Counting What the Statute Says: A Non-Doctrinal Audit of Safeguards and Enforcement Capacity in Maharashtra's MCOCA And the American RICO Regime

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***Abstract*—Debates about special organised-crime laws usually run through case law. This paper asks a narrower and more testable question: on the face of the statutes, does Maharashtra's organised-crime law balance enforcement and personal liberty less adequately than the American racketeering regime? I use a non-doctrinal content-analysis design. The Maharashtra Control of Organised Crime Act, 1999 (MCOCA) and the federal Racketeer Influenced and Corrupt Organizations Act (RICO), together with the American bail, interception and witness statutes that operate beside it, were coded against twenty-one items. Thirteen items measure liberty safeguards and eight measure enforcement capacity. Each was scored from 0 to 2 against a written rubric drawn from the UN Convention against Transnational Organized Crime and the International Covenant on Civil and Political Rights. MCOCA earned 38 per cent of the available liberty points against 88 per cent for the RICO regime, and 62 per cent of the capacity points against 81 per cent. The ranking survived leave-one-out, strict, lenient and weighted re-scoring. MCOCA's three procedural advantages (longer custody, usable confessions, easier interception) cost four liberty points to gain three capacity points, while its gaps in civil, financial, witness and territorial tools stayed open. Contextual figures, including a 75.8 per cent undertrial share in Indian prisons, fit the finding but do not prove causation. Outcome data for MCOCA prosecutions are not published in a testable form, which is itself a finding. The paper ends with four reform proposals.**

Index Terms—*organised crime; MCOCA; RICO; personal liberty; bail; interception; non-doctrinal legal research*

I. INTRODUCTION

Special criminal statutes are easy to defend in the abstract and hard to defend line by line. A legislature facing syndicate violence says that ordinary procedure is too slow and too gentle, and it writes a harder law. Years later the courts begin trimming that law, one bail order at a time, and a body of case law grows up around the text. Most scholarship on Maharashtra's organised-crime statute follows that second stage. It reads the judgments, notes where the Supreme Court softened a clause, and concludes that the system has found its balance.

I think that approach starts too late. A trial court in Pune or Thane does not begin from the Supreme Court's reasoning. It begins from the statute, and an accused person's first months in custody are governed by what the legislature wrote, not by what a bench later said it should have meant. If the aim is to judge the design of the law, the design itself has to be counted.

This paper does that. It treats the Maharashtra Control of Organised Crime Act, 1999 (MCOCA)[1] and the United States' Racketeer Influenced and Corrupt Organizations Act (RICO)[2] as two bundsles of rules

[1] Maharashtra Control of Organised Crime Act, 1999, Maharashtra Act No. 30 of 1999 (India) [hereinafter MCOCA]. The Act was extended to the National Capital Territory of Delhi, where it is applied by the Delhi courts. *See, e.g.*, *Delhi Court Acquits Persons Alleged Committed Organized Crime for Lack of Legal Ingredients to Invoke MCOCA*, SCC Online Blog (Oct. 19, 2024), https://www.scconline.com/blog/post/2024/10/19/delhi-court-acquits-persons-alleged-committed-organized-crime-lack-legal-ingredients-invoke-mcoca/.

[2] Organized Crime Control Act of 1970, Pub. L. No. 91-452, tit. IX, 84 Stat. 922, 941 (codified as

and asks, item by item, how many protections for the accused each bundle contains and how many enforcement tools it hands the State. The comparison is deliberately American-facing because RICO is the model most often invoked when Indian legislators defend special organised-crime laws, and because the United States publishes more about its use of intrusive powers than India does.

The question is a single hypothesis.

H1. Judged by statutory text, MCOCA balances enforcement and personal liberty less adequately than the RICO regime.

The word "adequately" needs a working meaning, and Part II supplies one. The method, a coded audit of provisions, is described in Part III. Part IV reports the scores, a robustness check and a small set of contextual indicators. Part V discusses what the numbers can and cannot show, including the part courts have played, and Part VI offers proposals. Part VII concludes.

Two limits should be stated now. First, this is a study of text, not of practice. A high score for a safeguard says that the law promises it, not that every magistrate delivers it. Second, I could find no official series of MCOCA prosecution outcomes (registrations, bail grants, acquittals, convictions) that would allow a direct test of how the statute behaves. I explain below why the absence matters.

A. Balance as a measurable idea

Herbert Packer's contrast between a crime-control model and a due-process model is the usual vocabulary for this problem.[3] Packer himself warned that the two models are poles for thinking, not scales for ranking real systems, and I follow that warning. I do not claim that a statute scoring 38 per cent is "38 per cent due process". The scores are an inventory. They record how many identifiable features of each statute fall on the protective side and how many on the enforcement side, so that two statutes can be laid next to each other without borrowing a conclusion from either.

An inventory needs a yardstick that neither country wrote for itself. I use two international instruments to which both India and the United States are parties. The first is the UN Convention against Transnational Organized Crime (UNTOC).[4] It pushes states toward strong tools, including confiscation of proceeds, special investigative techniques, witness protection and mutual legal assistance.[5] It also contains one provision on pretrial release. Article 11(3) asks states to set release conditions with "due regard to the rights of the defence" and with attention to the need to secure the defendant's later appearance.[6] The second instrument is the International Covenant on Civil and Political Rights (ICCPR). Article 9(3) states that detention of persons awaiting trial "shall not be the general rule," Article 14(3)(g) protects against compelled self-incrimination, and Article 17 protects against arbitrary interference with privacy and correspondence.[7] The Human Rights Committee has read Article 9(3) as making pretrial detention an exception that must be justified for the individual case.[8]

Taken together, the instruments describe a balanced organised-crime statute as one that is generous with tools aimed at money, networks and borders and careful with tools aimed at the body and the conversation of the individual accused. That description shapes the two axes used below.

B. The decision rule

I define the hypothesis in operational terms before looking at any score, so that the result can fail. H1 is

amended at 18 U.S.C. §§ 1961–1968) [hereinafter RICO].

[3] Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. Pa. L. Rev. 1 (1964).

[4] United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter UNTOC]. The United States became a party in 2005 and India in 2011.

[5] *Id.* arts. 12 (confiscation and seizure), 16 (extradition), 18 (mutual legal assistance), 20 (special investigative techniques), 24 (protection of witnesses).

[6] *Id.* art. 11(3). Article 11(2) separately asks states to exercise prosecutorial discretion so as to maximise the effectiveness of enforcement, and Article 11(4) asks courts to bear in mind the gravity of the offences when considering early release or parole. *Id.* art. 11(2), (4).

[7] International Covenant on Civil and Political Rights arts. 9(3), 14(3)(g), 17, Dec. 16, 1966, 999 U.N.T.S. 171.

[8] Human Rights Comm., General Comment No. 35: Article 9 (Liberty and Security of Person) ¶ 38, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

supported if MCOCA's share of available liberty points is lower than the RICO regimes *and* its share of capacity points is not higher. The second condition matters. A statute that is harsh on liberty but buys a clear enforcement advantage could still be defended as a deliberate trade. If MCOCA were to lead on capacity, H1 would need a more careful reading. If MCOCA were to match RICO on liberty, H1 would fail outright.

II. METHOD AND DATA

A. Design

The study is non-doctrinal in the sense usually given to the term. It does not ask what the law *is* by reasoning from precedent to rule, which is the task of doctrinal research.[9] It treats legal texts as data and applies a fixed coding scheme to them, which is the logic of content analysis.[10] The unit of analysis is a provision-level feature of a statutory regime. The output is a table of scores that another researcher can inspect, dispute and re-run.

No survey or interview data were collected. The study codes public primary texts, so anyone with the statutes can repeat it.

B. The two regimes

A statute never operates alone, so each side had to be defined. The *MCOCA regime* is the Act itself, read with the ordinary procedure that it modifies. The *RICO regime* is RICO plus four federal statutes that govern the same stages of a racketeering case: the federal wiretap statute (Title III),[11] the Bail Reform Act of 1984,[12] the Speedy Trial Act,[13] and the witness-protection provision.[14] I did not code the Bharatiya Nyaya Sanhita, 2023, section 111, as a third regime because that section sets out a definition and punishments and, as far as its text shows, no separate procedure for bail, confession or interception.[15] I return to it in Part V.

Two cautions apply. MCOCA's section 2(1)(e), which defines organised crime, was amended by Maharashtra Act No. 41 of 2025 with effect from 30 July 2025.[16] No item below turns on that clause. And MCOCA still refers to the Code of Criminal Procedure, 1973, which the Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced for new proceedings.[17] I coded the changes MCOCA makes to ordinary procedure, and those changes do not depend on which code supplies the baseline.

C. Items and rubric

I drew up 21 items in two groups. The thirteen *liberty* items ask whether the statute protects the accused at each stage: how the offence is defined and proved, who approves a prosecution, what happens to a statement made to police, how bail is decided, how long a person can be held before charge, how interception is authorised and disclosed, what presumptions apply, and how property and sentence are handled.

The eight *capacity* items ask whether the statute gives the State a tool: civil enforcement, forfeiture, investigation time, confessions, interception, witness protection, territorial reach and liability of organisers. Each item was scored on the rubric in Table 1.

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[9] *See* Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 Deakin L. Rev. 83 (2012) (describing doctrinal research as analysis of rules and precedent and contrasting it with empirical and other non-doctrinal methods).

[10] Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* 24–32 (4th ed. 2018).

[11] Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. III, 82 Stat. 197, 211 (codified as amended at 18 U.S.C. §§ 2510–2523).

[12] Bail Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. I, 98 Stat. 1837, 1976 (codified as amended at 18 U.S.C. §§ 3141–3150).

[13] 18 U.S.C. § 3161(b).

[14] 18 U.S.C. § 3521.

[15] Bharatiya Nyaya Sanhita, 2023, § 111, No. 45, Acts of Parliament, 2023 (India) [hereinafter BNS].

[16] *See* MCOCA, *supra* note 1, § 2(1)(e), as substituted by Maharashtra Act No. 41 of 2025 (India), https://www.indiacode.nic.in/bitstream/123456789/16362/1/the_maharashtra_control_of_organised_crime_act.pdf (text as shown on India Code).

[17] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India) [hereinafter BNSS].

Table 1. Scoring rubric

Score	Liberty items	Capacity items
2	The safeguard is written into the statute, applies by default, and is policed by someone outside the investigating agency.	The tool is available on the face of the statute, reaches the full range of targets, and needs no second approval beyond a court.
1	The safeguard exists but is internal to the executive, narrower than the international benchmark, or conditional.	The tool exists but is narrower in reach, or depends on discretion or a further condition.
0	The safeguard is absent, or the statute reverses it.	The tool is absent from the statute.

Capacity items E3 to E5 need a note. They score the legal *ease* with which investigators may use a power, and for that reason they sit on the opposite side of the ledger from liberty items L5, L3 and L6. This pairing is deliberate. These are the places where a statute can gain speed only by giving up protection, and the pairing lets me count the exchange (Part IV.C).

D. Sources, coding and reliability

I coded from primary texts: the Act as published on India Code, the Cornell Legal Information Institute's reproduction of the relevant sections of Title 18 of the United States Code, and the official treaty texts. For context I added three public figures: the Administrative Office of the U.S. Courts' *Wiretap Report 2024*, the National Crime Records Bureau's *Prison Statistics India 2022*, and a 2014 right-to-information disclosure by the Ministry of Home Affairs on interception orders. Table 2, in Part IV, lists every coded item with its basis, so the coding is open to challenge item by item.

The weaknesses of this design are plain. There was one coder, so inter-coder reliability could not be measured. The 0-1-2 scale is ordinal and every item carries equal weight. Case law that reads a provision down is not captured by a textual score, and I discuss that gap openly in Part V. To limit the effect of my own judgment calls I ran four stress tests, reported in Part IV.D.

III. FINDINGS

A. The coded list

Table 2 is the core dataset of the paper. It is the list on which H1 is tested.

Table 2. Coded items (0 = absent or reversed; 1 = partial; 2 = full)

ID	Item	MCOCA	RICO	Basis
L1	Pattern must be proved at trial	1	2	MCOCA § 2(1)(d): more than one charge-sheet in ten years with cognizance taken. RICO: two related acts shown to a jury, 18 U.S.C. § 1961(5).
L2	Review outside the investigating hierarchy	1	2	MCOCA § 23: approval and sanction by police officers. RICO: grand jury, U.S. Const. amend. V.
L3	Treatment of police-held confessions	1	2	MCOCA § 18: admissible, with warning and magistrate production. RICO: voluntariness and *Miranda*, 18 U.S.C. § 3501.
L4	Individualised, appearance-based bail test	0	2	MCOCA § 21(4): twin conditions on guilt and re-offending. RICO: hearing and findings, 18 U.S.C. § 3142(f), (g), (i).
L5	Ordinary pre-charge custody limits	0	2	MCOCA § 21(2): 30, 90 and 180 days. RICO: indictment within 30 days of arrest, 18 U.S.C. § 3161(b).
L6	Judicial authorisation of interception	1	2	MCOCA §§ 13–15: Home Department Secretary, then executive Review Committee. RICO: judge, 18 U.S.C. § 2518(1), (3).
L7	Notice to intercepted persons	1	2	MCOCA § 14(13): copy of order before use at proceeding. RICO: inventory within 90 days, 18 U.S.C. § 2518(8)(d).

ID	Item	MCOCA	RICO	Basis
L8	Exclusion of unlawfully intercepted material	2	2	MCOCA §§ 14(11), 15: treated as unlawfully obtained. RICO: suppression, 18 U.S.C. § 2518(10)(a).
L9	No statutory presumptions of guilt	0	2	MCOCA §§ 17(2), 22: rebuttable presumptions. RICO: none in §§ 1961–1968.
L10	Notice and hearing before property restraint	1	1	MCOCA § 20(2): court may attach, no hearing procedure stated. RICO: hearing and 90-day limit before indictment, but narrow challenge after, 18 U.S.C. § 1963(d).
L11	Third-party claims to restrained property	0	2	MCOCA § 20: absconder recovery only. RICO: third-party petition, 18 U.S.C. § 1963(l).
L12	Sentencing discretion preserved	0	2	MCOCA § 3: five-year floor and fine floor. RICO: maximum of 20 years or life, no statutory floor, 18 U.S.C. § 1963(a).
L13	No civil liability without conviction	2	0	MCOCA: no civil action. RICO: private treble damages, 18 U.S.C. § 1964(c).
E1	Civil and private enforcement	0	2	As L13, read as a tool.
E2	Forfeiture of proceeds and substitute assets	1	2	MCOCA § 20: forfeiture on conviction. RICO: also substitute assets, 18 U.S.C. § 1963(m).
E3	Extended investigation window	2	1	MCOCA § 21(2): up to 180 days. RICO: ordinary clock.
E4	Confession usable as evidence	2	1	MCOCA § 18, including against co-accused. RICO: usable only if voluntary.
E5	Ease of interception	2	1	MCOCA § 14: executive order, 60-day periods, emergency order by senior police officer. RICO: judicial order, 30-day periods.
E6	Witness protection	1	2	MCOCA § 19: in camera hearings and identity secrecy. RICO regime: relocation programme, 18 U.S.C. § 3521.
E7	Territorial and extraterritorial reach	0	2	MCOCA: Maharashtra and Delhi. RICO: federal, with reach set by *RJR Nabisco*.
E8	Liability of organisers and members	2	2	MCOCA § 3(2), (4). RICO § 1962(c), (d).

A note on the three scores that look most generous to RICO. L4 gives it a 2 because the Bail Reform Act requires an individual hearing and written findings, and because RICO is not among the offences that trigger the statutory presumption against release; a presumption can still arise through a listed underlying offence such as a ten-year drug crime.[18] The Supreme Court upheld preventive detention under the Act in *United States v. Salerno*,[19] and detention is common in federal practice, so the score reflects what the text requires, not how often release is granted. L10 gives RICO only a 1 because in *Kaley v. United States* the Court held that a defendant could not reopen the grand jury's probable-cause finding at a hearing on restraint

[18] 18 U.S.C. § 3142(e)(3) (listing offences that trigger the rebuttable presumption, which include certain drug offences carrying maximum terms of ten years or more, but not violations of 18 U.S.C. § 1962 as such); *id.* § 3142(f)–(g), (i) (hearing, factors, written findings).

[19] United States v. Salerno, 481 U.S. 739 (1987).

of assets,[20] while *Luis v. United States* protected untainted assets needed to pay counsel.[21] L13 gives RICO a 0 because a civil plaintiff can obtain treble damages from an alleged racketeer without any prior conviction.[22]

B. Liberty items

The headline result is a gap of fifty percentage points. MCOCA scored 10 of 26 liberty points (38 per cent) and the RICO regime scored 23 (88 per cent). RICO was ahead on 10 liberty items, tied on two and behind on one.

The two definitional items come first. MCOCA builds its "continuing unlawful activity" from charge-sheets filed and cognizance taken in the previous ten years, which are accusation-stage events, not findings.[23] The American pattern requirement must be proved to a jury and must show both relatedness and continuity.[24] Prosecution is also approved differently. MCOCA relies on sanction by senior police officers,[25] whereas a RICO prosecution must pass through a grand jury.[26]

The widest gaps sit at the stages where the accused is most exposed. Under MCOCA section 21(4), a person in custody is not released on bail unless the court is satisfied that there are reasonable grounds to believe the person is not guilty and is not likely to commit an offence while on bail. The test asks for a view on innocence at the very stage when the evidence has not been tested, and it asks about future conduct, not about the appearance at trial that Article 11(3) of the Convention names. The Supreme Court tempered the provision in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* by reading the twin conditions as a prima facie assessment, not a finding of guilt.[27] That is a judicial repair. The text still points the other way. The Court has been inconsistent about twin conditions generally: it struck down those in the money-laundering statute in *Nikesh Tarachand Shah v. Union of India*,[28] and later upheld the re-enacted version in *Vijay Madanlal Choudhary v. Union of India*.[29]

Custody works the same way. Section 21(2) replaces the ordinary fifteen-day and sixty-day limits with thirty and ninety days, and allows 180 days on a prosecutor's report.[30] The American comparison is a federal rule that an indictment must follow arrest within 30 days.[31] Anticipatory bail is also excluded in MCOCA cases.[32]

The confession and presumption items pull in the same direction. MCOCA section 18 makes a confession to a police officer of at least the rank of Superintendent admissible, including against co-accused tried together.[33] The ordinary Indian rule since the Evidence Act of 1872 has been that such confessions cannot be proved against the maker,[34] and the 2023 successor statute keeps it.[35] In the American regime a police-obtained statement is tested for voluntariness and for

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[20] Kaley v. United States, 571 U.S. 320 (2014).

[21] Luis v. United States, 578 U.S. 5 (2016) (plurality opinion).

[22] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985) (holding that a prior criminal conviction is not a prerequisite to a civil RICO claim); 18 U.S.C. § 1964(c).

[23] MCOCA, *supra* note 1, § 2(1)(d). Section 111(1) of the Bharatiya Nyaya Sanhita adopts the same ten-year, more-than-one-charge-sheet formula. BNS, *supra* note 15, § 111(1).

[24] H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239 (1989); 18 U.S.C. § 1961(5).

[25] MCOCA, *supra* note 1, § 23(1)–(2).

[26] U.S. Const. amend. V.

[27] Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 S.C.C. 294 (India).

[28] Nikesh Tarachand Shah v. Union of India, (2018) 11 S.C.C. 1 (India).

[29] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929 (India).

[30] MCOCA, *supra* note 1, § 21(2). Section 21(3) excludes the ordinary anticipatory-bail provision, and § 21(5) bars bail for a person who was already on bail for another offence on the date of the alleged offence.

[31] 18 U.S.C. § 3161(b). The Speedy Trial Act excludes certain periods of delay, so the 30-day figure is a starting rule, not an absolute cap. *Id.* § 3161(h).

[32] MCOCA, *supra* note 1, § 21(3). On the Supreme Court's wider bail guidance, see Satender Kumar Antil v. CBI, (2022) 10 S.C.C. 51 (India).

[33] MCOCA, *supra* note 1, § 18(1)–(6).

[34] Indian Evidence Act, 1872, §§ 25–26, No. 1, Acts of Parliament, 1872 (India).

[35] *See* Bharatiya Sakshya Adhiniyam, 2023, § 23, No. 47, Acts of Parliament, 2023 (India).

compliance with *Miranda v. Arizona*.[36] I scored MCOCA 1 because section 18 does surround the confession with warnings, certification and production before a magistrate, and the Supreme Court has upheld comparable confession provisions in earlier special statutes.[37] Sections 17(2) and 22 add rebuttable presumptions, for instance that property the accused cannot account for derives from crime. RICO's text has none.

Interception is the one area where MCOCA looks, on paper, like a serious attempt. Sections 13 to 15 require a written application, a finding of probable cause and of necessity, a 60-day limit, minimisation, sealing for ten years and a Review Committee. These echo the structure of Title III. The difference is the identity of the decision-maker: a Secretary in the Home Department, reviewed by other senior executive officers, in place of a judge.[38] The Supreme Court sustained the scheme in *State of Maharashtra v. Bharat Shanti Lal Shah*,[39] and the executive model is the Indian norm, going back to the guidelines in *PUCL v. Union of India*.[40] American law took the judicial route from *Berger v. New York* onward.[41] MCOCA scores 1 on authorisation and on notice, and 2 on exclusion, where its text is as firm as Title III's.

MCOCA's best results are its exclusion rule, which is as firm as Title III's, and its silence on civil liability. They show that the coding is not tilted against the Indian text by construction.

C. Capacity items and the exchange ledger

On enforcement capacity the picture is less one-sided. MCOCA scored 10 of 16 points (62 per cent) and the RICO regime 13 (81 per cent). MCOCA led on three items, E3 to E5, tied on one and trailed on four.

Here the paired items do the work. Table 3 sets the three places where MCOCA is stronger for investigators against the places where it is weaker for the accused.

Table 3. The exchange ledger (points)

Procedural power	MCOCA advantage (capacity)	Liberty item	MCOCA deficit (liberty)
Longer investigation window (E3)	+1	L5 custody limits	−2
Usable police confession (E4)	+1	L3 confession treatment	−1
Easier interception (E5)	+1	L6 judicial authorisation	−1
Total	+3		−4

The tools MCOCA lacks are of a different kind. RICO is ahead by two points on civil enforcement (E1), one on forfeiture with substitute assets (E2), one on witness protection (E6) and two on territorial reach (E7), a combined six points.

These are the instruments that the Convention emphasises: confiscation, cooperation, and protection of those who testify.[42] Put plainly, the Maharashtra statute spent four liberty points to gain three capacity points, all of them aimed at the person of the accused, and left unbuilt the instruments aimed at money and borders, worth six points to its American counterpart.

Figure 1 Summarises both axes.

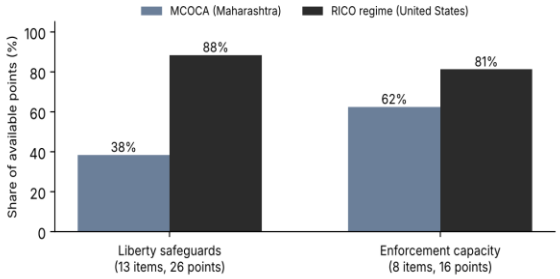

Figure 1. Share of available points by axis and regime. Source: author's coding (Table 2).

[36] Miranda v. Arizona, 384 U.S. 436 (1966); 18 U.S.C. § 3501.

[37] Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569 (India) (upholding comparable confession provisions in the repealed TADA with safeguards).

[38] MCOCA, *supra* note 1, §§ 13–15. Outside MCOCA, interception in India is likewise executive, whether under rule 419A of the Indian Telegraph Rules, 1951 or its successor under the Telecommunications Act, 2023.

[39] State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 S.C.C. 5 (India).

[40] People's Union for Civil Liberties v. Union of India, (1997) 1 S.C.C. 301 (India).

[41] Berger v. New York, 388 U.S. 41 (1967).

[42] UNTOC, *supra* note 4, arts. 12, 16, 18, 24.

Under the decision rule in Part II.B, the first condition is met (38 per cent against 88 per cent) and the second is met (62 per cent against 81 per cent, with MCOCA not ahead). H1 is supported on the textual evidence.

D. Robustness

Four stress tests checked whether the result depends on my scoring choices (Table 4).

Table 4. Robustness of the MCOCA and RICO shares (per cent of available points)

Test	Liberty: MCOCA / RICO	Capacity: MCOCA / RICO
Baseline	38 / 88	62 / 81
Leave one item out, range	33–42 / 88–96	57–71 / 79–86
Strict (partial scores treated as 0)	15 / 85	50 / 62
Lenient (partial scores treated as full)	62 / 92	75 / 100
Bail, confession and interception items double-weighted	38 / 91	n/a

In none of the tests did MCOCA reach RICO on either axis. The lenient scenario is the closest, and even there MCOCA sits thirty points behind on liberty. The ranking, in other words, does not rest on a handful of contestable calls.

E. Contextual indicators

Three public figures add context. None tests H1, because none is specific to MCOCA, and I flag that limit in each case (Table 5).

Table 5. Contextual indicators

Indicator	Figure	Source and caution
U.S. wiretaps authorised, 2024	2,297 (1,290 federal; 1,007 state); racketeering about 5% of applications	Wiretap Report 2024. Judicial orders, counted and published annually.
Average U.S. wiretap duration, 2024	47 days, with 1,600 extensions	Same report.
U.S. arrests from wiretaps, 2024	5,463	Same report; not specific to RICO.
Indian prisoners, end of 2022	573,220 total; 434,302 undertrial (75.8%); occupancy 131.4%	Prison Statistics India 2022, as reported. All offences, not MCOCA.
Indian central interception orders	7,500–9,000 per month	MHA reply to a 2014 RTI request. Breakdown by authority withheld.

The American figures show a regime in which intrusion is authorised by judges and then counted in a public report: 2,297 authorisations in 2024, with racketeering a small share of the total.[43] The Indian figures show a prison population in which three of every four people held are awaiting trial.[44] That is consistent with a system in which pretrial custody is the default, but it describes every offence, and it would be wrong to attribute it to MCOCA. The interception figure comes from a ten-year-old disclosure in which the ministry declined to give a breakdown by authority for security reasons.[45] I found no current Indian series comparable to the Wiretap Report. The imbalance in

[43] Admin. Off. of the U.S. Cts., *Wiretap Report 2024* (2025), https://www.uscourts.gov/data-news/reports/statistical-reports/wiretap-reports/wiretap-report-2024 (last visited Oct. 11, 2026).

[44] Nat'l Crime Recs. Bureau, Ministry of Home Affairs, *Prison Statistics India 2022* (2023). I read the figures in the secondary report at *NCRB Releases Prison Statistics India Report 2022*, LiveLaw (Dec. 7, 2023), https://livelaw.in/news-updates/ncrb-releases-prison-statistics-india-report-2022-243973.

[45] SFLC.in, *Information Received Under RTI for Surveillance* (Sept. 2014), https://sflc.in/information-received-under-rti-for-surveillance.

what each country tells the public is, I would argue, part of the imbalance this paper measures.

IV. DISCUSSION

A. What judges repair, and what they cannot

The obvious objection to the audit is that Indian courts have rewritten the harsh parts. They have, to a degree. *Ranjitsing* softened section 21(4). *Bharat Shanti Lal Shah* sustained the interception scheme only after reading it as a measure with internal checks. And in *Union of India v. K.A. Najeeb* the Court held that constitutional courts may grant bail despite a statutory bar when trial is delayed without end, resting the holding on Article 21.[46] A line of speedy-trial cases runs back to *Hussainara Khatoon v. Home Secretary*.[47]

I take that line of authority seriously, but it affects the argument less than it might seem. First, a judicial repair arrives late. It is available to the accused who can afford to reach the High Court or the Supreme Court, and it is available after months or years in custody. The statute governs the first bail application, in the Special Court, on the first day. Second, repair by reading down leaves the text where it was, so that every new accused must litigate the same point again. Third, a regime that depends on constitutional courts to correct its own design shows, by that dependence, what the design lacks. This is not a criticism of the courts. It is an observation that the audit measures the baseline from which the courts start, and a baseline of 38 per cent is a low place to start from.

The same reasoning cuts the other way for the United States. American courts have not been rigorous guardians of the accused in every respect. *Salerno* approved pretrial detention on dangerousness, *Kaley* limited what a restrained defendant can contest, and civil RICO, which L13 captures, has been used far beyond organised crime. The RICO regime's 88 per cent is a score for its ordinary criminal procedure, which RICO inherits, not a verdict on every use of the statute.

B. The shape of the trade

The exchange ledger suggests something about legislative choice. The powers that Maharashtra took for itself, longer holding periods, police-recorded confessions and executive interception, all work on a suspect's body and speech. The powers it did not take, civil suits, substitute-asset forfeiture, relocation of witnesses and reach beyond the state border, work on money and networks. The Convention's emphasis lies on the second group.[48] It treats organised crime chiefly as an economic activity and asks states to attack the proceeds. A statute that concentrates its strength on individuals and leaves the economics largely alone has, on that view, bought the less valuable half of the toolkit at the higher price.

The territorial gap deserves a separate word. A statute enforced in two jurisdictions cannot by itself reach a syndicate whose members, accounts and victims sit in several. That limitation is a failure of capacity, not of liberty, and it counts against the claim that MCOCA's harshness is the price of effectiveness.

C. Section 111 of the Bharatiya Nyaya Sanhita

Section 111 of the 2023 Sanhita creates a nationwide offence of organised crime. Its definition tracks MCOCA closely, including the requirement of more than one charge-sheet within ten years, and it prescribes five years to life as the base punishment with a fine of at least five lakh rupees.[49] On the face of the section there is no special bail rule, no police-confession rule and no interception regime. If that reading is right, a person charged under section 111 meets the ordinary procedure and a person charged under MCOCA meets the exceptional one, for what may be the same conduct. The audit cannot say which prosecutors will choose which law, and the answer will shape practice more than any scorecard. The point for present purposes is narrower: the national legislature, when it wrote a national offence, left out MCOCA's procedural derogations. That omission is some evidence that those derogations are not regarded as essential to the offence.

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[46] Union of India v. K.A. Najeeb, (2021) 3 S.C.C. 713 (India).

[47] Hussainara Khatoon v. Home Sec'y, State of Bihar, (1980) 1 S.C.C. 81 (India).

[48] UNTOC, *supra* note 4, arts. 12, 16, 18, 24.

[49] BNS, *supra* note 15, § 111(1), (2)(b). Section 111(2)(a) prescribes death or life imprisonment, with a fine of at least ten lakh rupees, where the offence results in death.

D. Limits of the study

Beyond the points made earlier, three limits should be repeated. The scale is coarse, and a more finely graded scale might shift individual items. Equal weighting treats a bail rule and a notice rule as equally important, which few would accept. And the American side is a composite of five statutes, which flatters it relative to a single Indian Act that has to borrow its procedural frame from elsewhere. I have tried to meet these concerns by publishing the full coding and by running the stress tests, but the fair conclusion is that the result is robust to my choices, not that it is free of them.

The most important gap is the empirical one. If MCOCA's tools produced convictions of organisers and recovery of criminal assets at a high rate, a defender could argue that the cost to liberty bought results. I could not test that, because I found no published series of registrations, bail outcomes, acquittals and convictions under the Act. The opposite point also holds: if the outcomes were poor, the case against the statute would be stronger still. In both cases the critical step is publication. A statute that grants extraordinary powers should be able to show, each year, how they were used.

V. CONCLUSION

The audit points to four changes, each tied to a coded item.

First, the State should publish an annual statistical report on MCOCA, modelled on the American Wiretap Report: registrations, interception orders, bail applications and their outcomes, and convictions of organisers as distinct from members. This costs little and would make the next study of the Act an empirical one.

Second, interception orders under section 14 should be issued by a judge of the High Court or a designated Special Court judge, with the existing Review Committee retained as a second check. This would lift items L6 and L7 and would align the Act with the direction of travel set by privacy law after *Puttaswamy*.[50]

Third, section 21(4) should give way to an individualised test: a hearing, written reasons, and a primary focus on the risk of non-appearance, interference with witnesses or serious harm, with periodic judicial review of continued custody. That would match Article 11(3) of the Convention and Article 9(3) of the Covenant, and it would move L4 and L5 toward the American score without removing the court's power to detain a dangerous accused.

Fourth, the property provisions in section 20 should add notice, a hearing and an innocent-owner procedure, and the State should consider civil and substitute-asset remedies aimed at proceeds. These changes address L10, L11, E1 and E2, and they would build the part of the toolkit the audit found missing.

A further task is methodological. The coding should be repeated by at least two independent coders, with agreement reported, and extended to the state organised-crime statutes of Karnataka and Punjab and to section 111.

The hypothesis was that MCOCA balances enforcement and liberty less adequately than the American RICO regime. On a 21-item audit of statutory text, it does. MCOCA secured 38 per cent of the liberty points against 88 per cent, and 62 per cent of the capacity points against 81 per cent. It gained three capacity points by giving up four liberty points, and it left unbuilt the civil, financial, witness and territorial tools that the international benchmarks stress.

None of this shows that Indian courts protect liberty poorly. It shows where they start. It also does not show that RICO is a gentle statute, since the American regime has its own record of harsh use. What the audit does show is that, measured by the same ruler, the Maharashtra text asks the accused to carry more and gives the State less of what a modern organised-crime statute is supposed to give. The remedy lies partly in the courts, which have done a good deal, and partly in the legislature, which has done less. A statute that grants extraordinary powers should also publish enough about their use for the next scholar to test, with outcome data, what this paper could test only with text.

[50] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).