

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 4 | Issue 2 [2026] | Page 116 - 125

© 2026 International Journal of Legal Studies and Social Sciences

Follow this and additional works at: <https://www.ijlsss.com/>

In case of any queries or suggestions, kindly contact editor@ijlsss.com

SPECIAL INVESTIGATIVE POWERS UNDER THE MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999

-Phalak Lamba¹

I. INTRODUCTION

Organized crime in India has evolved to no longer be limited to local criminal syndicates, but transnational networks that, having assimilated into legal, economic and political activities by default, interweave with them. Maharashtra Control of Organized Crime Act, 1999 (MCOCA) was introduced to deal with the menace of an organized crime that was not within the confines of the criminal law in place (primarily the Indian Penal Code, 1860 (IPC) and Code of Criminal Procedure, 1973 (CrPC)). It is not only the severe substantive content of the MCOCA as that of other penal laws, but rather the unusual scheme of investigation that is distinctive of it: special authority to special agents that undermines the customary principles of the interaction between the coercive authority of the State and human rights.

This blog examines the special investigative powers of MCOCA, their bases of law, constitutional aspects, conflict with the new criminal statutes, the approach of the judges and their applicability in this new dynamic world of organized crime.

II. CONSTITUTIONAL DIMENSIONS

MCOCA has been given special powers of investigation, which have been problematic concerning various constitutional rights under the Constitution of India, 1950. The provisions involved in Article

¹ Final Year, B.A. LL.B. (9th Semester), Lovely Professional University

21² (right to life and personal liberty), Article 22³ (protection against arbitrary arrest and detention) and Article 20(3)⁴ (protection against self-incrimination).

Interception powers of MCOCA expressly address the right to privacy, which currently is regarded as a part of Article 21 by a nine-judge bench ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁵. Meanwhile, the Supreme Court in that case determined that privacy is a fundamental right that is guarded against only reasonable limitations that are not illegal, unnecessary or disproportionate. The stratified approval hierarchy (even at top management) and time limitations of MCOCA are a struggle in attaining proportionality, but its adequacy can be debatable.

Article 20(3)⁶ It is a right against self-incrimination which is put to the test against the admissibility of confessions being made to the police officers under Section 18⁷. In *Bharat Shantilal Shah v. State of Maharashtra*⁸, the Supreme Court found the confession provisions of this essentially constitutional, pointing to the safeguards of a preliminary statement being recorded, the right to a lawyer, and the certificate of the magistrate. It found that such precautions were sufficient to guard against self-incrimination.

III. ORGANIZED CRIME AT MCOCA

In Section 2(1)(e)⁹ MCOCA defines organized crime as any current illegal action by a person acting either singly or in concert with a criminal syndicate which has an organized character by the application of violence or a threat of violence or intimidation or coercion or a combination of both, or by other illegal means, with the purpose of receiving pecuniary improvements, or of attaining unjustified economic benefit or other method, to himself The broad definition includes actions as varied as extortion, contract killing, money laundering and even acquiring criminal lands.

The targeted audience of the Act is the organized crime syndicate, a persistent, structured outfit that is involved in criminal activities. This definition of structured crime is important: it is not the criminal activity of an individual, but the syndicated criminal activity, upon which MCOCA is focused.

² The Constitution of India, art. 21

³ The Constitution of India, art. 22

⁴ The Constitution of India, art. 20(3)

⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) 10 SCC 1.

⁶ *Supra*, 3

⁷ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 18.

⁸ *Bharat Shantilal Shah v. State of Maharashtra* (2008) 13 SCC 5

⁹ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 2(1)(e).

Accordingly, the investigative authority offered by the Act denotes the type of the so-called syndicated criminal business.

IV. SPECIAL POWERS OF INVESTIGATION UNDER MCOCA

MCOCA special investigative powers (SIPs) are the working heart of the law. These authorities represent a legislative break of the traditional criminal process to address the institutional and structural aspects of organized crime. All these powers present a system of investigation, surrounded by surveillance to trial, indicative of the unique threat of criminal syndicates.

A. Interception of Communications - Section 14¹⁰ gives power to a superior police officer to intercept a wire, electronic or oral communication by having a reason to believe that an offence under MCOCA has or is likely to occur. It must be approved by the State Home Secretary, unless there is an urgent need, and approval must be granted within 72 hours. Authorizations are valid for 60 days, and may be renewed up to 180 days.

One outstanding feature of this power is the admissibility of intercepted material in Special Courts, a characteristic not present in the general law, which puts the evidentiary status of intercepted material in a state of indecision. However, there is no independent judicial review due to the lack of it. MCOCA only requires executive authority, unlike in the US and UK, where judicial warrants are required. This could impinge on the validity and proportionality of the law, as interpreted by the Supreme Court in *Puttaswamy*¹¹, in light of privacy jurisprudence.

B. Extended Police Custody - Section 16¹² allows a thirty-day police custody, whereas the length of the police custody previously was 15 days maximum. This is to address the complexity of organized crime, which consists of sophisticated structures and money flows, and pan-India networks. This section enables the police to trace financial transactions, uncover organizational nets and interrogate suspected persons with their evidence continually.

Special Court provides custody, which may be renewed in phases. However, there is ambiguity when a maximum protection of 40 days under BNSS is provided. This needs to be clarified, although MCOCA, as a special law, should take priority.

¹⁰ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 14.

¹¹ *Supra*, 4

¹² Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 16.

C. Limited Bail - Section 21(4)¹³ provides strict criteria for bail, and the court has to take the burden that the accused is not guilty, and will never commit the same crime again. This reverses the presumption of innocence and puts the burden on the accused.

The Supreme Court agreed with these conditions in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*¹⁴, but emphasized that judicial discretion is important. The court must give regard to the facts; bail cannot be denied simply because it is denied. This structure is constitutional but grossly disabling to pre-trial liberty.

D.- Police Confessions Admissible - Section 18¹⁵ permits the admissibility of confidences to senior police officers, even though there exists an exclusionary rule prohibiting confidences to police. This is a very disputable area in light of the possibility of wrongful arrest.

It also has protective measures against abuse: the person is told about their right to an attorney, about a statement of voluntariness, about a 48-hour cooling-off period, and that it is signed by a Magistrate. Questions are raised about the effectiveness of the safeguards, a validity that was struck down in *Bharat Shantilal Shah v. State of Maharashtra* by the Supreme Court. Interestingly, other laws, such as BNS, have omitted this provision since they are prudent.

E. Seizure and Forfeiture of Property- Under Section 20¹⁶It is possible to attach property that has been obtained through organized crime even before conviction. The State may use this property by being forfeited on conviction. This aspect deals with the financial component of criminal cartels, through averting the drainage of money.

It supports the PMLA, creating a two-pronged approach to financial disruption. However, this may lead to a problem of jurisdiction that would demand inter-agency co-operation.

F. Witness Protection and In-Camera Proceedings- Recognizing the security concerns of the witnesses in a case that relates to organized crime, Section 19¹⁷ permits Special Courts to conduct the trial in-camera and conceal the identity of the witness, and provide protection. Witness testimonies can also be provided electronically.

These preventive actions violate the open court principle, though they are justified by the fact of the actual danger of intimidation and coercion by criminal gangs. Witness protection is imperative in prosecution.

¹³ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 21(4)

¹⁴ *Infra*, 29

¹⁵ *Supra*, 6

¹⁶ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 20.

¹⁷ Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No 30 of 1999), s 19.

G. Special Court- it is the institutional center of the entire system under MCOCA. It presides over remand and sets bail, hears confessions, orders the seizure of property and gives witness protection. The Special Court, which is led by a judge of the High Court, provides a centralized judicial control. This is what makes MCOCA much more favorable than the prior legislation, like TADA and POTA and gives a degree of protection against abuse.

V. ENGAGEMENT OF NEW CRIMINAL LAWS WITH MCOCA.

A significant reformation of Indian criminal law is represented by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) laws, which also impact special investigative authorities of MCOCA, and come into force on 1 July 2024.

The BNS is a modification to the IPC, which added Section 111¹⁸ which criminalizes organized crime in all of India. It defines it the same way as MCOCA but has no geographical limitations and gives more severe penalties (such as a death sentence or life imprisonment, should the person die). There is also an expansion of provisions regarding terrorism¹⁹ (Section 113) and conspiracy²⁰ (Sections 61-62). Where there is overlap, *maxim generalia specialibus non derogant* suggests that MCOCA, as a special law, will prevail, but prosecutors can decide to exercise discretion, yielding to concomitants.

The BNSS (in place of the CrPC) has substantial procedural wording. Section 187²¹ is also permitting extended police custody (not more than 40 days), comparable to serious offences, in contrast to 30 days provided by MCOCA²² (Section 16), which creates interpretive challenges. MCOCA, as a special law, must apply, but this has to be interpreted judiciously. Another process that BNSS brings is an initial enquiry procedure²³ (Section 173), which might influence the initiation of MCOCA proceedings, and the need to record search and seizure on video²⁴ (Section 176), which enhances transparency. Its electronic evidence provision also supplements the evidentiary provisions of intercepted communications in MCOCA.

The BSA overturns the Evidence Act and upholds the general rule of police confessions²⁵ (Section 23) of which Section 18 of MCOA is an exception. It also modernizes electronic evidence law: Section

¹⁸ The Bhartiya Nyaya Sanhita, 2023, (Act no. 45 of 2023), s.111.

¹⁹ The Bhartiya Nyaya Sanhita, 2023, (Act no. 45 of 2023), s.113

²⁰ The Bhartiya Nyaya Sanhita, 2023, (Act no. 45 of 2023), ss. 61,62.

²¹ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No 46 of 2023), s 187.

²² *Supra*, 11

²³ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No 46 of 2023), s 173.

²⁴ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No 46 of 2023), s 176.

²⁵ Bharatiya Sakshya Adhiniyam, 2023 (Act No 47 of 2023), s 23

57²⁶, and 61-73²⁷ evidence of certification is lessened, and section 61-73 makes explicit recognition of the presence of electronic records as documentary evidence to improve the quality of evidence of surveillance and interception evidence.

Among the highly important questions that are not clear is the interaction of the rules on BNSS custody with the limits of MCOCA, which need to be clarified by the court.

VI. JUDICIAL PRONOUNCEMENTS

The courts have also been of significance in helping to shape the boundaries of MCOCA investigative powers. Even in the context of telephone tapping in the Telegraph Act 1974, in the case of *People's Union for Civil Liberties v. Union of India*²⁸, the Supreme Court developed guidelines of procedural rigor and due process, and these four standards have been used to interpret wiretapping laws of MCOCA. This established the principles of necessity, proportionality and procedural rigor.

In a case involving MCOCA, where the Supreme Court dealt with the application of the Act to interstate activities, *State of Maharashtra v. Bharat Chaganlal Raghani*²⁹, the Supreme Court upheld the applicability of the Act in the event that the syndicate was formed outside Maharashtra.

In one of the recent decisions, in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*³⁰, the Supreme Court has looked at the issue of the merits of bail under MCOCA and deemed that though the Act increases the standard of bail, it does not entirely violate the constitutional right to liberty. The Court warned the Special Court to exercise its discretion as to the two conditions and could not follow a rote procedure to deny bail.

The judiciary tends to uphold that the Maharashtra Control of Organized Crime Act (MCOCA) is *lex specialis*, and the Delhi High Court³¹ consistently upheld the admissibility of intercepted communications in high terror cases under strict requirements of measure of procedure authorization as prescribed by law. The denial of access to electronic communication to MCOCA-accused prisoners by the Delhi High Court has been clarified by recent observations that this need not be arbitrary, provided that the safety and security measures are adhered to.

²⁶ Bharatiya Sakshya Adhiniyam, 2023 (Act No 47 of 2023), s 57

²⁷ Bharatiya Sakshya Adhiniyam, 2023 (Act No 47 of 2023), ss 61-75

²⁸ *People's Union for Civil Liberties v. Union of India* (1997) 1 SCC 301

²⁹ *State of Maharashtra v. Bharat Chaganlal Raghani* (2001) 9 SCC 1

³⁰ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294

³¹ *Taped phone calls admissible as evidence: SC.* (2008, September 1). India Today. <https://www.indiatoday.in/latest-headlines/story/taped-phone-calls-admissible-as-evidence-sc-29203-2008-09-01>

The Bombay High Court³² In a move towards Bharatiya Nagarik Suraksha Sanhita (BNSS) has been highlighted that special provisions of MCOCA do not mean that investigative agencies should not comply with the mandatory transparency provisions that are introduced by the new acts, including stringent documentation and adherence to procedures. In particular, the Bombay High Court has warned about the use of these statutory requirements in disregard of typical practices in investigations, where non-compliance with the current procedural assurances, like the timeline of remand and trial under BNSS, may result in the award of default bail or the forfeiture of prosecution cases.

VII. CRITICAL ANALYSIS

Efforts to combat organized crime based on the extraordinary powers of investigation constitute a trade-off between civil liberties and the requirements of effective law enforcement under MCOCA, as complicated by the new criminal law regime.

First, the admissible nature of any confession that was made to the members of the police force under Section 18³³ of the MCOCA is quite controversial and constitutionally questionable. The history of custodial torture in India and the unreliability of these allegations pose a challenge that can never be fully dealt with by procedural means. The history of TADA and POTA demonstrates that these provisions, in many cases, have been misused, and the forced confessions provided the chief grounds to prosecute. Notably, this is not included in Section 111³⁴ offences against organised crime in the Bharatiya Nyaya Sanhita (BNS), which would indicate a legislative change towards the expansion of this exception and the issue it presents.

Two, the increased detention term and high bail offerings by MCOA offer a way of punishing offenders through an extension of pre-trial detention. This is especially applicable to those involved in organized crime and conspiracies, which could still be prosecuted years later. This matter is compounded by the BNSS that allows up to 40 days of custody in case of serious offences - ironically, more than 30 days in MCOCA restrictions that resulted in an incoherence. On the other hand, video surveillance of police under investigation is mandated by the BNSS, and perhaps it means that a critical

³² Editor. (2025, August 27). 'Flagrant violation of Section 21(2)(B) of MCOCA'; Bombay HC grants bail to accused after extension to file charge-sheet granted five times in 'routine manner'. *SCC Times*.
<https://www.scconline.com/blog/post/2025/08/27/bom-hc-grants-bail-as-charge-sheet-extension-was-in-routine-manner/>

³³ *Supra*, 6

³⁴ *Supra*, 17

safeguard, when implemented on MCOCA investigations, would diminish the risk of a coercion problem.

Third, unlike their earlier counterparts, the interception provisions of the MCOCA still do not provide a prior judicial supervision of authorization. Its ongoing reliance on executive approval (typically of the Home Secretary) is its weakness. Although the Bharatiya Sakshya Adhiniyam (BSA) makes electronic evidence more relevant, it does not deal with the fact that there is no judicial pre-interception control mechanism. Jurisdictions such as the United States (Title III of the Omnibus Crime Control and Safe Streets Act, 1968) and the United Kingdom (Investigatory Powers Act, 2016) demand judicial sanction over interception warrants, which offer another line of defense against abuses of surveillance authority.

Fourth, the term "organized crime" used by MCOCA is practically useful, but it has the potential to be over-generalized. The generic nature of continuing unlawful activity and that it incorporates other elements, such as promotion of insurgency, may, when taken out of context, capture lawful political or labor activities. This may be abusive, and it has to be interpreted judiciously so as to avoid its excesses.

VIII. RELEVANCE IN THE MODERN SIGNIFICANCE

Nowadays, the situation in organized crime has shifted significantly, and strong investigative capabilities and their misuse are required. Involvement of the cyber-crime syndicates, hawala banking, and amalgamation of crime, politics and lawful business poses a new challenge to investigations.

Indian soil has become home to encrypted messages, cryptocurrency and globalized crime. MCOCA was written to suit the 1990s gang culture, and despite its interception regime in Section 14³⁵, it is challenged by technology that it is not fully able to cope with encryption.

In addition, the interplay of laws and regulations, i.e. MCOCA, NIA Act, UAPA, PMLA and BNS, has established overlaps of jurisdictions. Some further clarity on the matters of federalism and coordination is needed in the drafting of BNS Section 111³⁶ as a new national organized crime offence. Conversely, the MCOCA courts in Maharashtra have a good institutional structure. However, the timelines of the BNSS investigation concerning fast-tracking an investigation must be followed, as the investigation can be challenging in organized crime. Efficiency and effectiveness must be under control.

³⁵ *Supra*, 9

³⁶ *Supra*, 17

IX. FUTURE TRAJECTORY

The future of the special investigation authority of MCOCA is in the field of evolution of technology, constitutional jurisprudence and the new architectural framework of laws under the new criminal laws. As the privacy jurisprudence of the Supreme Court continues to adapt in the post-Puttaswamy³⁷ age, and as the courts continue to work with the interplay between MCOCA and the new criminal codes, the necessity of pursuing legislative readjustment will be more pronounced.

The framework of interception is a major area to be reformed. MCOCA should be supplemented by an independent judicial authorization at the interception point, which would either substitute the existing system of executive approval with another procedure or complement it with constitutional provisions of proportionality and the protection of procedural rigor and international standards. It is also crucial to minimize the use of confessional evidence. More funding in forensic, financial, and technological investigation resources would enhance evidentiary soundness and decrease the necessity of contested measures like the admissibility of police confessions that have raised constitutional eyebrows.

There is also a need to have legislative clarity in terms of procedural overlaps. The uncertainty concerning the provisions of remand by MCOCA and the prolonged custody regime under the BNSS should be sorted out to provide uniformity and avoid ambiguity in interpretations. Likewise, the BSA should be modernized to accommodate the advent of electronic evidence law to explicitly tackle issues presented by encrypted communications, cryptocurrency transactions, and dark-web operations in the context of the MCOCA.

Moreover, the presence of several laws such as MCOCA, BNS Section 111³⁸, UAPA, PMLA and the NIA Act imposes on the designing of a consistent, integrated system to deal with overlapping jurisdiction, especially where organized crime crosses over to terrorism and money-related offences. Future reforms should be informed by India adhering to the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the Financial Action Task Force (FATF) standards at the international level. It will be necessary to enhance asset tracing, forfeiture, and cross-border cooperation mechanisms to complement MCOCA in an increasingly globalized criminal environment.

³⁷ *Supra*, 4

³⁸ *Supra*, 17

X. CONCLUSION

The special investigative powers of MCOCA, which were implemented in the year 1999, now perform in a new legal environment with the changes in the law brought about by the BNS, BNSS, and BSA (2024). Although these laws do not substitute MCOCA, they introduce new points of conflict and dilemma in the process of controlling organized crime. The MCOCA approach-interception, extended remand, restrictive bail and confessions by the police- has made prosecution a reality but has brought forth serious questions about personal liberty, fair trial, and privacy. Unless there are powerful checks and balances, these powers can be abused. The major issue is to maintain the effectiveness of MCOCA and, at the same time, guarantee the constitutional accountability with more judicial control and interconnection with the modern procedural and evidential standards. The way forward in the context of changing organized crime through the rule of law is a balance approach that is rights-respecting.