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PART IV

Acts of Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the President on the 15th October, 2019 is hereby published for general information.

K. M. LALA,

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GUJARAT ACT NO. 24 OF 2019.

(First published, after having received the assent of the President, in the "*Gujarat Government Gazette*", on the 5th November, 2019).

AN ACT

to make special provisions for prevention and control of terrorist acts and for coping with criminal activities by organised crime syndicates and for the matters connected therewith or incidental thereto.

It is hereby enacted in the Sixty-sixth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gujarat Control of Terrorism and Organised Crime Act, 2015.
- (2) It extends to whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Short title, extent
and
commencement.

Definitions. 2.

- (1) In this Act, unless the context otherwise requires,—
- (a) "abet" with its grammatical variations and cognate expressions, includes—
- (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate;
 - (ii) the passing on or publication of without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of, any document or matter obtained from the organised crime syndicate; and
 - (iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate for committing an offence under this Act;
- (b) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.
- (c) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment for a term of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;
- (d) "economic offences" include running of the ponzy schemes and the multi-level marketing schemes with a view to defraud the people at large for obtaining the monetary benefits or large scale organized betting in any form;
- (e) "organised crime" means any continuing unlawful activity and terrorist act including extortion, land grabbing, contract killing, economic offences, cyber crimes having severe consequences, running large scale gambling rackets, human trafficking racket for prostitution or ransom by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means;
- (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organised crime;
- (g) "Special Court" means the Special Court constituted under section 5;
- (h) "terrorist act" means an act committed with the intention to disturb 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 an act using bombs, dynamite or any other

explosive substance or inflammable material or firearms or other lethal weapons or poison or noxious gases or other chemicals or any other substance (whether biological or otherwise) hazardous in nature in such a manner so as to cause or likely to cause death or injury to any public functionary or any person or loss due to damage or destruction of property or disruption of any supplies or services essential to the life of the community or an act of detaining any person and threatening to kill or injure such person in order to compel the State Government to do or abstain from doing any act.

- (2) Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

CHAPTER II

PUNISHMENT

3. (1) Whoever commits an offence of terrorist act or organised crime shall,-

Punishment for terrorist act and organised crime.

- (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine which shall not be less than rupees ten lakhs ;
- (ii) in any other case, 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 fine which shall not be less than rupees five lakhs.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of any terrorist act or an organised crime or any act preparatory to any terrorist act or organised crime, 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 fine which shall not be less than rupees five lakhs.

(3) Whoever intentionally harbours or conceals or attempts to harbour or conceal any person who has committed an offence of any terrorist act or 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 fine which shall not be less than rupees five lakhs.

(4) Any person who is a 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 fine which shall not be less than rupees five lakhs.

(5) Whoever holds any property derived, or obtained from commission of terrorist act or an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with imprisonment for 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 which shall not be less than rupees two lakhs.

Punishment
for possessing
unaccountable
property on
behalf of
member of
organised crime
syndicate.

4. If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than rupees one lakh and such property shall also be liable for attachment and forfeiture, as provided by section 18.

CHAPTER III SPECIAL COURTS

Special
Courts.

5. (1) The State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification in the *Official Gazette*, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision in the matter shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court of Gujarat.

(4) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court of Gujarat, additional judges to exercise jurisdiction of the Special Court.

(5) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he immediately before such appointment, is a sessions judge or an additional sessions judge, respectively.

(6) Where any additional judge is or additional judges are appointed in Special Court, the judge of the Special Court may, from time to time, by general or special order in writing provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Jurisdiction of
Special Court.

6. Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5.

Powers of
Special Court
with respect
to other
offences.

7. (1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.

8. (1) The State Government shall appoint, for every Special Court, a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor and may also appoint for any case or class or group of cases, a Special Public Prosecutor. **Public Prosecutor.**
- (2) A person shall not be qualified to be appointed as a Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor unless he has been in practice as an Advocate for a period of not less than ten years.
- (3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a 'Public Prosecutor' within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.
9. (1) Subject to the provisions of section 22, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. **Procedure and powers of Special Court.**
- (2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, as far as may be, apply to such trial:
- Provided that where in the course of summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner as provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to, a Special Court as they apply to and in relation to, a Magistrate:
- Provided further that in case of any conviction in summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.
- (3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be, in accordance with the procedure prescribed in the Code for the trial before a Court of Session.
10. The trial of any offence by a Special Court under this Act shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases in any other court shall remain in abeyance. **Trial by Special Court to have precedence.**
11. Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to the Court having jurisdiction under the Code and the Court to which the case is transferred shall proceed with the trial of the offence as if it has taken cognizance of the offence. **Power to transfer cases to regular Courts.**

Transitional provisions and transfer of pending proceedings.

12. (1) The jurisdiction conferred by this Act on a Special Court, shall, until a Special Court is constituted under section 5, in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure as provided under this Act.

(2) On and from the date when the Special Court is constituted under section 5, every trial under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that court.

Appeal.

13. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court.

(2) Every appeal under sub-section (1) shall be preferred within thirty days from the date of the judgment, sentence or order by the accused.

(3) In computing the period of limitation, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

36 of 1963.

CHAPTER IV

INTERCEPTION OF COMMUNICATION AND ATTACHMENT OF PROPERTY

Admissibility of evidence collected through interception.

14. Notwithstanding anything contained in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of any other law shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any Court unless each accused has been furnished, not less than ten days before the trial, hearing or proceeding, with a copy of the order of the relevant Authority, under which the interception was authorised or approved:

Provided further that the period of ten days may be waived by the judge trying the offence, if he comes to the conclusion that it was not possible to furnish the accused with the aforesaid information ten days before the trial, hearing or proceeding and that the accused may not be prejudiced by the delay in receiving such information.

Special rules of evidence.

15. (1) Notwithstanding anything contained in the Code or the Indian Evidence Act, 1872, for the purposes of trial and punishment for offences under this Act or connected offences, the court may take into consideration as having probative value, the fact that the accused was,-

1 of 1872.

- (a) detained and where such detention has been confirmed by the competent authority under any law relating to preventive detention subject to the order, if any, of any competent court: or
- (b) on any previous occasion prosecuted under the provisions of this Act."

(2) Where it is proved that any person involved in any terrorist act or 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 contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.

1 of 1872.

16. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police, or for the areas where the Commissioner of Police is appointed by the State Government, before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such accused, co-accused, abettor or conspirator for an offence under the provisions of this Act:

Certain
confessions
made to
police officer
to be taken
into
consideration.

Provided that the co-accused, abettor or conspirator is charge-sheeted and tried in the same case together with the accused.

(2) The confession made under sub-section (1) shall be recorded in the atmosphere free from threat and inducement and shall be in the same language in which the person makes it.

(3) The Police officer shall, before recording any confession by the person under sub-section (1), explain to such person that he is not bound to make a confession and that, if he does so, it may be used as evidence against him:

Provided that such police officer shall not record any such confession unless, upon questioning the person making it, he is satisfied that the confession is being made voluntarily.

(4) The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of the confession and mention the date and time of the same.

(5) Every confession recorded under sub-section (1) shall be sent in original forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession in original so received to the Special Court which may take cognizance of the offence.

(6) The person from whom a confession has been recorded under sub-section (1) 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 under sub-section (5), alongwith the statement of confession, written or recorded on mechanical or electronic device which would be in its original form without any edition or being tempered with in anyway.

(7) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall, record the statement, if any, made by the accused so produced and get his signature or thumb impression and if there is any complaint of torture, the accused shall be directed to be produced for medical examination before Civil Surgeon.

Protection of
witnesses.

17. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in camera, if the Special Court so desires.

(2) A Special Court, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that life of such witness is in danger, it may take such measures as it deems fit for keeping secret the identity and address of any witness.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include -

- (a) the holding of the proceedings at a place to be decided by the Special Court;
- (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of the case accessible to public ;
- (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;
- (d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Attachment
and forfeiture
of property.

18. (1) No person shall hold or be in possession of any proceeds of any terrorist act or organised crime.

(2) If an officer, investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of any terrorist act or organised crime, he shall, with the prior approval in writing of the State Government make an order seizing such property, movable or immovable or both, and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order or, as the case may be, the Special Court and a copy of such order shall be served on the person concerned.

(3) The investigating officer shall duly inform the Special Court, within forty-eight hours of the seizure or attachment of such property.

(4) It shall be open to the Special Court either to confirm or revoke the order of seizure or attachment made under sub-section (2):

Provided that the Special Court shall not pass an order unless an opportunity of making representation is given to the person whose property is being attached.

- (5) (a) If, upon a report in writing made by an investigating officer, the Special Court has reason to believe that any person who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, the Special Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that the investigating officer shall not make a report to the Special Court for issuing the proclamation until he tried and failed to arrest the accused who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person.

(b) The Special Court issuing a proclamation under clause (a) may, at any time, pass an order for attachment of any property, movable or immovable or both belonging to such accused and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment.

(c) If the accused fails to appear before a Special Court as specified in the proclamation within a period of three months from the date of publication of proclamation, the Special Court shall pass an order for forfeiture of such property free from all encumbrances.

(d) If within a period of six months from the date of forfeiture of property under clause (c), the accused whose property has been forfeited, appears voluntarily before the Special Court and proves to the satisfaction of the Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of proclamation, the Special Court may pass an order for revoking the order of forfeiture of such property.

- (6) Where the accused has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both belonging to the accused and specified in the order shall stand forfeited to the State Government free from all encumbrances.

Explanation.- For the purpose of this section "proceeds of any terrorist act or organised crime" means all kind of properties which have been derived or obtained from commission of any terrorist act or organised crime or have been acquired through funds traceable to any terrorist act or organised crime and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found.

19. Where, after issue of order of seizure or attachment made under section 18, any property referred to in such order is transferred by any mode whatsoever, such transfer shall, for the purpose of proceedings under this Act, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Certain transfers to be null and void.

CHAPTER V

MISCELLANEOUS

Modified
application
of certain
provisions
of Code.

20. (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act shall be deemed to be a 'cognizable offence' within the meaning of clause (c) of section 2 of the Code and 'cognizable case' as defined in that clause and shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that in sub-section (2), -

(a) the reference to "fifteen days" and "sixty days", wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively ;

(b) after the existing proviso, the following proviso shall be inserted, namely :-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the said period of ninety days."

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Special Court is satisfied that there are reasonable grounds for believing that accused is not guilty of committing such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Special Court that he was on bail in an offence under this Act, or under any other Act on the date of the offence in question.

(6) The restriction on granting of bail specified in sub-sections (4) and (5) are in addition to the restriction under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reasons for seeking such custody and also for the delay, if any, in seeking the police custody.

Presumption as to
offences under
section 3.

21. (1) In a prosecution for an offence of terrorist act or organised crime punishable under section 3, if it is proved -

- (a) that unlawful arms and other material including relevant documents or papers were recovered from the possession of the accused and there is a reason to believe that such unlawful arms and other material including such documents or papers were used in the commission of such offence; or
- (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other materials like relevant documents or papers and vehicles used in connection with the commission of such offence,

the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence of terrorist act or organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).

22. (1) Notwithstanding anything contained in the Code,-

- (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of officer in charge of range of the concerned Districts or the Commissioner of Police, as the case may be;
- (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police, or for the areas where the Commissioner of Police is appointed by the State Government, by a police officer below the rank of the Deputy Superintendent of Police.

Cognizance of, and investigation into, an offence.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the State Government.

23. Whoever, being a public servant, renders any help or support in any manner in the commission of terrorist act or organised crime as defined in clause (e) and clause (h) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and with fine.

Punishment for public servants failing in discharge of their duties.

24. The provisions of this Act and the rules or any order made thereunder shall have effect notwithstanding anything inconsistent effect therewith contained in any other law for the time being in force or in any instrument having the force of law.

Overriding effect.

25. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act and the rules or any order made thereunder.

Protection of action taken in good faith.

Power of
High Court
to make
rules.

26. The High Court may, by notification in the *Official Gazette*, make such rules relating to the Special Courts, as it may deem necessary for carrying out the provisions of this Act,

Power of
State
Government
to make
rules.

27. (1) Without prejudice to the powers of the High Court to make rules under section 26, the State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published immediately in the *Official Gazette* and shall thereupon take effect.