(**SUPREME COURT OF INDIA**

Zameer Ahmed Latifur Rehman Sheikh

Vs.

State of Maharashtra

C.A.No.1975 of 2008

(R.V. Raveendran and Dr. Mukundakam Sharma JJ.)

23.04.2010

JUDGEMENT

Dr. MUKUNDAKAM SHARMA, J.

INTRODUCTION

1. This matter concerns an assortment of questions regarding the interpretation and constitutionality of certain provisions of the Maharashtra Control of Organized Crime Act, 1999, and as such calls for our utmost attention, particularly in view of the fact that, 1 this legislation, although widely used for maintaining law and order, has also generated some controversy alleging its sweeping powers.

2. Since its enactment in 1999, it has found favour with the law enforcement officials and has been enthusiastically applied wherever possible by the law enforcement agencies and the concerned Government.

3. These three appeals have been filed by the appellants herein to assail the common judgment and order dated 19.07.2007 rendered by the High Court of Judicature at Bombay in Writ Petition No. 1136 of 2007, whereby the High Court dismissed the Writ Petition filed by the appellants herein.

4. The appellants herein challenged before the High Court of Bombay, the constitutional validity of that part of Section 2(1)(e) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOCA" hereinafter) which refers to `insurgency'.

5. Before we proceed to discuss and deal with the issue at hand, it will be prudent to address an issue that goes to the very root of the jurisdiction of this Court to entertain the present appeal. The constitutional validity of the said provision of the MCOCA had earlier been under the scrutiny of this Court in the case of State of Maharashtra v. Bharat Shanti Lal Shah and Ors (2008) 13 SCC 5. The aforesaid case arose against the judgment of the High Court of Bombay dated 05.03.2003 in Crl. WP Nos. 27 of 2003, 1738 of 2002 and 110 of 2003, whereby the High Court negated the contention of the petitioners therein that Section 2 (1)(e) was violative of Article 13 (2) and Article 14 of the Constitution of India.

In the said case, no appeal was filed against the said finding of the High Court upholding the constitutional validity of Section 2 (1)(e) of the MCOCA. However, since the said issue was raised before this Court during the course of arguments in the said case, this Court on a conjoint reading of the said provision with the object and purpose of the MCOCA held that there is no vagueness in the provision and the same also does not suffer from the vice of class legislation. The said finding of this Court in the said case as enumerated, in paras 29 and 30, is as follows: - "29. In addition, Mr. Manoj Goel Counsel for the Respondent No. 3 submitted that Section 2 (d), (e) and (f) and Sections 3 and 4 of the MCOCA are constitutionally invalid as they are ultra virus being violative of the provisions of Article 14 of the Constitution. But we find that no cross appeal was filed by any of the respondents against the order of the High Court upholding the constitutional validity of provisions of Section 2(d), (e) and (f) and also that of Sections 3 and 4 of the MCOCA. During the course of hearing, Mr. Goel, the counsel appearing for one of the respondents herein tried to contend that the aforesaid provisions of Section 2(d), (e) and (f) of the MCOCA are unconstitutional on the ground that they violate the requirement of Article 13(2) of the Constitution and that they make serious inroads into the fundamental rights by treating unequals as equals and are unsustainably vague. Since such issues were not specifically raised by filing an appeal and since only a passing reference is made on the said issue in the short three page affidavit filed by the respondent No. 3, it is not necessary for us to examine the said issue as it was sought to be raised more specifically in the argument stage only.

30. Even otherwise when the said definitions as existing in Section 2(d), (e) and (f) of the MCOCA are read and understood with the object and purpose of the Act which is to make special provisions for prevention and control of organised crime it is clear that they are worded to subserve and

achieve the said object and purpose of the Act. There is no vagueness as the definitions defined with clarity what it meant by continuing unlawful activity, organised crime and also organised crime syndicate. As the provisions treat all those covered by it in a like manner and does not suffer from the vice of class legislation they cannot be said to be violative of Article 14 of the Constitution."

Thus, in the said case there was no specific challenge to the constitutional validity of Section 2(1)(e) of the MCOCA. Moreover, even in its observations, this Court had not gone into the question of constitutional validity of the said provision, so far as it relates to insurgency on the ground of lack of legislative competence.

6. We may also refer to the findings of this Court in a situation of this nature, where once the constitutional validity of a provision has been upheld and the same is again challenged on a ground which is altogether different from the earlier one. In Saiyada Mossarrat v. Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) and Ors. [(1989)1SCC272] notwithstanding the fact that the Constitution Bench of this Court had once upheld the constitutionality of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the petitioner therein had renewed his challenge on the ground that the Parliament did not have the legislative competence to legislate on the subject of the said legislation. On the facts before it, this Court held that since that specific aspect had not been debated before the Constitution Bench in the earlier case, it would not be appropriate to shut out the petitioner from raising the plea by recourse to the argument that the point had been concluded in the earlier case regardless of whether the matter had been debated or not.

7. In the later judgment in Kesho Ram and Co. v. Union of India, [(1989) 3 SCC 151], a larger Bench of this Court emphasized the binding nature of the judgments of this Court in the light of Article 141 of the Constitution and has held that the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is subsequently advanced was actually decided in the earlier decision.

8. However, since there was no specific challenge before this Court to the constitutional validity of Section 2(1)(e) of the MCOCA and the point with reference to which the arguments were advanced in the present appeal was actually not decided in the earlier decision of this Court, we wish to proceed to examine the same.

9. The appellants have challenged the constitutional validity of Section 2(1)(e) of the MCOCA, so far it relates to `promoting insurgency' on following two grounds:- (a) the Maharashtra State legislature did not have legislative competence to enact such a provision; and (b) the part of Section 2(1)(e) of the MCOCA, so far as it covers case of `insurgency', is repugnant and has become void by enactment of the Unlawful Activities (Prevention) Amendment Act, 2004, amending the Unlawful Activities (Prevention) Act, 1967.

10.The learned senior counsel appearing for the parties have advanced elaborate arguments before us on the aforesaid issues.

11.Mr. Sushil Kumar, learned senior counsel appearing for the appellant in Civil Appeal No. 1975 of 2008 submitted that `insurgency' is an offence falling within the ambit of Defence of India, Entry 1 of List I i.e., the Union List, as it threatens the unity, integrity and sovereignty of India and, in any event, under the residuary power conferred on the Parliament under Article 248 read with Entry 97 of the Union List and, therefore, the Maharashtra State legislature did not have legislative competence to enact the latter part of Section 2 (1)(e) of the MCOCA which relates to `promoting insurgency'. Hence, according to him, that part of Section 2(1)(e) of the MCOCA which refers to `promoting insurgency' is ultra vires Article 246(3) of the Constitution.

12.Mr. Shanti Bushan, learned senior counsel appearing for the appellant in Civil Appeal No. 1977 of 2008, in addition to the above noted submission, submitted that Section 2(1)(e) of the MCOCA so far as it covers `insurgency' is repugnant and has become void by enactment of the Unlawful Activities (Prevention) Amendment Act, 2004, amending the Unlawful Activities (Prevention) Act, 1967 ("UAPA" hereinafter). He submitted that insurgency and terrorism are two sides of the same coin and after the 2004 amendment, the UAPA exhaustively deals with the offence of terrorism and the meaning of the term insurgency as contained in Section 2 (1)(e) of the MCOCA is very well included in the definition of `terrorist act' as contained in Section 15 of the UAPA. He further submitted that due to the said anomaly, an act would constitute an offence under Section 2 (1)(e) of the MCOCA as also under Section 15 of the UAPA and that while MCOCA lays down a different procedure and envisages a different competent court to try that offence, the UAPA provides for a different procedure and different court for the trial of the same offence. He submitted that the MCOCA will be within the competence of the State Legislature, but for the addition of the term `insurgency' in Section 2(1)(e).

13.Mr. Bhushan submitted that although the UAPA does not expressly repeal the impugned provision of the MCOCA, yet the same cannot stand, for the case in hand is a case of implied repeal. Mr. Bhushan submitted that if the subsequent law enacted by the Parliament is repugnant (in direct conflict) to the State Law then the State Law will become void as soon as the subsequent law of Parliament is enacted. Thus, according to him, in the present case, after the 2004 amendment to the UAPA there is an implied repeal of the MCOCA, so far as it covers `insurgency'.

14.As against this Mr. Shekhar Naphade and Mr. Harish N. Salve, learned senior counsel appearing for the respondent State of Maharashtra submitted that the MCOCA deals with the activities of the organized gangs and the criminal syndicate and that no other law, including the UAPA, deals with the said subject. They further submitted that the aim, objective and the area of operation of the MCOCA and the UAPA are entirely different and that there is no overlapping in the working of the two Acts. As per the submissions of learned senior counsel, so far as the MCOCA is concerned, it

deals with the prevention and control of criminal activity by organized crime syndicate or gang within India, whereas the aim of the UAPA is to deal with the terrorist activities both within and outside India. Hence, the target of the MCOCA is the organised syndicate gangs whereas the UAPA targets any person who indulges in terrorist activity, be it an individual or a group. They further submitted that the extension of the MCOCA to activities of organized gangs or syndicate where they sought to promote insurgency is a logical extension of the remedy provided under the MCOCA to deal with the growing menace in the society.

15.While making a comparison between the two Acts, they submitted that the UAPA punishes the acts of insurgency per se whereas under the MCOCA, it is not the act of insurgency per se which is punishable, for under the MCOCA, `insurgency' is the motive for the act and not the act per se. They further submitted that at the first blush, they may appear to be similar but a closer scrutiny would dispel any such notion and would show a vast area of dissimilarity between the two.

16.While making their submissions on the issue of implied repeal, they submitted that promoting insurgency as one of the elements of the MCOCA may overlap in some cases in its application with the relevant provisions of the UAPA, but the question of implied repeal would arise only where it overlaps in its entirety. They further submitted that the law is settled on the point that a given act can constitute more than one offence under two or more statutes, but merely because an act also becomes an offence under a subsequent statute does not automatically result in repugnancy or implied repeal of the offence defined in the earlier statue. The existing statute would stand repealed only if the ingredients of the offence created by the later statute are identical to the ingredients of the offence in the earlier statute. It is only when the ingredients of both the offences are identical which makes them irreconcilable that the statutes are held to be repugnant to each other.

17.Mr. Mohan Jain, learned ASG appearing for the Union of India, respondent No. 2 herein, and Mr. Amarendra Sharan, learned ASG appearing for the CBI, supported the contentions made by Mr. Naphade and Mr. Salve. In addition, they submitted that the MCOCA creates and defines a new offence and even if it be assumed that the part of the MCOCA containing the term `promoting insurgency' incidentally trenches upon a field under the Union list then the same cannot be held to be ultra vires applying the doctrine of pith and substance, as in essence, the MCOCA deals with the subject on which the State legislature has power to legislate under the Constitution.

18.Before we proceed further to deal with and answer the issues that have been raised for our consideration, we wish to make note of a minor development which took place during the pendency of the present appeal. A further amendment was made to the UAPA, 1 namely, the Unlawful Activities (Prevention) Amendment Act, 2008 and so the matter was again listed for hearing in order to ascertain the impact, if any, of the said amendment to the issue in hand. Mr. Shekhar Naphade, learned senior counsel has, in detail, taken us through the provisions of the 2008 amendment. At the time of hearing, the counsel appearing for both the parties have fairly agreed that the 2008 amendment did not bring about any such change which would affect the decision of

this Court on the issues raised and urged. It is, therefore, not necessary for us to elaborate on the said amendments.

Legislative Competence of Government of Maharashtra

19.The legislature of a State derives its legislative power from the provisions of Article 246(3) of the Constitution of India. Article 246(3) confers on a State legislature the exclusive power to enact laws for the whole or any part of the territory of the State on any of the matters enumerated in List II in the Seventh Schedule to the Constitution.

20.So far as the question of legislative competence of the Maharashtra State legislature to enact a law like MCOCA is concerned, the Bombay High Court in the impugned judgment has held that MCOCA in pith and substance falls in Entry No. 1 of List III which refers to the criminal law. Though the Bombay High Court has 1 noted the fact that the State of Maharashtra could have relied upon Entry 1 of List II i.e. the State List which refers to `public order' to contend that the term `promoting insurgency' is relatable to that entry, the High Court refrained itself from analyzing the said aspect because the respondent State had, before the High Court, taken a stand that `promoting insurgency' would be covered by Entry 1 of List III i.e. the Concurrent List.

21.Before proceeding further, it would be appropriate on our part to mention that we do not concur with the said finding of the High Court that the MCOCA in pith and substance falls only in Entry No. 1 of List III. This Court in Bharat Shanti Lal Shah (supra) has already held that the subject-matter of the MCOCA is maintaining public order and prevention by police of commission of serious offences affecting public order, and thus would be within the purview of and be relatable to Entries 1 and 2 of List II as also to Entries 1, 2 and 12 of List III of Schedule VII to the Constitution of India. The question that needs to be determined in the present case is whether the said finding in Bharat Shanti Lal Shah (supra) can be extended to the term `promoting insurgency', and also whether the term `promoting insurgency', would be within the purview and relatable to Entry 1 of List II.

22.Section 2(1)(e) of the MCOCA, which includes within its ambit the term `promoting insurgency', reads as follows:- "2. (1)(e) `organised crime' means any continuing unlawful activity 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, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency." [emphasis supplied] 23.The term `insurgency' has not been defined either under the MCOCA or any other statute. The word `insurgency' does not find mention in the UAPA even after the 2004 and 2008 amendments.

The definition as submitted by Mr. Salve also does not directly or conclusively define the term

`insurgency' and thus reliance cannot be placed upon it. The appellants would contend that the term refers to rising in active revolt or rebellion. Webster defines it as a condition of revolt against government that does not reach the proportion of an organized revolution.

24.In Sarbananda Sonowal v. Union of India, [(2005) 5 SCC 665], this Court has held that insurgency is undoubtedly a serious form of internal disturbance which causes a grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State.

25.We feel inclined to adopt the aforesaid definition for the current proceedings as there does not appear to exist any other satisfactory source.

26.Although the term `insurgency' defies a precise definition, yet, it could be understood to mean and cover breakdown of peace and tranquility as also a grave disturbance of public order so as to endanger the security of the state and its sovereignty.

27.In terms of Entry 1 of the State List, the State Legislature is competent to enact a law for maintenance of public order. The said entry is reproduced herein below:- "Entry 1, List II

1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power)."

28.It has been time and again held by this Court that the expression `public order' is of a wide connotation. In Ramesh Thappar v. State of Madras [1950 SCR 594], it has been held by this Court that `public order' signifies a state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established. This Court, in para 8, quoted a passage from Stephen's Criminal Law of England, wherein he observed as follows:

"Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilized society is in each of the cases mentioned disturbed either by actual force or at least by the show and threat of it."

This Court further observed that though all these offences involve disturbances of public tranquility and are in theory offences against public order, the difference between them is only one of degree. The Constitution thus requires a line, perhaps only a rough line, to be drawn between the fields of

public order or tranquility and those serious and aggravated forms of public disorder which are calculated to endanger the security of the State.

29.In Superintendent, Central Prision v. Ram Manohar Lohia [(1960) 2 SCR 821] this Court had held that "Public order" is synonymous with public safety and tranquility, and it is the absence of any disorder involving a breach of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State. Subsequently, in Dr. Ram Manohar Lohia v. State of Bihar [(1966) 1 SCR 709], Hidayatullah, J., held that any contravention of law always affected 1 order, but before it could be said to affect public order, it must affect the community at large. He was of the opinion that offences against "law and order", "public order", and "security of State" are demarcated on the basis of their gravity. The said observation is as follows:- "55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State....."

30.The Constitution Bench of this Court in Madhu Limaye v. Sub- Divisional Magistrate, [(1970) 3 SCC 746], while adopting and explaining the scope of the test laid down in Dr. Ram Manohar Lohia v. State (supra), stated that the State is at the centre of the society. Disturbances in the normal functioning of the society fall into a broad spectrum, from mere disturbance of the serenity of life to jeopardy of the State. The acts become more and more grave as we journey from the periphery of the largest circle towards the centre. In this journey we travel first though public tranquility, then through public order and lastly to the security of the State.

This Court further held that in the judgment of this Court, the 1 expression "in the interest of public order" as mentioned in the Constitution of India encompasses not only those acts which disturb the security of the State or acts within ordre publique as described but also certain acts which disturb public tranquility or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression "in the interest of public order" is very wide.

31.The meaning of the phrase "public order" has also been determined by this Court in Kanu Biswas v. State of West Bengal [(1972) 3 SCC 831] where it was held that the concept of "public order" is based on the French concept of "ordre publique" and is something more than ordinary maintenance of law and order.

32.It has been seen that the propositions laid down in the above noted cases have been time and again followed in subsequent judgments of this Court and still govern the field.

33.At this stage, it would also be pertinent to note the findings of the Federal Court in Lakhi Narayan Das v. Province of Bihar [AIR 1950 FC 59] where the Federal Court while considering the scope and ambit of the expression "public order", used in Entry 1 of the provincial list in the Government of India Act, 1935, in para 12 of the judgment observed as follows:- 1 "The expression "Public Order" with which the first item begins is, in our opinion, a most comprehensive term and it clearly indicates the scope or ambit of the subject in respect to which powers of legislation are given to the province.

Maintenance of public order within a province is primarily the concern of that province and subject to certain exceptions which involve the use of His Majesty's forces in aid of civil power, the Provincial Legislature is given plenary authority to legislate on all matters which relate to or are necessary for maintenance of public order."

34.It is a well-established rule of interpretation that the entries in the List being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. Each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. [Reference in this regard may be made to the decisions of this Court in Navinchandra Mafatlal v. Commr. of I.T. [AIR 1955 SC 58], State of Maharashtra v. Bharat Shanti lal Shah [(2008) 13 SCC 5]]. It is also a cardinal rule of interpretation that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature [Reference may be made to the cases of: Charanjit Lal Choudhary v. Union of India [AIR 1951 SC 41], T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481], Karnataka Bank Ltd. State of AP [(2008) 2 SCC 254]].

35.One of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List.

36.A Constitution Bench of this Court in A.S. Krishna v. State of Madras [AIR 1957 SC 297], held as under:

"8. ... But then, it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate.

Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial Legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within it competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment."

37.Again, a Constitutional Bench of this Court while discussing the said doctrine in Kartar Singh v. State of Punjab [(1994) 3 SCC 569] observed as under:

"60. This doctrine of `pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."

38.It is common ground that the State Legislature does not have power to legislate upon any of the matters enumerated in the Union List. However, if it could be shown that the core area and the

subject-matter of the legislation is covered by an entry in the State List, then any incidental encroachment upon an entry in the Union List would not be enough so as to render the State law invalid, and such an incidental encroachment will not make the legislation ultra vires the Constitution.

39.In Bharat Hydro Power Corpn. Ltd. v. State of Assam [(2004) 2 SCC 553], the doctrine of pith and substance came to be considered, when after referring to a catena of decisions of this Court on the doctrine it was laid down as under:

"18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of `pith and substance' for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of `pith and substance' regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see Southern Pharmaceuticals & Chemicals v. State of Kerala [(1981) 4 SCC 391], State of Rajasthan v. G. Chawla [AIR 1959 SC 544], Amar Singhji v. State of Rajasthan [AIR 1955 SC 504], Delhi Cloth and General Mills Co. Ltd. v. Union of India [(1983) 4 SCC 166] and Vijay Kumar Sharma v. State of Karnataka [(1990) 2 SCC 562]. In the last-mentioned case it was held:

`(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.' "

40.Now that we have examined under what circumstances a State Law can be said to be encroaching upon the law making powers of the Central Government, we may proceed to evaluate the current issue on merits. Let us once again examine the provision at the core of this matter:

"2(1)(e) "organized crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency;"

After examining this provision at length, we have come to the conclusion that the definition of "organized crime" contained in Section 2(1)(e) of the MCOCA makes it clear that the phrase "promoting insurgency" is used to denote a possible driving force for "organized crime". It is evident that the MCOCA does not punish "insurgency" per se, but punishes those who are guilty of running a crime organization, one of the motives of which may be the promotion of insurgency. We may also examine the Statement of Objects & Reasons to support the conclusion arrived at by us. The relevant portion of the Statement of Objects & Reasons is extracted hereinbelow: - "1. Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had 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 criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

...

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organized crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of organized crime."

41.We find no merit in the contention that the MCOCA, in any way, deals with punishing insurgency directly. We are of the considered view that the legislation only deals with "insurgency" indirectly only to bolster the definition of "organized crime".

42.However, even if it be assumed that "insurgency" has a larger role to play than pointed out by us above in the MCOCA, we are of the considered view that the term "promoting insurgency" as contemplated under Section 2(1)(e) of the MCOCA comes within the concept of public order. From

the ratio of the judgments on the point of public order referred to by us earlier, it is clear that anything that affects public peace or tranquility within the State or the Province would also affect public order and the State Legislature is empowered to enact laws aimed at containing or preventing acts which tend to or actually affect public order. Even if the said part of the MCOCA incidentally encroaches upon a field under Entry 1 of the Union list, the same cannot be held to be ultra vires in view of the doctrine of pith and substance as in essence the said part relates to maintenance of Public Order which is essentially a State subject and only incidentally trenches upon a matter falling under the Union List.

43.Therefore, we are of the considered view that it is within the legislative competence of the State of Maharashtra to enact such a provision under Entries 1 and 2 of List II read with Entries 1, 2 and 12 of List III of the Seventh Schedule of the Constitution.

Repugnance with Central Statute 44.This brings us to the second ground of challenge i.e. the part of Section 2(1)(e) of the MCOCA, so far as it covers case of insurgency, is repugnant and has become void by the enactment of Unlawful Activities (Prevention) Amendment Act, 2004, amending the Unlawful Activities (Prevention) Act, 1967.

45.The Bombay High Court, in para 44 of the impugned judgment, has held that though `promoting insurgency' is one of the facets of terrorism, the offence of terrorism as defined under the UAPA as amended by the 2004 Act is not identical to the offences under the MCOCA and the term `terrorism' and `insurgency' are not synonymous. As per the High Court both the enactments can stand together as there is no conflict between the two.

46.Before we proceed to analyze the said aspect, it would be appropriate to understand the situations in which repugnancy would arise.

47.Chapter I of Part XI of the Constitution deals with the subject of distribution of legislative powers of the Parliament and the legislature of the States. Article 245 of the Constitution provides that the Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

48.The legislative field of the Parliament and the State Legislatures has been specified in Article 246 of the Constitution. Article 246, reads as follows: - "246. Subject-matter of laws made by Parliament and by the legislature of States.--(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the `Union List').

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the `Concurrent List').

(3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the `State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Article 254 of the Constitution which contains the mechanism for resolution of conflict between the Central and the State legislations enacted with respect to any matter enumerated in List III of the Seventh Schedule reads as under:

"254. Inconsistency between laws made by Parliament and laws made by the legislatures of States.--(1) If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent 2 List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State."

49.We may now refer to the judgment of this Court in M. Karunanidhi v. Union of India, [(1979) 3 SCC 431], which is one of the most authoritative judgments on the present issue. In the said case, the principles to be applied for determining repugnancy between a law made by the Parliament and a law made by the State Legislature were considered by a Constitution Bench of this Court.

At para 8, this Court held that repugnancy may result from the following circumstances:

"1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

In para 24, this Court further laid down the conditions which must be satisfied before any repugnancy could arise, the said conditions are as follows:-

"1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

Thereafter, this Court after referring to the catena of judgments on the subject, in para 38, laid down following propositions:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

50.In Govt. of A.P. v. J.B. Educational Society, [(2005) 3 SCC 212], this Court while discussing the scope of Articles 246 and 254 and considering the proposition laid down by this Court in M. Karunanidhi case (supra) with respect to the situations in which repugnancy would arise, in para 9, held as follows:- "9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.

10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields.

It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

Thereafter, this Court, in para 12, held that the question of repugnancy between the parliamentary legislation and the State legislation could arise in following two ways:-

"12.....First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State;

this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."

51.In National Engg. Industries Ltd. v. Shri Kishan Bhageria [(1988) Supp SCC 82], Sabyasachi Mukharji, J., opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

52.In the light of the said propositions of law laid down by this Court in a number of its decisions, we may now analyze the provisions of the two Acts before us.

53.The provisions of the MCOCA create and define a new offence of `organised crime'. According to its Preamble, the said Act was enacted to make specific provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang and for matters connected therewith or incidental thereto.

54.The Statement of Objects and Reasons of the MCOCA, inter alia, states that organized crime has for quite some years now come up as a very serious threat to our society and there is reason to believe that organized criminal gangs are operating in the State and thus there is immediate need to curb their activities. The Statement of Objects and Reasons in relevant part, reads as under:

"Organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco-terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organised criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime."

After enacting the MCOCA, assent of the President was also obtained which was received on 24.04.1999. Section 2 of the MCOCA is the interpretation clause. Clause (d) of sub-section (1) of Section 2 of the MCOCA, defines the expression "continuing unlawful activity" to mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment 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. Clause (e) (extracted earlier hereinabefore), defines the expression "organised crime" to mean any continuing unlawful activity 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, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. Clause (f), defines "organised crime syndicate" to mean a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime. The said definitions are interrelated; the "organised crime syndicate" refers to an "organised crime" which in turn refers to "continuing unlawful activity". MCOCA, in the subsequent provisions lays down the punishment for organised crime and has created special machinery for the trial of a series of offences created by it.

55.Prior to the 2004 amendment, the UAPA did not contain the provisions to deal with terrorism and terrorist activities. By the 2004 amendment, new provisions were inserted in the UAPA to deal with terrorism and terrorist activities. The Preamble of the UAPA was also amended to state that the said Act is enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations, and dealing with terrorist activities and for matters connected therewith. In 2008 amendment, the Preamble has again been amended and the amended Preamble now also contains a reference to the resolution adopted by the Security Counsel of the United Nations on 28.09.2001 and also makes reference to the other resolutions passed by the Security Counsel requiring the States (Nations which are member of the United Nations) to take action against certain terrorist and terrorist organizations. It also makes reference to the order issued by the Central Government in exercise of power under Section 2 of the United Nations (Security Council) Act, 1947 which is known as the Prevention & Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007. The Preamble of the UAPA now reads as under:

"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.

Whereas the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;

And whereas Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

And whereas the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947) has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;

And whereas it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto."

56.Section 2 (1)(k) and Section 15 of the UAPA, 1967 which were inserted by the 2004 amendment and define and deal with the term `terrorist act', read as under :

"2(k). `terrorist act' has the meaning assigned to it in section 15 and the expression `terrorism' and `terrorist' should be construed accordingly."

"15. Terrorist act. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act".

However, after the 2008 amendment, Section 15 has been substituted in the following manner:- "15. Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,- 3 (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances whether biological radioactive, nuclear or otherwise of a hazardous nature or by any other means of whatever nature to cause or likely to cause-- (i) death of, or injuries to, any person or persons;

or (ii) loss of, or damage to, or destruction of, property;

or (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the

Government of India, any State Government or any of their agencies; or (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Explanation.- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as public functionary."

From a perusal of Section 15 before and after amendment of the UAPA, it comes to light that though after amendment there have been certain additions to the provision but in substance the provision remains the same.

57.Sub-Clauses (l) and (m) of sub Section (1) of Section 2 of the UAPA, which define the term `terrorist gang' and `terrorist organisation' respectively, read as under :

(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

The following are the Terrorist Organisations which are mentioned in the First Schedule of the UAPA: - "1. Babbar Khalsa International.

2. Khalistan Commando Force.

3. Khalistan Zindabad Force.

4. International Sikh Youth Federation.

5. Lashkar-E-Taiba/Pasban-E-Ahle Hadis.

6. Jaish-E-Mohammed/Tahrik-E-Furqan.

7. Harkat-Ul-Mujahideen/Harkat-Ul-Nsar/Harkat-Ul-Jehad- E-Islami.

8. Hizb-ul-Mujahideen/Hizb-ul-Mujahideen Pir Panjal Regiment.

9. Al-Umar-Mujahideen.

10.Jammu and Kashmir Islamic Front.

11.United Liberation Front of Assam (ULFA).

12.National Democratic Front of Bodoland (NDFB).

13.People's Liberation Army (PLA).

14.United National Liberation Front (UNLF).

15.People's Revolutionary Party of Kangleipak (PREPAK).

16.Kangleipak Communist Party (KCP).

17.Kanglei Yaol Kanba Lup (KYKL).

18.Manipur People's Liberation Front (MPLF).

19.All Tripura Tiger Force.

20.National Liberation Front of Tripura.

21.Liberation Tigers of Tamil Eelam (LTTE).

22.Students Islamic Movement of India.

23.Deendar Anjuman.

24.Communist Party of India (Marxist-Leninist)--People's War, all its formations and front organisations.

25.Maoist Communist Centre (MCC), all its formations and front organisations.

26.Al Badr.

27.Jamiat-ul-Mujahidden.

28.Al-Qaida.

29.Dukhtaran-e-Millat (DEM).

30.Tamil Nadu Liberation Army (TNLA).

31.Tamil National Retrieval Troops (TNRT).

32.Akhil Bharat Nepali Ekta Samaj (ABNES).'.

33. Organisations listed in the Schedule to the U.N.

Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 made under section 2 of the United Nations (Security Council) Act, 1947(43 of 1947) and amended from time to time."

[Entry No. 33 was inserted by the 2008 amendment.] The precise reason why we have extracted the list of terrorist organizations under the UAPA hereinbefore is to bring to the fore the contrast between the two legislations which are in question before us.

The exhaustive list of terrorist organizations in the First Schedule to the UAPA has been included in order to show the type and nature of the organizations contemplated under that Act. A careful look of the same would indicate that all the organizations mentioned therein have as their aims and objects undermining and prejudicially affecting the integrity and sovereignty of India, which certainly stand on a different footing when compared to the activities carried out by the forces like the appellant.

58.Section 2 (1)(o) of the UAPA, which defines the term `unlawful activity', reads as under: - "(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise, - (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India;"

59.Before we proceed to analyse the provisions of the two statutes in order to ascertain whether they are repugnant or not, we may note that it is well settled that no provision or word in a statute is to be read in isolation. In fact, the statute has to be read as a whole and in its entirety. In Reserve Bank of

India v. Peerless General Finance & Investment Co. Ltd., [(1987) 1 SCC 424], this Court while elaborating the said principle held as under:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

60.A perusal of the Preamble, the Statement of Objects and Reasons and the Interpretation clauses of the MCOCA and the UAPA would show that both the acts operate in different fields and the ambit and scope of each is distinct from the other. So far as the MCOCA is concerned, it principally deals with prevention and control of criminal activity by organised crime syndicate or gang within India and its purpose is to curb a wide range of criminal activities indulged in by organised syndicate or gang. The aim of the UAPA, on the other hand, is to deal with terrorist and certain unlawful activities, which are committed with the intent to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror in the people or any section of the people in India or in any foreign country or relate to cessation or secession of the territory of India.

61.Under the MCOCA the emphasis is on crime and pecuniary benefits arising therefrom. In the wisdom of the legislature these are activities which are committed with the objective of gaining pecuniary benefits or economic advantages and which over a period of time have extended to promoting insurgency. The concept of the offence of `terrorist act' under section 15 of the UAPA essentially postulates a threat or likely threat to unity, integrity, security and sovereignty of India or striking terror amongst people in India or in foreign country or to compel the Government of India or the Government of a foreign country or any other person to do or abstain from doing any act. The offence of terrorist act under Section 15 and the offence of Unlawful activity under Section 2 (1) (o) of the UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons etc., Section 2 (1)(o) takes in its compass even a written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and 4 security of India. The said offences are related to the Defence of India and are covered by Entry 1 of the Union List.

62.Moreover, the meaning of the term `Unlawful Activity' in the MCOCA is altogether different from the meaning of the term `Unlawful Activity' in the UAPA. It is also pertinent to note that the MCOCA does not deal with the terrorist organisations which indulge in terrorist activities and similarly, the UAPA does not deal with organised gangs or crime syndicate of the kind specifically targeted by the MCOCA. Thus, the offence of organised crime under the MCOCA and the offence of terrorist act under the UAPA operate in different fields and are of different kinds and their essential contents and ingredients are altogether different.

63.The concept of insurgency under Section 2(1) (e) of the MCOCA, if seen and understood in the context of the Act, is a grave disturbance of the public order within the state. The disturbance of the public order, in each and every case, cannot be said to be identical or similar to the concepts of terrorist activity as contemplated respectively under Section 2(1)(o) and Section 15 of the UAPA. Moreover, what is punishable under the MCOCA is promoting insurgency and not insurgency per se.

64.The aforesaid analysis relating to the essential elements of offence of `promoting insurgency' under Section 2 (1) (e) of the MCOCA and the offence of terrorist act and unlawful activity under Section 15 and Section 2 (1)(o) of the UAPA respectively, clearly establishes that the UAPA occupies a field different than that occupied by the MCOCA. There is no clear and direct inconsistency or conflict between the said provisions of the two Acts.

65.We therefore, for the reasons mentioned above, concur with the final decision reached by the High Court in the impugned judgment and repel the challenge unhesitatingly.

66.The appeals accordingly fail and are dismissed. No Costs.

Dr. MUKUNDAKAM SHARMA, J.

67.By a separate Judgment pronounced today, the three connected Civil Appeals being C.A. Nos. 1975-1977 of 2008 have been dismissed.

68.We dispose of the present Criminal Appeal with a direction that the Special Court constituted under the MCOCA shall consider the issue raised under Misc. Application No. 142 of 2008 in MCOCA Special Case No. 23 of 2006 on its own merits in light of the findings given by this Court in the said connected appeals, in case a fresh application is moved by the appellant herein before the Special Court.