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A STUDY OF GUJARAT CONTROL OF TERRORISM AND ORGANIZED CRIME ACT 2015 IN LIGHT OF CLASSICAL CRIMINAL LAW PRINCIPLES*

INTRODUCTION

RULE OF LAW AND ROLE OF STATE

Many studies suggest that rule of law can counter the growth of terrorism. As long as rule of law is in place it ensures that government is responsive to the needs of the people as it results in enhanced civil participation. The more citizens are stakeholders in the political process, the less likely is that some of them associate with terrorist organizations.[1] This occurs because rule of law enables ordinary citizens to resolve their problems through democratic rule of law systems so that they lack the feelings of hopelessness and desperation that motivate terrorist action. *Only when the citizens believe in likelihood of fair and impartial legal ruling in court that citizens are willing to turn to domestic justice systems.*[2] Only in the absence of impartial adjudicatory bodies citizens join the radicalized groups to resolve their conflicts. Choi also suggests that failed states in the international world often become exporters of terror not just due to the absence of central administrative mechanism but also due to the feeling of marginalization among its citizens. The State should primarily ensure a just legal system with independent judiciary and fair law enforcement system to ensure that its citizens are not resorting to terrorist activities. Passing laws in a non arbitrary manner and which assures equality to all, which is supplemented by a efficient judiciary reinstates the citizens faith in system and would force him to resort to legal solutions rather than violent ones.

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[1] Seung Whan Choi, *Fighting terrorism through Rule of law,* The Journal of Conflict Resolution, Vol 54, No 6, 947 (2010)

[2] *Id* 944

PHILOSPOHY BEHIND ANTITERRORISM LAWS

The traditional belief is that harsher the laws the stronger the deterrent message would be. This belief is also found in case of serious offences like terrorism too. It is true that terrorist deserve stronger punishments than ordinary criminals because of the fear they cause in society but there is no empirical proof to the belief that harsher laws are efficient agents of deterrence. In fact making harsh laws for terrorism does not result in lowering of crime rates but it increases the support for such organizations and causes more people to join them. In fact it is suggested that "*a criminal law which is full of draconian measures may provide the terrorists with additional reasons to continue with their fight.*"[3] If we adopt a harsher law for curbing the menace of terrorism it would be equal to giving them more reasons to fight for. In the fight against terror the government should be cautious not to adopt laws that denounce the basic principles of rule of law because such adoption would mean government has transformed into something which is worth fighting against. These laws can very well cross limits and demonize certain groups, probably minorities which would further escalate the problem. Politicians pass more and more harsh laws to send the message that they are concerned with safety of society and public in turn demands more. This can lead to exponential growth of such laws resulting in over criminalization. Lord Hoffmann clearly expressed that "*such a power to place in custody without time constraints and without any evidence are not compatible with our constitution. The real threat to the nation comes not from terrorism but from laws such as these. This is the true measure of what terrorism may achieve*".[4] There are also chances that the standard of draconian laws would contaminate the future legislations and would ultimately result in the lowering of legal system itself.[5]

GCTCOC ACT 2015 AN OVERVIEW

The GCTOC Act was introduced as a sudden reaction to the Akshardam temple attack where 37 were killed. The act was initially introduced as Gujarat Control of Organized Crime (GujCoc) in 2003.[6] But it was turned down twice by Abdul Kalam and once by Pratibha Patel. Gu-

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[3] Manuel Cancio Melia, *Terrorism and Criminal law: The Dream of Prevention, the nightmare of rule of law,* New Criminal Law Review, Vol 14 No 11, 121 (winter 2011)

[4] [2004]UKHL 56, para. 97

[5] Supra note3, 116

[6] http://www.tribuneindia.com/news/comment/gujarat-s-draconian-way-to-counter-terror/139397.html (retrieved on 27/07/2016)

jarat's vulnerable coastline with proximity to Pakistan was once again cited as the main reason for passing of the law in March 2015 by Gujarat state assembly. The Anandiben Patel government also invited attention to similar laws in Maharashtra, Karnataka and Andhrapradesh which intended to curb organized crime and terrorism. But President Pranab Mukherjee send back the bill for further clarifications on December 28 2015. In response the union home ministry informed the President that they are withdrawing the act and would resubmit after working on the relevant provisions.[7] The Gujarat control of terrorism and organized crimes Act 2015 was denied assent by the President and was sent back owing to the controversial nature of its sections. The act violated the classical principles of criminal law and circumvents the procedural safeguards assured to the accused to such an extent that it was denied presidential assent four times in total.

Few classical principles of criminal law are 1) Narrow definition of crime 2) Burden of proof lies on the prosecution 3) Presumption of innocence 4) Strict interpretation of statute 5) Proportional punishment 6) Presence of essential elements of crime like mens rea in a statute. In light of these principles controversial sections of the Act would be analyzed to support the argument that presidential assent should not be granted to this act. The shift towards crime control model which is suggested by the Malimath committee and the same trend which can be found in similar Acts would be criticized for its readiness to sacrifice rights of the accused which can only lead to more atrocities and suppression of dissenting voices.

CLASSICAL CRIMINAL LAW PRINCIPLES

1) NARROW DEFINITION AND STRICT INTERPRETATION

Stephen S Smith has clearly stated that over criminalization happens as a result of ambiguous laws.[8] Moral blameworthiness which is an essential ingredient in a crime is sacrificed by way of this ambiguous drafting. Over criminalization can happen due to quantitative as well as qualitative reasons. Quantitative reasons mean more no.of crimes being created by way of statutes but qualitative reason holds ambiguous drafting of statutes as a reason for over crimi-

[7] http://www.outlookindia.com/website/story/another-rejection-for-gctoc-bill/296554 (retrieved on 26/07/2016)

[8] http://www.heritage.org/research/reports/2014/08/a-judicial-cure-for-the-disease-of-overcriminalization (retrieved on 27/09/16)

nalization.[9] Jerome Hall went on to the extent of suggesting that modern penal law suffers from superfluity and not paucity of laws.[10] Henry M. Hart suggests that it makes no sense to speak of procedural safeguards if anything can be made a crime in the first place. He says "*the function of a penal code is statement of those obligations of conduct which the conditions of community life impose upon every participating member if community life is to be maintained and prosper*".[11]

There should be narrow construction of statutes in favor of defendant. Going for a liberal interpretation of statute would result in lack of notice to defendants regarding criminal nature of an act. Judiciary while liberally interpreting ambiguous criminal laws are violating the principle of prior warning to the defendant. Jerome Hall states that Courts should not criminalize acts that are not specifically declared criminal by the legislature.[12] This would work against over criminalization. The maxim "Nullum crimen sine lege" means no conduct shall be held criminal unless it is specifically described in a penal statute. It also means penal acts should not be given retroactive effect. Hall also points out that "*it is unjust that what was legal when done should be subsequently held criminal that what was punishable by a minor sanction when committed should later be punished more severely*".[13]

2) BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE

A defendant in a criminal action is presumed to be innocent until the contrary is proved and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.[14] Reasonable doubt means a doubt a man of reasonable intelligence has good reason for entertaining if he is called upon to do so.[15] David Hamer states that "*a balance is sought between the defendants right of not to be wrongly punished and communities interest of law en-*

[9] *Id.*

[10] Jerome Hall, *Nulla Poena Sine Lege*, 47 THE YALE LAW JOURNAL, 165, 176 (1937)

[11] Henry M Hart Jr, *Aims of Criminal law,* 23 LAW AND CONTEMPORARY PROBLEMS 402, 431 (1958)

[12] Hall, *Supra* note 6 at 165,

[13] Hall, *Supra* note 6 at 171

[14] John A. Seiff, *The presumption of innocence*, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY (1931 - 1951), Vol 25, No.1 (May-Jun, 1934) 53, 54

[15] *People v John Henry Barker,* 153 N.Y. 111, 47 N.E.31

forcement".[16] Presumption of innocence places more weight on defendant's rights.[17] The defendant has to pay a heavy price for erroneous conviction. It unjustifiably punishes and stigmatizes the defendant. The deterrence of an erroneous conviction would be lost if the mistake comes into light. Such mistakes would make the citizens to move away from obeying laws because they lose faith in the legal system. A wrongful conviction does irreversible harm to the defendant and damages the effectiveness of legal system. Thus the injustice of a wrongful conviction is considered greater than harm caused by a mistaken acquittal.

But the answer to this problem is not to demand absolute proof for criminal conviction because it would make convictions a rarity. For law to be practically possible some risk of erroneous conviction has to be tolerated. *The presumption of innocence by putting forth a high but not an absolute standard of required proof ensures that there is balance between individual's liberty and practical side of criminal law.*[18] Any shift in the reversal of this presumption increases the chance of wrong conviction. Hamer also suggests that seriousness of the offence should be looked into to determine the injustice caused by an erroneous conviction. Reverse burden can only be justified when prosecution would find it extremely difficult to prove guilt without reverse burden but it is easy for defendant to prove his innocence.[19]It is better to run risks in such a way as to let guilty go rather than punish an innocent man.

3) PROPORTIONAL PUNISHMENT

Mens rea recognizes the fact that harsher punishments are kept for crime with a guilty state of mind. The punishments should be in such a way that there is enough room for the theories of reformation to apply but at the same time the criminal should pay the price for his criminal act. The penalties should be serious enough to express the that gravity of condemnation of act by the society but at the same time it should provide the offender with an opportunity to correct himself and rejoin the society so that he can also contribute to societies growth.

[16] David Hamer, *the presumption of innocence and reverse burdens: a balancing act*, Cambridge Law Journal, 66(1), March 2007, 142, 147.

[17] *Id*155.

[18] *Id* 147

[19] *Id* 148

Hart says "*there exist two objectives for a sentence. First objective is that it should adequately express the community's view of gravity of defendants misconduct and Second objective is that the sentence should be as favorable as possible to the defendants rehabilitations as a responsible and functioning member of the community* ".[20] There should not be unacceptable inequalities in punishments with respect to similar offences. The very idea of justice is violated by unequal penalties for substantially similar crimes and it also destroys the accused's sense of having been justly dealt with which is first prerequisite for his personal reformation.[21]

4) PRESENCE OF ESSENTIAL ELEMENTS OF CRIME

Number of regulatory offenses is on the rise which means they are an offense only because law says so (*mala prohibitum*) and this result in criminal consequences for actions which can be controlled by civil consequences. Hart points out that guidance of moral standards of communities which are available in case of acts *malum in se,* is absent in case of acts which are *malum prohibitum.*[22] Classical criminal law requires that punishment be limited to those who willfully disobeyed the notice that their action would amount up to a crime. But in strict liability offences the only question court has to look into is whether the defendant has committed the act proscribed by the statute. If the answer is yes then it has to convict the person. Classical criminal law states that there can be no justification for condemning and punishing a human being as criminal when he has done nothing which is blameworthy. According to Richard A.Wasserstorm "*Strict liability offences are yet to prove themselves as having any deterrent effect since they do not proscribe activities incompatible with standards of community*[23] and also the message they convey, that criminality can be a matter of ill chance rather than blameworthy choice, causes serious damage to social morale.[24]

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[20] Hart, *Supra* note 7 at 430, See 426 where it is said that "*The legislature normally goes for gradation of offences and the penalties normally correspond to the degree of blameworthiness of defendants conduct which will take into account the relative extent of the harm characteristically done or threatened to individuals and thus to social order*".

[21] *Id* 439, See 416 where it is said that *"If a member of community despite his awareness that community condemns a specific act as unjustifiable still does it, then he is morally blameworthy and can be adjudged a criminal. Or if a member of community performs a risky act, without the necessary skill required for performance of that act, despite his knowledge that he is not capable of performing the same, then, his action can be condemned by community*".

[22] *Id* 420

[23] Richard A.Wasserstorm, *Strict liability in Criminal Law,* 12 STANFORD LAW REVIEW 731, 735 (1959)

[24] Hart, *Supra* note 7 at 423

5) FAIR TRIAL

DETAINMENT AND BAIL

Raifearteigh points out that in common law countries like Ireland bail is considered neither as punitive nor as preventative. It has been used to secure the purpose of the accused person at his trial by a reasonable amount of bail.[25] It is a recognized fact that detention in custody pending trial could cause hardships and only in exceptional circumstances people should be detained in custody. The presumption of innocent until conviction would be violated if custodial detainment becomes the norm rather than the exception. Justice V.R.Krishna Iyer in *Gudikanti Narasimhulu And Ors* v *Public Prosecutor*[26] categorically stated this principle. It was also pointed out that a man who is released on bail has a better chance to prepare or present his case rather than a person in remand. Also the public expense in keeping a man in jail where there is no chance of disappearance or danger is also not negligible. These factors along with the deplorable conditions of the sub jails made him suggest that the policy should be favoring release rather than incarceration. The same principles were reiterated in the case of *Sanjay Chandra* V *CBI*[27] and it was also held that an accused is not detained in custody with the object of punishing him on the assumption of his guilt.

ADMISSION OF CONFESSION MADE TO POLICE OFFICER

In criminal cases the state usually offers a confession made by accused. John A.Seiff points out that with regard to these cases it was held by the highest court of Massachusetts in *Commonwealth v Curtis*[28] that "*No cases require more careful scrutiny than those of disclosures made by a party under arrest to the officer who had him in custody".*[29] The inherent danger in using confession is that the responsible police officer may have used third degree methods to extract

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[25] Una Ni Raifearteigh, *Reconciling Bail law with the presumption of innocence,* OXFORD JOURNAL OF LEGAL STUDIES, Vol 17, No.1 (Spring,1997) 1,6.

[26] 1978 AIR 429 it was held that "*significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorizing it is reasonable even handed and geared to the goals of community good and state necessity spelt out in Article 19.* "

[27] 2012 1 SCC 40

[28] 97, Mass.574, 578 (1867)

[29] Seif, *Supra* note 11 at 53

the confession. Section 162 of CrPC, Section 25 of Indian Evidence Act, and Section 26 of Indian Evidence Act institutionalize these principles.[30]

REFORMS SUGGESTED BY MALIMATH COMMITTEE

The Malimath committee was formed to formulate measures for the revamping of criminal justice system in the country. In its suggestions there are 2 recommendations which are of critical importance in the light of classical criminal law presumptions. The first recommendation is the dilution in standard of proof required and second is admissibility of confessions made to higher ranking police officers.

Malimath committee recommends for the lowering of standard of proof from proof beyond reasonable doubt to clear and convincing standard which is followed in United States. This recommendation is based on several reasons. The committee notes that the proof beyond reasonable doubt was a standard evolved when jury trial was done by untrained citizens in UK so that they don't violate the rights of the accused. Without any contextual understanding of its development it has been followed by all countries which adopted common law. This standard of proof is not a universal one either with France following the "in time conviction" standard and United States following the "clear and convincing standard" in matters of Fraud. Committee highlights the failure of this test by stating that a major function of criminal law, which is punishing of guilty, is hampered by the presence of this standard. In practical application proof beyond reasonable doubt has become absolute proof and rather than truth of the matter importance is given whether the doubt is reasonable or not. Committee recommends the adoption of clear and convincing model because it ensures justice to the victim and at the same time results in better efficiency in punishing the guilty.[31]

The Malimath committee on reformation of criminal justice system has recommended an amendment in Section 25 of Indian Evidence Act to admit confessions given to a police officer not below the rank of Superintendent of Police[32]. The Law Commission of India's 48th report

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[30] Section 162 of CrPC provides that provides that no statement made by any person to any police officer in the course of an investigation shall be used in inquiry or trial in respect of any offence under investigation. Section 25 of Indian Evidence Act states that no confession made to police officer shall be proved as against a person accused of any offence. Section 26 also provides that no confession made by any person whilst he is in the custody of police officer, unless it be made in the immediate presence of magistrate shall be proved against such person.

[31] See Committee on Reforms of Criminal Justice system, 2003 , 65-75

[32] See Committee on Reforms of Criminal Justice system, 2003 , 123-124

has also suggested that the confessions made before a higher officer should be admissible as evidence provided certain safeguards are in place.[33]

PURPOSES OF THE GCTOC ACT

The Act identifies organized crime as a major security concern for the society. Organized crimes such as contract killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom etc affects not just public peace and order but also affects the financial stability of the nation. Also these crime syndicates use wire and oral communications in their activities. The purpose of the act states the existing laws cannot effectively curb these activities. Hence this need for a comprehensive law which allows for interception of communication for effective administration of justice has resulted in the formulation of GCTOC.[34]

CONTROVERSIAL PROVISIONS

1) BROAD DEFINITIONS

Section 2 of the act enumerates the definitions. Section 2 (1) (h) of the act defines terrorist act. The definition is borrowed from the definition of terrorist act under the repealed TADA[35] which was also followed in POTA.[36] It is defined as an act done with the intention to disturb law and order or public order or threaten the unity, integrity, security, or sovereignity of India or to strike terror in the minds of people or any section of people. The major criticism against POTA was that the vague definition allowed for discriminatory application. Section 2(1)(e) defines organized crime. This definition is inspired from Maharashtra Control of Organized Crime Act (MCOCA) with minor changes.[37] The term insurgency is not found in GCTOC instead certain other specific acts like contract killing, land grabbing, economic crimes and cyber crimes with serious consequences have been included.

[33] Law Commission of India, 48th report on July 1972, 4-7

[34] Statement of object of reasons GCTOC 2015.

[35] Section 3(1) TADA

[36] Section 3(1) POTA

[37] Section 2 (1) (e) MCOCA

Due to the broad terms used in Act it is not possible to compartmentalize organized crime and terrorist activity. In *Jayawant Dattraya Surya Rao* v *State of Maharashtra*[38] the court held that it is not possible to give a definition for terrorist activity. There are high possibilities that both terms could slip into each other.[39] Narrow and strict wordings are totally absent making GCTOC an umbrella legislation under which any action can be brought by way of interpretation. The faults in POTA are repeated in GCTOC by way of adoption of definition in broad terms. Terrorist Acts could comprise of ordinary cases of murder robbery or even theft which means violators could be subject to severe penalties without any protection of the constitutional or procedural safeguards.

The Section 2(1) (a) of GCTOC defines what is abetting an offence. This definition is borrowed from Section 2(1) (a) of TADA. Section 2 (1) (a) (iii) states any assistance rendered whether financial or otherwise would fall under ambit of abetment. The definition given is so wide that even providing legal assistance to an accused could become an offence. Communication with a person involved in organized crime syndicates could also be held liable under these provisions. The provision fails to address the Mens rea element and there is no requirement that person should have actual knowledge or intention to be charged under this provision.

2) VIOLATION OF PROCEDURAL SAFEGUARDS

ADMISSABILITY OF CONFESSIONS

Section 16 of GCTOC allows for a confession which is recorded by a superintendent of police to be admissible in trial against accused or any other accused. This section is a reproduction of Setion15 of repealed TADA. MCOCA also has a similar provision under Section 18. This is in clear violation of procedural safeguards provided under Section 162 of CrPC and Section 25 and 26 of Indian Evidence Act. This can lead to gross human rights violation and use of inhuman methods by police to extract confessions. Section 16(7) further derogates the rights of accused by holding that even if the accused complains of torture it does not invalidate the confession as such but leads only to a medical examination. Considering the fact that under GCTOC

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[38] 2002 SCC (Cr) 898 it was held that "*in our view it is not possible to define terrorism by precise words. Whether the act was committed with the intent to strike terror in the people or a section of the people would depend upon facts of each case*".

[39] Ujjwal Kumar Singh, *Repeal of POTA: What about other draconian laws?* Economic and Political Weekly ol 39, No33 August 14-20 2004, 3677, 3678

accused can be kept under custody for 180 days without bail the chances of misuse of this provision are very high.

The Supreme Court in *Nandini Satpathy* v *P.L.Dani*[40] has clearly underlined why confessions are not admitted in court. 185th law commission also observed that over the years the police conduct seems to have deteriorated.[41] The Supreme Court observed in *Kartar Singh* v *State of Punjab*[42] that brutal atrocious, barbaric, and inhuman treatment are adopted by the police over the accused and held that confession extracted by means of third degree, torture and atrocity is inadmissible. Also in GCTOC the burden of proving the confession is involuntary is on the accused which is nearly impossible for him, because of the lack of witnesses to police atrocities when the accused is in their custody.

Also this position of accepting confessions would lead to important question of whether confession obtained under GCTOC can be used against other offences committed by the accused. In case of TADA the answer was in the affirmative in the case of *State of Tamil Nadu v Nalini.*[43]But this interpretation if applied in the case of GCTOC will have serious ramifications in rights of accused. It will encourage police officers to add GCTOC provisions to charge sheet of the accused extract confession from him and use that confession to attain conviction in other offences charged along with GCTOC provisions. This can only lead to rampant misuse of GCTOC act for all type of offences in order to secure an easy conviction. Moreover this is in direct conflict with procedural safeguards provided to the accused under Section 25 and 26 of Indian Evidence Act. Another important aspect would be status of confession of co-accused. Going by the interpretation of Supreme Court in *Jamal Ahamed* v *State of Rajasthan*[44] the confession of a co-accused can be corroborated by confession of another accused. This interpretation reduces rights of accused into nothingness and in fact encourages police officers to resort to third degree methods to extract confession.

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[40] AIR 1978 SC 1025; the court held that "*The first is that we cannot afford to write off the fear of police torture leading to forced self-incrimination as a thing of the past. Recent Indian history does not permit it; contemporary world history does not condone it".*

[41] 185th Law Commission report, Part II, 127

[42] 1994 3 SCC 569

[43] AIR 1999 SC 2640; The court held that "*confession statement duly recorded under Section 15 of TADA would continue to remain admissible as for the other offence under any other law which too were tried along with TADA offences, no matter that the accused was acquitted of offences under TADA in that trial"*

[44] AIR 2004 SC 588

3) CUSTODIAL DETENTION AND BAIL

Section 167 of CrPC is modified by Section 20(2) of the act so that a person can be held in police custody for a period of 30 days and pending investigation he can be held in custody for a period of 180 days. Section 20(3) removes the facility of anticipatory bail to the accused and 20(4) and 20(5) ensures that practically it's impossible for an accused to get bail. Section 20(4) mentions that bail would be granted only after public prosecutor is given a chance to oppose the application and only if special court is satisfied that there are reasonable grounds for believing accused is not guilty of offence. This provision is once again a reiteration of Section 20(8) of TADA which can also be found in Section 21(4) of MCOCA. The Supreme Court while dealing with an offence under MCOCA in *Chenna Boyanna Krishan Yadav* v *State of Maharashtra*[45] observed that reasonable belief demands that facts and circumstances in themselves should justify satisfaction that accused is innocent. .

Section 20(5) prescribes that accused shall not be granted bail if he was on bail for any other offence under any other act on the date of offence under GCTOC. This provision is same as that in Section 21(5) of MCOCA which was later held unconstitutional by Supreme Court in *State of Maharashtra* v *Bharat Shanti Lal & Ors*[46] it was held by the Supreme Court that such a restriction violates Right to equality guaranteed under Article 14 and it is not even in consonance with the object of the Act which led to the restriction being held as excessive restriction.

4) BURDEN OF PROOF

Section 21 of the act identifies certain situations where the burden of proof would shift from prosecution to the accused.[47] These sections are clearly inspired from Section 53 of POTA which allowed Special Court Judge to form an adverse presumption when accused was found in possession of arms used in commission of offence or when fingerprint of the accused were found in site of commission of offence. But these provisions have serious ramifications on in-

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[45] 2007 (1) SCC 242;

[46] 2008 (13) SCC 5

[47] Section 21(1) a states that if the accused is found in possession of unlawful arms or documents which were used in the commission of the offence then the special court shall presume that the accused is guilty. Section 21(1) b states that if the fingerprint of the accused is found in vehicles, documents or papers used in connection with the commission of the offence or if it is found in the site of crime then also the same presumption would apply. Section 21(2) states that in case of any financial assistance to a person accused in a terrorist act or reasonably suspected of an act, the person rendering assistance shall be presumed to be guilty for abetting the act.

dividual liberty especially when considering the fact that police can engage in doctoring evidence. The classical criminal law principle of innocent until proven guilty is being violated here and the defendant is posited against mighty state to win back his freedom.

Section 17 of GCTOC also works against concept of fair trial. In fact this section is a straight replication of Section 16 of TADA and Section 30 of POTA. It states that if a person who testifies against the accused is afraid of danger to his life then identity of those witnesses would not be released to the accused provided prosecution makes such a motion. But this denies the accused a fair chance to prepare his defense and question the reliability of witness.[48] His opinion is not sought before placing any witness under this blanket protection. These provisions are in violation of principles of ICCPR[49] and UDHR[50] which speaks about right to defend oneself. Also Section 25 grants immunity for any action done by the state government official or authority in good faith which practically makes them non accountable for any action done under this act. They can go to any extent under the guise of performing these statutory obligations and is granted high degree of protection.

5) CHANCES OF DISPROPORTIONATE PUNISHMENTS

Punishment for offences under GCTOC is dealt under section 3. Section 3(1) states that whoever commits an offence of terrorist act or organized crime shall be punished with death or imprisonment of life if such offence has resulted in death of any person. Section 3(1) also states that in other cases the punishment shall not be less than 5 years but may extend to imprisonment for life. Since GCTOC brings within its ambit large no of offences ranging from terrorism to chain snatching[51] there are chances that 2 dissimilar crimes may be given same punishment or for the same crime entirely different punishment may be given. Lack of guidelines instructing the special courts how to utilize this vast discretion vested upon them can lead to varying standards of sentencing.

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[48] Jayanth K Krishnan, *India's PATRIOT ACT: POTA and impact on Civil Liberties in the world's largest Democracy,*22 Law & Ineq. 265, 286 (2004)

[49] Article 14(3)(d) and (e) of ICCPR, https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

[50] Articles 9-11 of UDHR, http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

[51] http://timesofindia.com/city/mumbai/Maha-govt-raises-jail-term-upto-5-yrs-for-chain-snatchers/articleshow/52008558.cms

Section 3(4) of the act also makes a mere membership in criminal gang punishable with imprisonment not less than 5 years which may extend to life imprisonment. Now what constitutes membership is something not defined by the act which once again grants the special courts unbridled discretion in determining whether a person is a member of a crime syndicate from the facts and circumstances of the case. This provision is also in conflict with Supreme Court decisions which have held that mere membership shall not be made the sole criterion for punishment. In *Arup Bhuyan v State of Assam*[52] Supreme Court has categorically held that mere membership will not make a person criminal unless he indulges in violence or incites people to violence.

CONCLUSION

American legal scholar Herbert Packer identified 2 models of criminal process; the due process model and the crime control model. Crime control model is all about repression of crime and hence great deal of faith is placed in police and prosecutors to control crime. They are trusted with the duty of sorting out innocent ones and securing expeditious conviction for the rest with minimum opportunities to challenge the same. But in contrast due process model is built on the belief that police procedures are susceptible to misuse and hence assumes the presumption of innocence. Packer has stated that *it is based on the liberal values of primacy of individual and the complementary concept of limitation of official power*.[53]

Indian legal system right from early stages has been following the due process model. It requires state to prove a crime beyond reasonable doubt and limits police powers of arrest and detainment. Procedural and constitutional safeguards are provided to protect the rights of the accused and to prevent informal fact finding mechanisms. This model has been purposefully followed to protect the minorities and the poor from atrocities of police. Protecting the due process rights would give security to disadvantaged sections of the society because they may not be in a position to complain about police abuses. The shift to the crime control model can only happen at the cost of these rights and securities provided to the disadvantaged sections and minorities.

[52] 2011 3 SCC 377

[53] Herbert Packer, Two models of criminal process, 113 U. PA. L. REV. 230

Acts like POTA and TADA which could be justified only in a system of crime control model of criminal process was found incompatible with our political and legal system and was repealed after a period of usage. Rampant misuse of POTA against political opponents[54] and targeting of religious minorities[55] made our legislators realize that Acts like this which circumvents the procedural and constitutional safeguards can only result in suppression of religious and political minorities and it would only lower the utility of society rather than increasing it by curbing serious crimes. By passing the GCTOC Gujarat state assembly has only shown its eagerness to repeat the mistakes of past. This Act borrows majority of its sections from POTA or TADA and provides the police and prosecution a "one stop solution" for all offences. Charge the accused with GCTOC and their duty is over. But as experiences from the past has shown us this can only lead to suppression of political and religious minorities and blatant disregard to individual rights and liberties. It is high time that Gujarat Assembly stop its efforts to pass a legislation which does not suit with the due process criminal law process we follow and effectively enforce already existing laws to curb the menace of organized crime.

[54] See Krishnan, *Supra* note 44 discussion on the Vaiko case 291

[55] *Id, 275* discussion on acquittal of professor geelani in 2001 parliament attack case, also http://www.firstpost.com/india/sar-geelani-arrested-heres-what-you-need-to-know-about-the-ex-du-professor-2628314.html