

Annexure 1 - Brief Comparison of the GCOCA and KCOCA.

The table below compares the legislation relating to organised crime in the states of Gujarat and Karnataka. It reveals some procedural but mainly substantive differences between the two pieces of legislation and the fact that the KCOCA contains fewer procedural safeguards as compared to the GCOCA. There are significant differences in the legislation especially given the recent amendments to the KCOCA which have added to the definition of an organised crime and created extraordinary forms of punishments for such organised crime. The state of Karnataka as compared to Gujarat has clearly expanded its powers beyond the scope of an organised crime and whereas both states have created laws which are extraordinary in the sense that there are limited powers of review, excessive punishment and a framework of impunity as it relates to government officials, the KCOCA creates an even more fertile environment within which human rights violations can flourish and excessive powers can be abused and even condoned.

No.	Karnataka Control of Organised Crime Act, 2000	Gujarat Control of Organised Crime Act, 2003	Commentary
1.	<p>Section 2(1)(e) defines organised crime by referring to a continuing unlawful activity.</p> <p>Section 2 is amended to include further a definition of organised crime which includes:</p> <p>(iii) any terrorist act, committed with the intent to disturb law and order or public order, or threaten the unity, integrity and security of the State or to strike terror in the minds of the people or any section of the people by doing any act or by using bombs, dynamite or other explosive substance or inflammable materials or firearms or other lethal weapons or poisons or noxious gases or other chemicals or any other substance</p>	<p>Section 2(1)(e) defines organised crime by referring to a continuing unlawful activity but specifically includes “extortion, land grabbing, contract killing or ransom by an individual.”</p>	<p>No reference is made to a terrorist act in the GCOCA therefore no reference to the imposition of the death penalty for an organised crime.</p> <p>The definition of organised crime in GCOCA has specific references.</p>
2.	<p>Section 3(1)(i) provides that the fine for the any offence resulting the death of another to be not less than rupees ten lakhs.</p>	<p>Section 3(1)(i) as amended provides that the fine for any offence resulting in the death of another to be not less than rupees five lakhs.</p>	

3.	Section 19(2) provides for the confession to be recorded in a free atmosphere.	Section 27(2) provides that in terms of acquiring a confession, “the confession shall be recorded in an atmosphere free from threat and inducement. it.	No specification in KCOCA, the mere inclusion of a free atmosphere is not an adequate safeguard against threats or inducements. The KCOCA leaves too much room for interpretation.
4.	Section 19(5) provides for the person from whom the confession was recorded to be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate without unreasonable delay.	Section 27(6) relating to confessions provides that the person from whom the confession has recorded shall be produced, within forty-eight hours before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent...”	The failure to specify a time limit and instead a requirement for the person to be produced before the authorities without “unreasonable delay” could result in abuse. It is essential in regard to confessions that the person is presented before authorities within a specific time period so as to enable them to ascertain whether the confession was obtained via torture, threat or inducement.

<p>5.</p>	<p>Section 14(13) deals with the admissibility of evidence collected through the interception of wire, electronic or oral communication. It provides that such evidence <i>shall</i> be admissible in evidence against the accused before the Special Court during the trial of a case.</p> <p>It provides further that such evidence shall not be received as evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each party, has been not less than ten days before the trial, hearing or proceeding furnished with a copy of the order of the Competent Authority and accompanying application, under which the interception was authorised or approved.</p> <p>This section however further provides that the said ten days may be waived by the judge trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.</p>	<p>Section 23 provides for the admissibility of evidence collected through interception. It provides that such evidence <i>shall</i> be admissible in evidence against the accused before the Special Court during the trial of a case.</p> <p>It provides further that such evidence shall not be received as evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each party, has been not less than ten days before the trial, hearing or proceeding furnished with a copy of the order of the Competent Authority and accompanying application, under which the interception was authorised or approved.</p> <p>This section however further provides that the said ten days may be waived by the judge trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.</p>	<ol style="list-style-type: none"> 1.) A copy of the order of the Competent Authority and the accompanying application is essential to the defence of the accused as it relates to the case that the state has made against the accused. 2.) The waiver of the ten days is potentially detrimental to the ability of the accused to defend himself and can result in an unfair trial. No mention is made in this section of the submission of information relating to the actual evidence which has been obtained against the accused. The order and the application does not constitute such evidence.
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6.	<p>Section 18 deals with special rules of evidence and provides that “notwithstanding anything to the contrary contained in Code of Evidence Act, 1872 for the purpose of trial and punishment for offences under this Act or connected offence the Court may take into consideration as having probative value, the fact that the accused was, -</p> <p>a.) On any previous occasion bound under section 107 or section 110 of the Code.</p> <p>b.) Detained under any law relating to preventive detention, or</p> <p>(2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall unless the contrary is proved presume that such property or pecuniary resources have been acquired or derived by his illegal activities.</p> <p>(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.</p>	<p>Section 26 deals with special rules of evidence and provides that that “notwithstanding anything to the contrary contained in Code of Evidence Act, 1872 for the purpose of trial and punishment for offences under this Act or connected offence the Court may take into consideration as having probative value, the fact that the accused was, -</p> <p>a.) On any previous occasion bound under section 107 or section 110 of the Code.</p> <p>b.) Detained under any law relating to preventive detention, or</p> <p>c.) On any previous occasion prosecuted under the provisions of this Act.</p> <p>(2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall unless the contrary is proved presume that such property or pecuniary resources have been acquired or derived by his illegal activities.</p> <p>(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.</p>	<p>This section is relevant to the issue of prior convictions and the fact that the Special Court may take into account as having probative value, prior convictions.</p> <p>The section also gives the Court to make presumptions which affect the nature of the crime for which the accused is being convicted.</p>
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7.	Section 21A provides for the seizure of property relating to the proceeds of organised crime or terrorism.	Section 29(1) provides for the seizure of the proceeds of organised crime. Proceeds of organised crime is specifically defined as “all kinds of properties which have been derived or obtained from commission of organised crime and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found.	No definition of the proceeds of organised crime or terrorism in KCOCA. This creates a vague provision which has the potential for abuse. The GCOCA does not contain any reference to terrorism or the seizure of the proceeds of terrorism.
8.	S21A provides for permission to be sought from the Competent Authority, this section has been amended. The previous section provided for permission to be sought from the Special Court.	Section 29 provides for the permission to be sought from the special court.	*Consider the composition and appointment of members of the special court.
9.	Section 22(as amended) allows for the accused to be detained without charge for up to a year.	Section 31 allows for the accused to be detained without charge for up to 180 days.	Both are excessive.