

# State Legislative Brief

## RAJASTHAN

### The Rajasthan Control of Organised Crime Bill, 2023

#### Key Features

- The Bill penalises organised crime. Organised crime is a cognisable offence punishable with a minimum imprisonment of three years and carried out by a criminal organisation.
- The Bill removes certain safeguards to the accused related to bail, confessions to a police officer and conditions for intercepting communications.
- The Bill is identical to the Maharashtra Control of Organised Crime Act, 1999 (MCOCA).

#### Key Issues and Analysis

- While removal of safeguards to the accused has been upheld by the Courts, they have cautioned against the wrongful application of these provisions.
- The Bill contains a provision related to denial of bail. An identical provision in MCOCA was struck down by the Supreme Court.
- The Review Committee that authorises interceptions includes a secretary from the Home Department. The Supreme Court has ruled against such composition as the Committee reviews the decision of the Home Department.

## PART A: HIGHLIGHTS OF THE BILL

### Context

Organised crime is a continuing unlawful activity carried out by a criminal organisation through the use of violence or other illegal means.<sup>1</sup> The aim may be to gain financial advantage or promote insurgency. The Indian Penal Code, 1860 (IPC) penalises criminal offences committed jointly by several individuals. Section 37 of the IPC penalises a person who intentionally helps in the commission of an offence, either alone or with another person committing that offence.<sup>2</sup> Further, under the IPC, multiple individuals involved in a criminal act may be guilty of different offences as a result of their involvement.<sup>3</sup>

In 1999, Maharashtra enacted the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) to combat organised crime in the state.<sup>4</sup> In January 2002, the central government extended the application of the Act to Delhi.<sup>5</sup> States such as Gujarat and Karnataka also have similar Acts that penalise organised crime in their states.<sup>6,7</sup> Haryana recently passed the Haryana Control of Organised Crime Bill, 2023.<sup>8</sup> These laws have been challenged on the grounds of: (i) conditions to grant bail, (ii) admissibility of confessions under police custody, and (iii) the legality of intercepting communication.<sup>9,10,1</sup> Courts have upheld provisions relating to bail conditions, confessions, and interception, with one exception. In 2008, the Supreme Court struck down a provision from MCOCA relating to the denial of bail.<sup>1,9,10</sup>

The Rajasthan Control of Organised Crime Bill, 2023 was introduced in the Assembly on March 15, 2023. The Bill is identical to MCOCA.

### Key Features

- **Organised crime** is defined as a continuing unlawful activity carried out by an individual (as a member or on behalf of a criminal organisation) through the use of: (i) violence, (ii) threat, (iii) intimidation, or (iv) other illegal means. The aim of such activities may include: (i) gaining financial advantage, or (ii) promoting insurgency. Continuing unlawful activity is an activity which is: (i) a cognisable offence, punishable with a minimum imprisonment of three years, and (ii) for which two or more chargesheets have been filed in the preceding ten years.
- **Penalties:** If an organised crime offence results in the death of a person, the penalty will be death or life imprisonment, and a minimum fine of one lakh rupees. If an individual possesses or has possessed unaccountable wealth on behalf of a member of an organised crime syndicate, he shall be imprisoned for three to ten years and will be fined a minimum of one lakh rupees. The Court may additionally declare any movable or immovable property of the convicted to be forfeited to the state government.
- When the organised crime does not result in the death of a person, the punishment shall be imprisonment from five years up to life and a minimum fine of five lakh rupees. These include offences of (i) abetting the commission of organised crime, (ii) harbouring a member of an organised crime syndicate, or (iii) being a member of an organised

crime syndicate.

- **Bail:** Bail will be denied unless the Court reasonably believes that: (i) the accused is not guilty, and (ii) is unlikely to commit any offence while on bail. Further, if the accused was on bail for any other offence, while an offence under the Bill took place, bail will be refused.
- **Interception of communication:** Communication may be intercepted by a police officer (rank of superintendent or above) if the interception may provide evidence of organised crime. The officer must seek authorisation from a designated officer who is of Secretary rank in the Home Department. The application may be accepted if certain conditions are met including: (i) there is probable cause that organised crime is being committed, (ii) other modes of intelligence gathering have failed or are insufficient, and (iii) communications related to the offence may be obtained through such interception.
- The decision to intercept, along with the reasons, must be submitted to a Review Committee. The Committee will be chaired by the Chief Secretary and two senior officials. It may approve or revoke the decision to intercept. The state government shall table in the Legislative Assembly an annual report giving a full account of interceptions.
- **Trial:** The state government may constitute Special Courts of the level of Sessions Courts for trying offences under the Bill. Appeals shall lie with the High Court. The accused will be presumed to be guilty if: (i) unlawful arms and material such as documents used in the commission of the offence are recovered from him, or (ii) fingerprints of the accused are recovered from the site of the offence or on evidence such as documents and unlawful arms.
- **Confessions:** Any confession made by a person before the police (rank of superintendent or above) and recorded by the officer in either writing or on any mechanical devices (including tapes) will be admissible during the trial of the accused or co-accused (abettor or conspirator).

## PART B: KEY ISSUES AND ANALYSIS

### Departures from CrPC and Evidence Act

The Bill seeks to curb organised crime in the state through a special law. There are several departures from the provisions of other laws such as the Code of Criminal Procedure, 1973 (CrPC), the Indian Evidence Act, 1872 and the Indian Telegraph Act, 1885. These remove some safeguards for the accused. Under the Bill, an accused will not be granted bail unless there are reasonable grounds of proving innocence. The CrPC allows bail to be denied under a few conditions. These include instances when there are reasonable grounds to believe that the accused is guilty of an offence punishable with death penalty or life imprisonment, or if the person has previously been convicted of such an offence (or one punishable with seven years' imprisonment). The Bill thus reverses the burden of proof while granting bail. In 2005, the Supreme Court examined a similar provision in MCOCA. It ruled that the provision must be read in a way to balance the decision of acquittal and conviction, and allow for bail before the trial starts.<sup>9</sup>

*Bill:*  
Clauses  
14, 18,  
and 21 (4)

The Indian Evidence Act, 1972 does not permit confessions to a police officer as evidence. The Bill permits confessions as evidence if they are made to officers of the rank of Superintendent of Police. The Supreme Court (2013) ruled that a similar provision under MCOCA is an exception to the Evidence Act, 1872.<sup>10</sup> As a result, it must be strictly interpreted for a limited purpose, i.e., to the accused and to the co-accused (abettor or conspirator). The conditions for intercepting communications are less stringent than that in the Indian Telegraph Act, 1885.

Removing such safeguards may affect an individual's liberty as confessions made in police custody may be obtained under pressure or duress. Additionally, the Bill's stringent bail conditions may require the court to determine that the applicant did not commit the offence before granting bail. Courts have upheld similar laws on organised crime in Karnataka and Maharashtra, recognising the need for special laws to combat organised crime. However, the Supreme Court also highlighted that the police may wrongfully apply such laws.<sup>11</sup>

A wrongful application can lead to incarceration and in effect curtail an individual's liberty.<sup>11</sup> For instance, in 2007, the Supreme Court held that the accused had been wrongly proceeded against under MCOCA for alleged offences under the Sales Tax, 1955 and the Essential Commodities (Special Provision) Act, 1981.<sup>11</sup> The Court noted that a wrongful application of MCOCA would deprive a citizen of their freedom at the initial stage of investigation, making it difficult to obtain bail.

### Identical bail condition under MCOCA struck down by Supreme Court

The Bill provides that bail may be refused if an offence is committed under this Bill while the accused was on bail under any other law. While examining MCOCA, the Supreme Court (2008) struck down an identical provision.<sup>12</sup> The Court observed that an accused has a right to seek bail, which should not be denied for being arrested in an unconnected law. It reasoned that categorising two unrelated offences into a single class for denying bail was arbitrary and discriminatory, violating the fundamental right to equality and liberty.<sup>12</sup>

*Bill:*  
Clause  
21 (5)

For example, suppose a person is accused in a gambling and extortion case under the Rajasthan Bill. The crime was committed while the accused was out on bail for an offence of rash and negligent driving. As per the Bill, the accused will be denied bail for the alleged offence of gambling because he was already on bail for a traffic violation.

## Interception procedure inconsistent with Telegraph Act

Bill:  
Clause  
13-16

The Bill provides a procedure for intercepting communication to prevent organised crime. Interception procedures are also specified under the Indian Telegraph Act, 1885 and Rules made under it.<sup>13,14</sup> Certain procedures in the Bill are inconsistent with the procedure in the Indian Telegraph Rules, 1951.

Telegraph  
Rules,  
1951:  
Rule  
419A

Under the Seventh Schedule of the Constitution, communication is a union subject.<sup>15</sup> While examining an identical provision in MCOCA, the Supreme Court (2008) held that states have the legislative competence to provide for such interception.<sup>12</sup> It noted that the primary aim of MCOCA was to curb organised crime, which incidentally encroached upon a union subject.

**Table 1: Inconsistencies between the Rules under the Indian Telegraph Act, 1885 and the Rajasthan Bill**

Provision	Indian Telegraph Rules, 1951	The Rajasthan Control of Organised Crime Bill, 2023
<b>Emergency interception</b>	When obtaining prior interception directions is not feasible due to remoteness of the area or operational reasons.	Where there is: (i) immediate danger of death, physical injury to a person, (ii) conspiracy activity that threatens the interest or security of the state, or (iii) conspiracy activity characteristic of organised crime that requires interception before due diligence.
<b>Timeline for termination of emergency interception</b>	Approval required within seven days	Application to be made within 48 hours of interception. Termination if application is denied. No timeline is specified for automatic termination
<b>Interception period</b>	Maximum period including extensions is 180 days.	The initial 60 day interception period may be extended indefinitely, 60 days at a time.
<b>Review committee (which scrutinises interception authorisations)</b>	Membership must not include any secretary from the Ministry of Home Affairs.	Review Committee has a Secretary from the Home Department as a member. Interception is also authorised by a Secretary from the Home Department.

Sources: Indian Telegraph Rules, 1951; The Rajasthan Control of Organised Crime Bill, 2023; PRS.

## Composition of Review Committee may not be appropriate

Bill:  
Clauses  
13 and  
15

Interceptions are initially authorised by the Secretary from the Home Department. They are then reviewed by a Review Committee which has a Secretary from the Home Department as a member of the Review Committee. As per the Telegraph Rules, 1951, the Review Committee constituted must not include a secretary from the Home Department.<sup>14</sup> In 1996, the Supreme Court had specified this requirement for both the centre and the states.<sup>16</sup>

## Monetary penalties may not be proportionate to the offence

Bill:  
Clause 3  
(1)

Under the Bill, if an organised crime offence results in the death of a person, the penalty will be death or life imprisonment, and a minimum fine of one lakh rupees. In any other case not resulting in the death of a person, the penalty will be imprisonment for at least five years or life imprisonment, and a minimum fine of five lakh rupees. While the imprisonment penalty is higher for more serious offences, the minimum monetary penalty is lower.

## Delaying trials in all other cases may not be justified

Bill:  
Clause 10

Under the Bill, the trial of any offence under the Act shall have precedence over the trial of any other case against the accused in any other Court (besides a Special Court). The trial in other cases will be put on hold until the case under the Bill is decided. It is not clear why trials in all cases, including those which may be unrelated to the offence being tried under the Bill, must be deferred.

For example, there may be a situation where a trial is almost complete and a judgement is due in a few days. Such a case will also be put on hold until the trial under the Bill is completed. An identical provision exists under MCOCA.

1. [State of Maharashtra vs Bharat Shanti Lal Shah & Ors.](#), Supreme Court, Criminal Appeal, 2008.
2. Section 37, [The Indian Penal Code, 1860](#).
3. Section 38, [The Indian Penal Code, 1860](#).
4. [The Maharashtra Control of Organised Crime Act 1999](#).
5. GSR 6(E), [Extension of MCOCA to Delhi](#), Ministry of Home Affairs, January 2, 2002.
6. [The Gujarat Control of Terrorism and Organised Crime Act, 2015](#).
7. [The Karnataka Control of Organised Crime Act, 2000](#).
8. [The Haryana Control of Organised Crime Bill, 2023](#).
9. [Ranjitsingh Brahmajeetsingh Sharma v State of Maharashtra](#), Appeal (Crl) 523 of 2005, Supreme Court of India, April 7, 2005.
10. [State of Maharashtra vs Kamal Ahmed Mohammed Vakil Ansari](#), Appeal (Crl) 445 of 2013, Supreme Court of India, March 14, 2013.
11. [State of Maharashtra vs Lalit Somdatta Nagpal](#), Special Leave Petition (Crl) 3320-21 of 2005, Supreme Court of India, February 13, 2007
12. [State of Maharashtra vs Bharat Shanti Lal Shah & Ors.](#), Supreme Court of India, Criminal Appeal, 2008.
13. [The Indian Telegraph Act, 1885](#).
14. Rule 419A, [The Indian Telegraph Rules, 1951](#).
15. Entry 31, List I, [Seventh Schedule](#), The Constitution of India.
16. [People's Union for Civil Liberties \(PUCL\) vs Union of India](#), Supreme Court of India, December 18, 1996.

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