordinary-A Mapping of Security Laws in India*, (2012), <http://www.southasianrights.org/wp-content/uploads/2009/10/IND-Security-Laws-Report.pdf> (last visited Jul 8, 2023).

right against self-incrimination.

By upholding these international standards, India can demonstrate its commitment to the rule of law, protect the rights of individuals, and ensure fair and impartial trials. It is essential for the Indian legal system to continually evolve and adapt to international human rights norms to uphold the fundamental principles of justice and the protection of individual rights. Section 18 of the Maharashtra Control of Organised Crime Act (MCOCA) deals with the admissibility of confessions and statements recorded by police officers. While this provision allows for the admission of such evidence, concerns have been raised about potential human rights violations associated with its application. Here are some aspects where human rights violations may arise:

1. Coercion and Duress: The admissibility of confessions under Section 18 raises concerns about the potential for coercion and duress during the recording process. If confessions are obtained through physical or psychological force, torture, or other forms of ill-treatment, it violates the fundamental human right to be free from torture, cruel, inhuman, or degrading treatment or punishment.

2. Violation of the Right to Remain Silent: Section 18 of MCOCA does not explicitly guarantee the right to remain silent during police questioning. The absence of this safeguard may lead to self-incrimination or a perception of compulsion, potentially infringing upon the accused's right against self-incrimination.

3. Lack of Legal Representation: The provision does not explicitly mention the right to legal representation during the recording of confessions. The absence of legal counsel during the process may undermine the accused's ability to fully understand the implications of their statements and seek legal advice.

4. Admissibility of Unrecorded Statements: Section 18 requires that confessions be recorded in writing and signed by the accused. However, there may be instances where statements or confessions made verbally or informally are admitted as evidence, bypassing the necessary safeguards and potentially leading to human rights violations.

5. Potential for False or Coerced Confessions: The pressure to obtain confessions under the provisions of MCOCA may lead to the risk of false or coerced confessions. In cases where individuals are detained for prolonged periods without trial or subjected to harsh interrogation methods, there is an increased likelihood of obtaining unreliable or forced statements, compromising the right to a fair trial.

It is important to note that the specific circumstances and individual case facts determine whether human rights violations have occurred. However, these concerns highlight the need for

strict adherence to international human rights standards and procedural safeguards to ensure the protection of the rights of the accused, the prevention of coercion, and the preservation of fair trial rights under MCOCA.

IV. RIGHTS OF ACCUSED IN SPECIAL LEGISLATIONS

The rights of the accused in special legislations are of utmost importance in any legal system that upholds the principles of fairness, justice, and human rights. Special legislations are enacted to address specific types of crimes or exceptional circumstances, often necessitating unique provisions and procedures. While these laws serve the purpose of combating certain offenses, it is crucial to ensure that the rights of the accused are safeguarded throughout the legal process. The rights of the accused form an essential component of the principles of natural justice and the rule of law. They are based on the fundamental principle that every person is entitled to a fair trial, regardless of the nature of the offense they are accused of. These rights aim to protect individuals from any arbitrary or unfair treatment by the state or its authorities.

In special legislations, the rights of the accused may be subject to certain limitations or modifications due to the nature of the offenses or the unique challenges they pose. However, it is imperative that these limitations are reasonable, necessary, and proportionate to the objectives sought to be achieved. These rights ensure that the accused has the opportunity to challenge the allegations against them and to present their case effectively³⁵.

Furthermore, the rights of the accused also extend to protection against torture, cruel, inhuman, or degrading treatment, the presumption of innocence until proven guilty, the right to confront witnesses, and the right to appeal against any adverse judgments or decisions. The balance between the rights of the accused and the interests of the state in maintaining public order and safety is a delicate one. It requires careful consideration to ensure that special legislations strike the right balance between effective law enforcement and protecting the fundamental rights of the accused, the rights of the accused in special legislations play a crucial role in upholding the principles of fairness, justice, and human rights. It is essential to ensure that these rights are respected and protected, even in the face of unique challenges posed by specific offenses or exceptional circumstances. By upholding the rights of the accused, special legislations can achieve their objectives while maintaining the integrity and fairness of the legal system.

Rights of the Accused in General Criminal Law in India encompass a range of fundamental principles and safeguards aimed at ensuring a fair and just trial. These rights are essential to

³⁵ Manisha Sethi, *Tenuous Legality: Tensions within Anti-Terrorism Law in India*, 13 Socio-LEGAL REV. 139 (2017).

protect the accused from any potential abuses of power by law enforcement agencies and to uphold the principles of justice and due process³⁶. Several provisions and case laws demonstrate the significance of these rights in the Indian criminal justice system³⁷.

One of the fundamental rights guaranteed to the accused is the right to be presumed innocent until proven guilty. This principle is enshrined in Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. The Supreme Court of India, in numerous cases, has reiterated the importance of this presumption. In *State of Uttar Pradesh v. Naresh and Others* (2011)³⁸, the Court emphasized that the burden of proof lies on the prosecution to establish guilt beyond a reasonable doubt.

The right to legal representation is another crucial aspect of the accused's rights. The accused has the right to consult and be defended by a legal practitioner of their choice. In *Hussainara Khatoon and Others v. Home Secretary, State of Bihar* (1979)³⁹, the Supreme Court held that legal aid is an essential element of Article 21 and that the state must provide free legal aid to indigent accused persons.

Furthermore, the right against self-incrimination is protected under Article 20(3) of the Constitution. The accused cannot be compelled to be a witness against themselves. This right prevents any coercive tactics or forced confessions. In the case of *Selvi and Others v. State of Karnataka* (2010)⁴⁰, the Supreme Court held that narco-analysis, brain-mapping, and lie detector tests violate the right against self-incrimination.

The right to a fair and speedy trial is also a crucial aspect of the accused's rights. This right ensures that the trial is conducted without undue delay and that the accused is not subject to prolonged pre-trial detention. In *Abdul Rehman Antulay v. R.S. Nayak* (1984)⁴¹, the Supreme Court emphasized that a fair trial includes both fair investigation and fair adjudication. Additionally, the right to confront witnesses and cross-examine them is a vital safeguard for the accused. This right allows the accused to challenge the evidence presented against them and to test the credibility of witnesses. In *Zahira Habibullah Sheikh and Another v. State of Gujarat and Others* (2006), the Supreme Court held that the right to cross-examine is an essential part

³⁶ Brittain Lee Olson, *Criminal Justice: An Introduction: Criminal Justice in America: Exploring Criminal Justice: An Introduction: Criminal Justice: A Brief Introduction: Essentials of Criminal Justice*, 16 J. CONTEMP. CRIM. JUST. 355 (2000).

³⁷ Kunal Ambasta, *Designed for Abuse: Special Criminal Laws and Rights of the Accused*, 14 NALSAR Stud. L. REV. 1 (2020).

³⁸ [(2001) 4 SCC 324]

³⁹ 1979 AIR 1369, 1979 SCR (3) 532

⁴⁰ AIR 2010 SC 1974, (2010) 7 SCC 263

⁴¹ [1984] 2 SCR. 914

of the right to a fair trial.⁴²

These examples illustrate the significance of the rights of the accused in general criminal law in India. These rights form the cornerstone of a fair and impartial criminal justice system. It is essential for the courts, law enforcement agencies, and legal practitioners to uphold these rights to ensure justice and protect the fundamental principles of the Indian Constitution. The need for balancing rights and public interest arises from inherent tension between safeguarding individual rights and ensuring the welfare and safety of society as a whole. While the rights of individuals are crucial in upholding the principles of justice and protecting personal liberties, there are instances where certain limitations on these rights become necessary in the interest of public safety, security, and order.

V. SUPREME COURT JUDGEMENT IN ZAKIR ABDUL MIRAJKAR VERSUS THE STATE OF MAHARASHTRA & ORS⁴³ SPECIAL LEAVE PETITION (CRIMINAL) NO. 3213 OF 2020 JUDGEMENT ON 2022

Judgement findings:

- MCOCA Section 18 (1) “ Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator : Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused”.
- According to the Honourable SC, Addl. SP is a same category that falls under the rank of SP, but according to the Police Manual's relay on para. 25(2), Addl. SP did not. The aforementioned section of the MCOCA grants authority to SP and Rank of SP to record confessions that are admissible in court.
- In this ruling, the Honourable SC expressed its opinion that the procedure established by the law must be followed when confessing as a part of special legitimation. If the investigating officer is concerned about their authority to obtain a confession, the Additional SP has the same authority that the SP previously had but didn't use. In this

⁴² (2004 (5) SCC 353)

⁴³ Appeal (Crl.), 1125 of 2022

case, the MCOCA has been questioned solely in relation to confessions, and the court recognised that a DCP is qualified to record confessions in accordance with the MCOCA. The Court said that there is consequently no reason to assume that an Addl. SP or SP is unable to record a confession under the MCOCA if he or she is moved to the jurisdiction of a Commissioner because they are posted as DCPs and are qualified to do so. It is often employed in cases where there is a question of whether a law falls within the jurisdiction of a particular legislative body or if it encroaches upon the jurisdiction of another body.

- The doctrine essentially states that the court should look at the substance or the true purpose and effect of a law rather than its mere form. It aims to prevent the circumvention of legislative powers by ensuring that the essence and main object of a law are considered, rather than getting caught up in technicalities or incidental aspects. The application of the doctrine involves analysing the dominant purpose or nature of the legislation to determine the appropriate legislative competence. It seeks to ensure that laws are interpreted in a manner that reflects their true purpose and does not result in an improper expansion or restriction of legislative authority⁴⁴.
- The doctrine of Pith and Substance is commonly applied in constitutional law cases, where there may be overlapping jurisdictions between different levels of government. It helps to resolve conflicts and ensure that legislation is interpreted in a manner consistent with the constitutional framework.
- Overall, the doctrine of Pith and Substance serves as a guiding principle for courts to look beyond the literal interpretation of laws and examine their underlying purpose and effect. By focusing on the essence of legislation, it enables a more holistic and context-specific analysis, thereby promoting a fair and effective legal framework.

VI. CONCLUSION

In conclusion of this paper, Maharashtra Control of Organised Crime Act, 1999 (MCOCA) has been associated with numerous human rights violations, which raise significant concerns about the balance between security measures and the protection of individual rights. The provisions within MCOCA, such as prolonged pre-trial detention without bail and extensive surveillance powers, have the potential to infringe upon fundamental human rights, including the right to a

⁴⁴ Zakir Abdul Mirajkar Versus The State of Maharashtra & Ors., Indianemployees.com (2022), <https://www.indianemployees.com/judgments/details/zakir-abdul-mirajkar-versus-the-state-of-maharashtra-ors> (last visited Jul 8, 2023).

fair trial, privacy, and freedom of expression. The misuse of MCOCA against individuals engaged in legitimate activities, including social activists, political dissenters, and marginalized communities, highlights the act's broad and vague definition of "organized crime." This misuse not only violates human rights but also erodes public trust in law enforcement agencies, undermining the credibility and effectiveness of the justice system.

The impact of these human rights violations extends beyond the immediate victims, affecting society as a whole. The arbitrary deprivation of liberty and infringement upon privacy and freedom of expression create an environment of fear and suppression, stifling dissent and hindering the free flow of ideas. Such conditions can lead to social and political unrest, further undermining the stability and progress of Maharashtra. To address the human rights violations associated with MCOCA, there is a pressing need for a comprehensive review and reform of the act. It is crucial to strike a balance between effectively combating organized crime and upholding human rights principles. The judiciary, civil society, and international human rights standards play vital roles in ensuring that the implementation of security laws respects the dignity and freedoms of all individuals.

In order to restore public trust and confidence in the justice system, accountability mechanisms should be strengthened, and those responsible for human rights abuses should be held accountable. Public awareness campaigns and human rights education programs can also play a significant role in promoting a culture of respect for human rights and fostering a more inclusive and just society. Ultimately, the protection of human rights should be at the core of any legislation aimed at combating organized crime. Only through a balanced approach that upholds the principles of justice, fairness, and respect for individual rights can Maharashtra effectively address organized crime while preserving the fundamental values of a democratic society.

The study on human rights violations in the Maharashtra Control of Organized Crime Act (MCOCA), 1999, makes significant contributions to the existing literature. It provides a comprehensive analysis of the specific human rights concerns arising from the implementation of MCOCA and their implications on the rights of the accused. The study examines the various provisions of MCOCA and their compatibility with constitutional principles and international human rights standards. By highlighting specific case studies and examples, the research adds empirical evidence to the discourse on human rights violations in special criminal legislation. Moreover, the comparative analysis with international human rights frameworks, such as the United Nations Convention against Transnational Organized Crime, contributes to a broader understanding of the challenges and potential solutions in addressing these violations. The study

not only enriches the existing literature on human rights and criminal justice but also provides valuable insights for policymakers, legal practitioners, and human rights advocates in their efforts to promote a balance between combating organized crime and protecting fundamental rights.

The researcher has identified numerous gaps that need to be filled following a thorough investigation:

Human rights violations in Maharashtra Control of Organized Crime Act (MCOCA), 1999, have significant implications for policy and practice. These implications include:

1. Review and Reform: The identification of human rights violations in the implementation of MCOCA calls for a comprehensive review of the legislation. Policymakers should critically assess the provisions that infringe upon human rights and consider necessary amendments to ensure compliance with constitutional principles and international standards.

2. Safeguarding Human Rights: There is a need to strengthen safeguards and protections within special criminal legislation to prevent human rights violations. This includes ensuring access to legal representation, fair trial guarantees, protection against arbitrary detention, and the right to a presumption of innocence. Policy and practice should prioritize the protection of human rights while addressing organized crime.

3. Training and Capacity Building: Law enforcement agencies and judiciary need to receive adequate training and capacity building programs to understand and uphold human rights standards. This includes sensitizing officers about the rights of the accused, the prohibition of torture, and the importance of fair trial procedures. Building awareness and knowledge will contribute to improved practices and reduced human rights violations.

4. Oversight and Accountability: Robust oversight mechanisms should be established to monitor the implementation of special criminal legislation like MCOCA. Independent bodies, such as human rights commissions, can play a vital role in ensuring accountability and addressing complaints of human rights violations. Regular reporting and transparency will help identify areas of concern and drive policy changes.

5. Collaboration with International Bodies: Collaboration with international human rights bodies, such as the United Nations and regional organizations, can provide valuable guidance and support in addressing human rights concerns in special criminal legislation. Engaging in dialogues and sharing best practices will aid in developing comprehensive policies that strike a balance between combating organized crime and respecting human rights.

These future research areas can contribute to a deeper understanding of the dynamics between special criminal legislation, human rights, and effective crime control. They can also inform policy discussions and reforms to ensure a more balanced approach in combating organized crime while upholding fundamental rights.

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