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State Security Legislation and Judicial Escapism- A study with respect to the Maharashtra Control of Organised Crime Act (MCOCA)

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Research Article

Abstract

If we track down the India's path of history, states have been inclined to enact special security-legislations in order to make a special class of offences as per the needs and patterns of the crime prevalent in that particular state, to which they are competent under the relevant entries of List II under the Schedule VII of the Constitution of India. But it has been observed that under the broad spectrum of "security" legislations, there have been glaring violations of human rights. These legislations have been contested on the basic premise of Article 14 of the Constitution being flouted. The Maharashtra Control of Organised Crime (hereinafter MCOCA) is one such legislation. MCOCA defines "Organised Crime" in a broad and ambiguous manner as it prescribes a minimum of two conditions upon fulfilment of which an offence can come under its purview. First, a "continuing unlawful activity" by an individual, whether singly or jointly as a member of an organised crime syndicate or on behalf of such a syndicate. Second, the accused must have used "unlawful means" to gain monetary benefits or promote insurgency. The points which become pertinent in this aspect to observe are the basic philosophy and objective behind these special statutes and whether these legislations actually fulfil the purpose or become an instrument for oppression at the Government. On the basis of cases pertaining to MCOCA, the authors will try to see as to what is the attitude of courts when such cases come before it. The endeavour shall be to understand the methodology of court in deciding the cases which mainly pertains to terror related cases and to see if the judicial delineation is smacked with escapism. Through the cases pertaining to MCOCA, we would like to look at the broader issues of criminal jurisprudence and citizens, also whether the question of terrorism so vital that it may also lead to obfuscation of constitutional rights of citizens.

Keywords: Security Legislations, MCOCA, Politicization and Abuse, Rule of Law

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1. Introduction

With the advent of globalisation, the world changed drastically. The changes were not just restricted to the positive ones as many negative changes also crept in. One of such negative change was the extraordinary way in which the nature of crime transformed. Terrorism, organized crimes had been posing new challenges to the safety and security of the states and it is important that the Government safeguards the interest of its subjects as well as the state. Such extraordinary situations in the past has given birth to draconian legislations as the overzealous attitude of the Government leads to flagrant violation of the rights of the people. It is thus necessary not to just focus on the words of the law under impugnity or the principles, procedures and interpretation by the courts, but also find out the effect that a particular law envisages to bring.

The analysis can show that the attitude of the law maker is not to pay attention over violence of jurisprudence which trumps on the civil rights of the citizens. The attitude rather revolves around the physical force that law deploys and legitimises the violence in the garb of security of the state.[3] State security legislations have a central theme that extraordinary situations cannot be tackled by the regular laws in existence, therefore, a separate legislation is needed which could even transcend the constitutional limits and basic principles of criminal law. Interestingly the courts support such move of legislature.

Here in this research paper the Maharashtra Control of Organised Crime Act, 1999 has been dealt meticulously as an example to look at the larger questions, questions such as how the politics of special law unfolds in India, how the political and legal intersperse which is seminal in eroding the institutions of a democratic country like India.[4]

2. Maharashtra Control of Organised Crime Act, 1999

Crimes are generally acts of commission or omission which is in violation of law that prohibits the act and if convicted for the act, the punishment is to be imposed. With the passage of time the methods employed by criminals to facilitate a crime has changed by leaps and bounds and,

[3] Ujjwal Kumar Singh, *The State, Democracy and Anti- Terror Laws in India* (Sage Publications India Pvt Ltd, New Delhi, 2007).
[4] *Ibid.*

therefore, it is incumbent on state as the protector of the lives and properties of its subject to modify laws which could in turn be effective to check the growing audacity of the criminals.

For example, organised crime is generally misunderstood to be scunnered form of criminal acts performed by the vexed hoodlums, in popular culture such groups are referred to as gangs. It is a common belief among the masses that such assorted gangs are indulged in skirmishes in order to maintain the one-upmanship of their respective gangs and thus in order to facilitate such gang wars the hoodlums commit number of crimes so as to materialize criminal conspiracy. However, organised crime doesn't just mean gang wars and conglomeration of criminals but also include much more than that. Organised crime is a serious threat to the social system including the economy, the polity and even national security and is, therefore, a serious challenge to the law enforcement agencies.[5]

Interpol the International Criminal Policy Organisation, defines organised criminals as,

"Any individuals or group of persons engaged in continuing illegal activity which has as its primary purpose, the generation of profits, irrespective of national boundaries".[6]

Organised crimes are not driven by the impulse of ordinary henchmen rather it is a concerted effort of those big-timers who patiently hatch conspiracies for years actuated by the aim of establishing supremacy over particular areas which promises lucrative return in the form of money and property. The commission defines organised crime as "a continuing structured collectivity of persons who utilise criminality, violence and a willingness to corrupt, in order to gain and maintain power and profit."[7]

The Maharashtra Control of Organised Crime Act, 1999 enacted on April 24, 1999 broadly deals with the menace of organised crime. The Act also provides a definition of continuing unlawful activity as well. The constitutionality of the act was challenged in the case of *Bharat Shantilal Shah* v. *State of Maharashtra*[8] mainly on two grounds. Firstly, on the bedrock of State Legislature's competence to create such a piece of legislature. That is to say the legislation (MCOCA) is made to effectively control organized crime within the state of Maharashtra and to facilitate collection of evidence by interception of the wireless or telegraphic messages. This being the object of the Act, the many entries in the List II of the Schedule VII of the

[5] P.M.Nair, *Combating Organised Crime* 5 (Konark Publishing Private Ltd, New Delhi., 2002).
[6] Definition of "organised crime", *available at*: http://www. Interpol.com (Last visited on Feb., 29, 2016).
[7] *Supra* note 3.
[8] 2003 Bom CR (Cri) 947.

Constitution, do not provide for any such field of legislation available to the state by recourse to which legislation could be made by the state under Articles 245 and 246 of the Constitution of India.

The second aspect of the challenge is that the impugned legislation flagrantly violates the fundamental rights of the citizens. Even though the rules of interpretation suggest that the legislative competence of the legislature should be assumed, however, the provisions of the impugned legislature are void as they infringe the Fundamental rights of the citizens, thus making the act void in totality. As Article 13 prohibits making of such legislation it is contended that it is ultra-wires for the legislature to do so.

The petitioner also contested the *vires* of section 2(1) (a) (d) (e) (f) on the grounds that these Sections are vague and arbitrary. The word 'abet' used in the MCOCA is quite vague and confusing. The word 'abet' itself is not defined and only that is defined which by this enactment includes within the definition of the word 'abet'. It is an inclusive definition without defining what the word 'abet' means. The challenge therefore is that any communication or association whatsoever, with any person known to be or believed to be a person engaged in organized crime or assisting any organized crime syndicate would be abetting an offence mentioned in the MCOCA. The court held that the word abet shall mean same as is provided in Section 107 and Section 109 and includes i, ii and iii. The words, 'communication' or 'association' must be read to mean aid or assistance to anything done by organized crime syndicate as an organized crime, the definition must be interpreted with respect to the objects for which they are made, legislature never intended and the provision can't be interpreted to mean that a criminal should be segregated from a society for all the time to come *i.e* he would have no interest and legal transaction related to daily life. The court in order to fortify its argument took cue of Section 3 of the General Clauses Act, 1897, that unless there is anything repugnant to the subject or context, the word "abet", with all of its variations and different cognate expression shall have the same meaning as in the IPC.[9]

The court here constructed the meaning of word abet in consonance to what is given under Section 107 and Section 109 of the Indian Penal Code, also interestingly the court in this

[9] S. 3. Definitions.-- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,
(1) 'abet', with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860).

particular point restricted to the question that whether the particular section is fulfilling the object of the act or not .[10]

The next point contended was that the definition of 'continuing unlawful activity', as given in Section 2 (1) (d) is violative of Article 14 as it treats unequal as equals, the definition says that an activity would be an activity of continuing unlawful activity if more than one charges of cognizable offence punishable with imprisonment of three years or more are filed in competent court. It doesn't talk about an activity as continuing unlawful activity, if undertaken by a person who is known to be a criminal but more than one charge sheet has not been filed against him. The court held that the particular legislation was enacted with a purpose that special purpose was to forestalling, checking and controlling of the activities which were criminal in nature. Such prevention and control was not just with respect to person only but also gangs constituted by such person, even the activities which are incidental to the furtherance organized crime and formation of criminal syndicates are covered. On being contended that it was vague, the court took guidance from the following paragraph from the judgement given in the case of *Amritsar Municipality* v, *State of Punjab:*[11]

"But the rule that an Act of a competent legislature may be "struck down" by the Courts on the ground of vagueness is alien to our Constitutional system.... A law may be declared invalid by the Superior Courts in India if the Legislature has no power to enact the law or that the law violates any of the fundamental rights as guaranteed in Part III of the Constitution or is inconsistent with any constitutional provision, but not on the ground that it is vague."

The court observed that the provision containing the definition of the word 'unlawful activities' has a very limited purpose, the limited purpose is to find out about the antecedents of the person, the purpose of the provision is not to convict such person. Hence, the provision only talks about those unlawful activities in which the person has been charged over the period of last 10 years.

[10] S. 107 (Indian Penal Code). Abetment of a thing- A person abets the doing of a thing, who—
First — Instigates any person to do that thing; or
Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.
And S. 109 (Indian Penal Code). Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.
[11] (1969) 3 SCR 447.

Section 3 and Section 4 were also attacked on account of arbitrariness. It was contended that the provision under impugnity were negating the aspect of requisite *mens rea* required for harbouring, concealing or attempt to harbour and conceal, it may have adverse effect as a person who unknowingly or unintentionally harbours a person may find himself landing in a soup thus the provision having capability to used as a tool of oppression. However the court held that unless the legislature expressly does away with the aspect of *mens rea*, it shall be presumed that the provision is instilled with requisite m*ens rea* required for the commission of an offence. The court held that the word 'intentionally' when read into Section 3 (3) and word knowingly is read into Section 3(5) then the said anomaly could be corrected.[12] We should also see that the court had similar approach when it was confronted with the questions of similar nature in the case of *Kartar Singh* v. *State of Punjab*[13], in this case Section 5 of the Terrorist and Disruptive Activities (Prevention) Act famously known as TADA was under question, under this section if someone was found in possession of any such specific arms and ammunition notified under the act then that particular person will be charged with a substantive offence , provided that such possession was pertaining to any terrorist activity. Court through the interpretation of statute *read in* the element of *mens rea* so that the offence does not turn out to be a strict offence.

In case of *PUCL* v. *UOI*[14] which was related with the constitutional vires of Prevention of Terrorist Activities (POTA), the court read into S.4 of the Act the requirement of knowledge, which dealt with the same issue of possession of arms. The Court also held that the requirement of *mens rea* must also be read into Sections 20, 21 and 22, POTA dealing with certain associative crimes.

[12] S. 3. Punishment for organised crime-
(3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate; shall be punishable, with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a, fine, subject to a minimum fine of rupees five lacs.
(5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which, shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.
S.4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate. - If any person on behalf of a member of an organised crime syndicate is, or, at any time bus been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also liable for attachment and forfeiture, as provided by Section 20.
[13] (1994) 3 SCC 569.
[14] (2004) 9 SCC 580.

Section 4 of the act was also challenged that the words 'at any time' used in the provision could be used in retrospective effect, however, the court held that the words should be read prospectively so as to mean after the act coming into force, this judicial construction was done in order to protect it from the vice of retroactivity.

Then Section 13 to Section 16 were contended on grounds of legislative competence. Section 13 of the Act provides for appointment of Competent Authority for granting permissions, approvals or sanction etc. under Section 14 of the Act. Section 14 deals with authorization of interception of wire, electronic or oral communication. It exhaustively enumerates the manner in which it can be done. Section 15 deals with the constitution of Review Committee for the purpose of review of authorization under Section 14. It thus provides the supervisory or reviewing authority over the decision of the competent authority under Section 14 of the Act. The procedure to be adopted by the Review Committee is provided by Section 15. Section 16 deals with unauthorized use of interception and disclosure of wire, electronic or oral communication not except in the circumstances mentioned. It therefore enacts prohibition and punishment of unauthorized user of information acquired by interception of wire electronic or oral communication. The respondent contended that the state has got power to legislate under Entry 1 List II of the Schedule VII i.e public order. The petitioner contended that the power of interception of phone calls and communication squarely falls under Entry 31 of List I. It was also contended that these provisions have overriding effect on Indian Telegraph Act of 1885, which is a central piece of legislation. Section 25 of MCOCA enables overriding of the provisions in the Telegraph Act for the purposes of this Act. Thus provisions of MCOCA therefore make severe and substantial inroads on the subject of telecommunications which is an exclusive domain of the Union Legislature. Even on the touch-stone of peripheral and minimal interference the provisions of MCOCA cannot be saved. The inroads as will be seen from the chart above are substantial. They specifically empower the state to do certain things which the Central Legislation i.e. the Telegraph Act specifically prohibited. The court held that MCOCA circumvents the safeguards of the Indian Telegraph Act and, therefore, held that Sections 13 to 16 are liable to be struck down on ground of legislative competence.

The next challenge was regarding the sustainability of Section 21 (5), that it leads to the ouster of the court's power to judicial review. The court held that there is no reason to deny considered of grant of bail to anybody merely because he is on bail for any other offence. The object of the Act being to prevent organized crime, the refusal of bail to an offender who commits an offence under the Act, while on bail for an offence already committed under the Act may be consistent

with the aims of the Act. The court accordingly strike down section 21(5) as being violative of Article 14 of the constitution.

Aggrieved by the decision of the High Court the state went into an appeal against the judgement in the case of *State of Maharshtra* v. *Bharat Shanti Lal Shah*[15] . The court discussed the question of constitutional validity of the legislation at length, the court observed that the subject matter contained under the impugned legislation falls under Entry 1 and 2 of the State List also the Entry 1, 2 and 12 of the Concurrent List also suggests that the state is well within its limits to frame a law like this. The court also observed that President of India has given its assent to the formation of this law; the court thus held that the legislation of state under impugnity satisfies the test of constitutionality and even if there are incidental encroachments, such encroachments cannot affect the constitutionality of the legislation. The conclusion of the High Court that there is repugnancy between the provisions of Sections 13 to 16 of the MCOCA and the provisions of the Telegraph Act, 1885 does not appear to be sound.

Regarding the vires of Section 21 (5) of the MCOCA, the court held that the said provision suffered from the vice of unreasonable classification and was arbitrary and discriminatory to the extent it denied bail to an accused under MCOCA if on the date of the commission of offence, he was on bail for an offence 'under any other Act', hence the order of the High Court to the extent that the words 'or under any other Act' should be struck down was upheld by the Supreme Court.

Zameer Ahmed Latifur rehman Sheikh v. *State of Maharashtra*[16] , issue was regarding the constitutionality of the statutory provision of Section 2(1)(e) of the MCOCA, the main bone of contention was that, whether is it feasible to challenge it as the matter had already been challenged in the previous case of *State of Maharshtra* v. *Bharat Shah*[17]. It was contended that Section 2(1)(e) lack legislative competence, this section talks about insurgency. It was contended that insurgency is a condition of political revolt against the government with the means of arms and violence and that the crime 'promoting insurgency' does not lie under Entry 1 of the State List or under Entry 1 of the Concurrent List of the Schedule VII or in any other entry of the above said State List and Concurrent List. It was submitted that Entry 1 in the State List pertains to public order is a disorder of much lesser gravity and insurgency cannot be covered by public order. It was also contended that 'insurgency' relates to security of the

[15] (2008) 13 SCC 5.
[16] 2007 SCC Online Bom 650.
[17] *Supra* note 6.

country and finds its place in the Union List, to be more precise Entry 1 of the Union List talks about defence. If Article 248 of the constitution is looked upon and read with Entry 97 of the Union List then one can see that the law under impugnity does not possess the requisite legislative vires, therefore, it was unconstitutional on the part of the Maharashtra Government to make a law which pertains to 'insurgency' and thus encroaching upon the powers of the Union Government.

After POTA was repealed on account of its misuse Unlawful Activities Prevention (Amendment) Act, 2004 was enacted and incorporated in the Unlawful Activities Prevention Act, 1967. The new provisions incorporated in UAPA, 1967 which intend to curb terrorism and insurgency like POTA have made MCOCA inoperative. They cover the whole field under Entry 1 of List III of the Schedule VII. They deal with the same subject and as per Article 254, the Unlawful Activities (Prevention) Amendment Act, 2004 which was incorporated in UAPA must prevail over the MCOCA so far as insurgency is concerned. Since the state legislature is in direct conflict with the central legislation, therefore, the state legislature should give way to the central piece of legislation.

The court went into the statement and purpose of the Act. The object is stated as: "prevention and control of, and for coping with criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto". It states that organized crime for several years had been a serious threat to the security of the state and it is necessary to curb their activities. It seems that by laying down punishment for possessing unaccountable wealth on behalf of members of organized crime syndicate, the primordial aim of the act is to curb organized crime syndicate.

Justifying the incidental overlap between the relevant entries of Union List and State List, the court made a point that it is necessary in 'defence of India', now this is quite interesting as court is yet again linking the 'public order' and 'defence of India' thereby creating confusion, as on one hand it is trying to show that MCOCA is an Act aimed at maintain public order and thereby rightly drawing its power from the State List but simultaneously it is expanding the scope of the act. The court also held that the word insurgency as used in MCOCA under Section 2(1)(e) and under UAPA are of different purport and held that there is no repugnancy between the two.

The matter subsequently was taken up in the Apex court in the case of *Zameer Latifur Rehman Sheikh* v. *State of Maharashtra*[18] , here also the bone of contention was regarding the impact of

[18] AIR 2010 SC 2633.

word 'insurgency' used both in MCOCA and the UAPA, the court here in this case also held that the word insurgency used in MCOCA is in reference to organized crime, whereas under the UAPA, the word 'insurgency' has a larger amplitude which relates to the security and stability and sovereignty of the state.

If we look into the relevant portion of the statement and object of the MCOCA, the following portion need to be seen:

"The illegal wealth and black money generated by the organised crime being very huge, it has serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There was reason to believe that organised gangs have been operating in the state and thus, there was immediate need to curb their activities."

Now, terrorist gangs have not been defined in the act, let us look into Section 2(1)(l) of the UAPA, which defines it as "Any association, other than terrorist organisation, whether systematic or otherwise, which concerned with, or involved in, terrorist act." The difference between terrorist gang and terrorist organisation is altogether flimsy as organisation are those which have been enlisted in a separate schedule, the important thing is that terrorist gang shall be guided by the terrorist act which is defined under Section 2(k), which further guides us to Section 15 in order to ascertain the expression 'terrorism' and 'terrorist', the word 'any other purpose' other than defence is of wide amplitude, as it is not only covering the issues pertaining to centre but also states. The court here also played to the gallery by just interpreting the provision as per the object of the act which it wishes to achieve, without going into the deeper fact that how such a construction can affect civil liberties in totality.

It is uncanny how the court could not apprehend a situation, that since the expression has not been defined precisely in the act, the security agencies can misuse the provision and could charge the accused both under the MCOCA as well as UAPA, solely with the objective of harassing such an accused and this is a known fact that the provision of bail etc. are deliberately made in such a manner so as to stifle the constitutional framework, the ordinary criminal jurisprudence and again bring us to the broader question that, is security of state such an issue that even though courts which in ordinary course of time, shows itself as a champion of human rights and liberty tiptoes away from this role and subterfuges by shrugging off the duty which has been entrusted on it as the 'guardian of constitution'.

How confusing could be the application of MCOCA is reflected in the latest case of *State of Maharashtra* v. *Hamaja Abdul Sayyed*[19], in this case the Bombay High Court held that an accused can be booked under the stringent MCOCA as well as UAPA in cases pertaining to terror activities. The matter was one in which the state government challenged the August 2 2014 order of the special MCOCA court which had discharged the accused in 2012 serial bomb blasts in Pune from MCOCA offences. The trial judge had then transferred his case to the regular court to be tried under UAPA and the Indian Penal Code. The learned trial judge had observed that, causing of bomb explosions would not convert a terrorist act or an act of insurgency into 'promoting insurgency'. The trial judge further recorded a finding that insurgency and promoting insurgency were two different aspects and the act alleged against the accused was an act of insurgency and, therefore, would not be an act promoting insurgency. The trial judge further recorded a finding that the act of terrorism or an act of terrorist as is defined under the UAPA would not be an offence under the MCOCA. The trial judge further recorded a finding that in cases of serial bomb blasts, it would not be a case of 'organised crime' as it would not amount to committing any activity of promoting insurgency.

The reasoning given by trial court was sound as if in prior decisions it has been categorically ascertained that promoting insurgency under the MCOCA and insurgency under UAPA have different purport and it would be ludicrous to apply both MCOCA and UAPA simultaneously as, how an act which is of the nature to be aptly called under insurgency could simultaneously be promoting insurgency? But the High Court here acknowledged the fact that since these two acts are different in purpose, therefore, the application of both the Acts for the impugned offence is feasible. This is the broad point which we wanted to emphasise, that court while applying the feasibility will tend to get confuse and will surely link public order with the offences pertaining to state legislature, what about the guideline given in the case of *Dr. Ram Manohar Lohia* v. *State of Bihar*[20] in which the court had clearly marked a difference between law and order, public order and state security and that set of security measures which are necessary for security of the state cannot be applied in the case of public order, the court though makes a difference between public order and the state security, still links the two while coming to the judgement. This problematic approach not only causes unusual hardships for the accused nut also affects speedy trial. It is of no use to book a person under many Acts as it is only going to burden the courts.

[19] 2015 SCC Online Bom 3132.
[20] (1966) 1 SCR 709.

Recently in the case of *Surjitsingh Bhagatsingh Gambhir* v. *State of Maharashtra*[21] , a different approach was adopted by the court. Here the impugned provision was s.21 (3) of the MCOCA. As per this section if a case is registered against a person under MCOCA then automatically his right to seek for anticipatory bail stands cancelled. The aggrieved party challenged the constitutionality of this section. The court in this case gave relief to the petitioner by observing that the order of prosecution against the petitioner was passed without application of mind, it was further observed that, it was further observed that the principle of *mens rea* is the cornerstone of the criminal law and the action of the petitioner does not reflect any culpability as such. This is one of the rare line of action adopted by the courts in the recent times and this change is welcome, however, with respect to the constitutionality of the section in question, the court held that the constitutionality of the particular section would be decided in appropriate proceedings. Here also the court put a blind eye towards the mischief which the provision was capable to do instead of correcting the mischief, the line of action adopted by the court suggests protection of the draconian provision.

3. Methodology

The court's modus operandi in terror related cases seems dubious as it only stick itself to a definite line of action, it just look into the legislative purpose and strategy without reviewing it that whether the purported purpose is justifiable or not and while analyzing the specific provision it just look into the fact that the nexus of the provision is getting consummated with the object and purpose of the Act or not. It just look into the fact that whether there are enough procedural safeguards or not and then upholds the legislation instead of looking into the broader question as to whether the legislation has the potential to violate fundamental rights or not, the courts delve into a different kind of enquiry that it should be ensured that the chances of the Act to be violated may be minimalised, thereby acting more like a careful drafter than an interpreter.

4. Conclusion

If we unfold the methodology which was adopted by the courts then we can see a seeming biasness towards the legislature, the biasness almost transfigures into reverence thereby tilting the scales in favour of the legislature and inflicting invisible blows to the civil rights of the

[21] WP 913 of 2019.

people. Instead of judging the law on the touchstones of arbitrariness which was evolved in the famous case of *E.P.Royappa* v. *State of Tamil Nadu*[22], and dismissing the draconian law in totality, the court chose to play to the gallery. By brushing the matter inside the carpet by terming it as a 'policy matter' the court validated a bad law. When it comes to defending adjudication pertaining those general laws which tend to violate the fundamental rights of the people then the court defends those rights as zealously as in the Greek mythology the three headed dog *Cerberus* guard the gates of the underworld. This approach of 'running with the hare and hunting with the hounds only creates confusion and disbelief in the psyche of the common man.[23]

We can look the judgements given in *Keshavanand Bharati* v. *UOI*[24] and *Maneka Gandhi* v. *UOI*[25] where the approach of court is aimed at upholding reasonableness, fairness and justness. Whereas the cases pertaining to security of state shows a different kind of consistency in court's approach, whether it was *A.K Gopalan*[26], *ADM Jabalpur*[27] or *Bharat Shah*[28] where the courts approach is escapist, instead of holding the forte by reflecting a sound jurisprudential understanding, the courts approach is opportunistic rather playing to the gallery.

One of the trend that can be picked by the analysis is that law has been used as a 'political instrument', thus sabotaging and undermining the basic tenets of rule of law. The courts by such minimal interpretations give fillip to the legislation to come up with more stringent and draconian varieties of law which has minimal respect for the civil and fundamental rights of the individual. Such non interference by the judiciary creates a doubt in the psyche of the common person, they start seeing institutional wheels of democratic setup as manifestation of organised authority, domination, and power of the possessing classes over masses, and the most flagrant and complete negation of humanity and universal solidarity.[29]

The state devices many treacherous ways to defeat the basic civil liberties, it is, therefore, the entrenched fundamental rights are necessary, the courts are the sentinels guarding these rights but many a times efforts of the courts are rather half hearted. Recently the Unlawful Activities

[22] AIR 1974 SC 555.
[23] Mrinal Satish, Aparna Chandra, *et. al.*, "Of Maternal State and Minimalistic Judiciary: The Indian Supreme Court's Approach to Terror- related Adjudication"103 *National Law School of India Review* 138 (2013).
[24] (1973) 4 SCC 225.
[25] (1978) 1 SCC 248.
[26] AIR 1950 SC 27.
[27] (1976) 2 SCC 521.
[28] *Supra* note 9.
[29] *Supra* note 1.

(Prevention) Amendment Bill, 2009 was passed by the Lok Sabha.[30] The provisions of the new amendments are atrociously draconian as the Central Government is now possessed with a *carte blanche* to declare any person as terrorist and no fulfilment of due process is required while taking this decision. Wrong application of such laws have put the life and reputation of affected individuals on a tailspin, the courts have shrugged their duty to protect the fundamental rights of the people on flimsy excuse of state security.

Such kind of legislations also conceals those weak areas which are in need of immediate reforms such as proper investigation of crimes, speedy disposal of cases and long delays. These are the real areas which can result in efficient working of the system and consequent strengthening of the state as a whole.

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