

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 6 | Issue 1

2024

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An Analysis of the Legislative Framework of Organized Crime in India

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ABSTRACT

The emergence of organized crime syndicates has led to an escalation in illicit operations such as drug trafficking, gold smuggling, arms trade, contraband, abductions, blackmail, human exploitation by human trafficking, cybercrime, counterfeit currency circulation, etc. The paper provides an overview of the legal framework in India designed to counter and prevent organized criminal activities. The study delves into the legislative measures, judicial mechanisms, and law enforcement strategies that collectively constitute the nation's approach to tackling organized crime. Indian government faces challenges in countering this issue due to inadequate agency capabilities, coordination issues, resource and manpower limitations, and a shortage of skilled personnel at law enforcement agencies. Discordant viewpoints between the central and state governments further prolong the decision-making process, impeding effective action against organized crime. Despite these challenges, there is a pressing need to bolster the nation's framework and introduce new legislation to combat this menace.

Keywords: Organized crime, terrorism, legislation, enforcement, syndicates.

I. INTRODUCTION

Organized crime is the commission of crimes at regular intervals for financial gain. Some examples of organized crime include human trafficking, money laundering, and smuggling. Organized crime has a number of characteristics that distinguish it from other types of crime.

- **Organization:** Organized crime is typically carried out by groups of people who work together over a period of time. These groups have a hierarchy and a division of labor.
- **Continuity:** Organized crime is not a one-time event. It is an ongoing enterprise that seeks to make a profit.
- **Seriousness:** Organized crime often involves serious crimes, such as drug trafficking, human trafficking, and terrorism.
- **Profit motive:** Organized crime is motivated by profit. The goal of organized crime is

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to make money.

- **Covertness:** Organized crime often operates in secret. This makes it difficult to investigate and prosecute.
- **Violence:** Organized crime often uses violence to protect its interests and to intimidate its victims.

By understanding the characteristics of organized crime, we can better understand the threat it poses to society.

Organized crime can be divided into two main types: traditional organized crime and non-traditional organized crime.

- Traditional organized crime involves activities such as illicit liquor, kidnapping, prostitution rackets, gambling, betting, blackmailing, trade extortion, sand mafia, contract killing, mining mafia, pornography, terrorism, and many others.
- Non-traditional organized crime involves transnational crimes such as human trafficking, cybercrime, money laundering, arms smuggling, pumping fake Indian currency, hacking, and drug smuggling.

The increasing global reach of organized crime, terrorism, corruption, and economic wrongdoing necessitates a collaborative and united international approach. These severe forms of criminal activities, notably terrorism, are advancing worldwide with greater sophistication and perilous strategies. Nations view terrorist assaults and their ruthless tactics as an assault on the principles of freedom, democracy, justice, the rule of law, and human rights, specifically the fundamental right to life. Consequently, we endorse all endeavors made on the international stage to combat terrorism. Crime, which disregards national boundaries, presents considerable hurdles that can only be surmounted through collective actions involving all countries and pertinent institutions.

The contemporary era of organized crime is characterized by the presence of criminal syndicates. Organized criminal activities have expanded to the extent that they now involve not only criminals but also law enforcement officers, political figures, and other individuals in positions of authority. This infiltration has become so profound that individuals in leadership roles within these criminal groups have even participated in political elections at various levels, such as assemblies, parliament, municipal corporations, and local governing bodies. Through these political endeavors, they attain a certain social standing that allows them to cultivate influential connections and exploit the support of influential individuals to evade capture

following criminal acts.

These syndicates and gangs have not only acquired substantial financial profits but also acquired a level of immunity from interference. Moreover, they have established a monopolistic grip over extensive geographical regions.

II. EFFECTS OF ORGANIZED CRIME IN INDIA

Organized crime has a number of negative effects in India, including:

- **Increased crime rates:** Organized crime groups are responsible for a significant amount of crime in India, including murder, extortion, kidnapping, drug trafficking, and human trafficking. Crime like cyber-crime, corporate fraud, terrorism, and wildlife trafficking is also increasing. This leads to an increase in the overall crime rate in the country, which makes it less safe for everyone.
- **Destabilization of society:** Organized crime can destabilize society by corrupting government officials, infiltrating legitimate businesses, and fueling violence. This can lead to social unrest and make it difficult for the government to function effectively.
- **Economic harm:** Organized crime can harm the economy by extorting businesses, engaging in illegal activities that undermine legitimate businesses, and discouraging investment. This can lead to job losses, lower tax revenue, and a decline in economic growth.
- **Damage to the reputation of India:** Organized crime can damage the reputation of India by making it seem like a lawless country where criminals can operate with impunity. This can make it difficult to attract foreign investment and tourism, which can harm the economy.
- **Loss of life and suffering:** Organized crime can lead to the loss of life and suffering of many people. This is because organized crime groups are often involved in violent activities, such as murder, extortion, and kidnapping. They also often traffic in drugs and weapons, which can lead to addiction and violence.

III. LEGAL FRAMEWORK TO DEAL WITH ORGANIZED CRIME IN INDIA

In the modern period, organised crime is thought to be in a particularly virulent state due to a number of socioeconomic, political, and scientific developments. Although it does affect rural India, it is primarily an urban phenomenon. There isn't a comprehensive law in India to prevent organised crime in all of its forms and expressions, but there is a substantive law against criminal conspiracy. Additionally, there are penalties for particular infractions of certain

statutes in those laws. Laws which are dealing with the organized crime are as follows:

1. Criminal Conspiracy is defined as "when two or more persons agree to do or cause to be done- (1) An illegal act, or (2) An Act which is not illegal by illegal means" in Section 120-A of the Indian Penal Code.² Such an agreement is referred to as a criminal conspiracy; nevertheless, only an agreement to commit an offence qualifies as a criminal conspiracy if one or more participants to the agreement perform another act in accordance with the terms of the agreement. It doesn't matter if the unlawful behaviour is the agreement's main goal or only a byproduct of it, according to the explanation. The India Penal Code's Section 120-B outlines the penalties for criminal conspiracy.
2. **Dacoity and Related Offences:** One of the first types of crime in the world is in India and is carried out solely for extortion or looting. According to Section 391 of the Penal Code³, dacoity is: When five or more people simultaneously execute a robbery or attempt to do so, or when the total number of people simultaneously committing or attempting a robbery, and there are five or more people present who are helping such a commission or attempt, each Dacoity' is the term for the act that someone commits, attempts to commit, or helps to perform.
3. In 1995, Section 364-A of the India Penal Code⁴ was further amended to provide for harsh punishment for such offences in response to the rising number of kidnapping for ransom instances. The revised Section 364-A states: Whoever kidnaps or abducts any person, or keeps a person in custody after such kidnapping or abduction, and threatens to kill or hurt them, or by his conduct creates a reasonably foreseeable fear that they will be killed or hurt, or kills or injures them in order to compel the government, any foreign state or an international intergovernmental organization to perform an act, refrain from performing an act, or pay money, shall be punished."
4. These organized criminals will also face charges for the particular crime they committed. For instance, the IPC's Sections 300 and 302, which deal with murder, will hold offenders responsible for contract killings. Similarly, an organized criminal involved in kidnapping will be prosecuted under IPC Sections 360, 363, and 364A. A human trafficker will be held accountable under Sections 370 and 370A of the IPC.
5. In India, there are numerous explicit and operative preventive legislation that apply to

² The Indian Penal Code 1860 (Act No. 45) of 1860.

³ *Id.*

⁴ *Id.*

organized crime. The National Security Act is one of them, and it allows for the detention of those who are "acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India."⁵ The phrase "defence" has a very broad definition that encompasses gangster operations, and since preventative detention is handled by the administration, courts have a very limited role to play.

6. Another preventative law, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was passed with the intention of regulating the behaviour of those involved in the criminal trafficking of drugs and other narcotic substances. If found to be involved in drug trafficking, a person may face up to a year in jail. Depending on the seriousness of the situation, this term may occasionally be extended by another year.
7. In addition to these regulations, there are numerous other laws that regulate particular organized crimes in particular. For instance, the Prevention of Money Laundering Act, of 2002, governs cases involving money laundering, while the Narcotics Drugs and Psychotropic Substances Act, of 1985, governs cases involving the trafficking of various narcotic substances. In addition to these, there are numerous other laws, including the Public Gambling Act of 1867, the Foreign Exchange Regulation Act of 1973, the Immoral Traffic (Prevention) Act of 1956, and others.
8. Organised crime is not covered by any federal legislation. However, Maharashtra passed the Maharashtra Control of Organised Crime Act in 1999 in response to the high levels of organized crime in Mumbai. It includes many rules addressing the admissibility of evidence, witness protection, the court's presumption that those accused of a crime have done so upon the fulfillment of specified requirements, etc. And following MCOCA other states also enacted their respective state laws to deal with these issues. For instance, there is the Karnataka Control of Organized Crime Act, 2001, the Gujarat Control of Organized Crime Act, 2003, the Uttar Pradesh Control of Organized Crime Act, 2003, The Rajasthan Control of Organized Crime Bill, 2023, The Haryana Control of Organized Crime Act, 2023.

IV. INTERNATIONAL LEGAL FRAMEWORK TO DEAL WITH ORGANIZED CRIME

The subject of cooperation in criminal cases is particularly delicate. Its efficiency frequently

⁵ The National Security Act, 1980 (Act. No. 65) of 1980.

hinges on the private flow of information and a shared interest in the accomplishment of a certain function. Such shared faith in the international community of states was very scarce during the Cold War. Furthermore, it was believed that domestic issues dominated the scope of organized crime. However, the lack of shared concerns and mutual trust as well as the slowly growing understanding of the transnational dimensions of organised crime only partially account for states' reluctance to create a legally binding multilateral framework intended to encourage and promote global cooperation for the eradication of organised crime. The United Nations Convention against Transnational Organized Crime (UNTOC) is a major breakthrough in the fight against organized crime. The Convention obliges state parties to criminalize participation in an organized criminal group, corruption, money laundering, and the obstruction of justice. It also focuses on the "enabling" or "secondary activities" that are characteristic of organized crime. The "primary activities" of organized crime, such as drug trafficking, human trafficking, and smuggling, are dealt with in three protocols to the Convention. This approach facilitated finding a consensus and increased the Palermo Convention's chance of gaining universal acceptance. The decision to deal with the "primary activities" in autonomous international treaties allows for the adoption of further protocols dedicated to specific aspects that are not covered by the existing instruments. It also facilitates its revision and amendment.

(A) The New Criminal Law

Three new Laws that call for a fundamental revamp of the nation's criminal justice system were introduced by the Centre on August 11 in the Lok Sabha. The Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Indian Penal Code of 1860 are all expected to be replaced by the three bills. The foundation of India's criminal justice system has been the Indian Penal Code (IPC), which was adopted by the British in the year 1860. The Bharatiya Nyaya Sanhita is scheduled to take its place in 2024. The Bharatiya Nagarik Suraksha Sanhita, 2023 will replace the CrPC of 1973, while the Bharatiya Sakshya Bill, 2023 will replace the Indian Evidence Act of 1872. The Minister stated that the 146th report of the department-related Parliamentary Standing Committee on Home Affairs had emphasized the necessity for a thorough examination of the nation's criminal justice system. It was also noted that the Parliamentary Standing Committee had similarly emphasized the necessity for criminal law reforms through the passage of comprehensive legislation rather than piecemeal adjustments to existing acts in its 111th and 128th reports.⁶ Under the law, Organized crime got a place

⁶ Aaratrika Bhaumik, Seditious 'repealed', death penalty for mob lynching: the new Bills to overhaul criminal laws, <https://www.thehindu.com/news/national/explained-sedition-repealed-death-penalty-for-mob-lynching->

under sections 109 and 110, and Section 111 Provides for offences involving terrorist acts. The law permits anyone to file a police complaint in any police station, regardless of where the offence was committed. The law is ambiguous in many ways as it gives the police disproportionately broad powers of arrest." These ambiguous provisions continue the unlawful and unconstitutional use of police powers.⁷ Also, the other state Acts⁸ continue to operate with the provisions mentioned under the new law. This will create confusion related to definitions, jurisdictions, and punishment. There is no clarity which Act to follow in case of an organized crime.

(B) Loopholes in the current legal framework

1. In India, there is no national law that expressly addresses organized crime. It's crucial that specific measures are implemented to stop this threat. The executive must be given the authority to act in accordance with certain legislation. The execution of the law should likewise be strict; otherwise, the entire purpose of passing such a law would be defeated.
2. Despite the fact that these organized criminals are tried under various laws, the trials are quite drawn out and there is a very low conviction rate because, in the majority of cases, for such a lengthy period of time, the witnesses refuse to testify out of fear, and in some instances, the pieces of evidence are lost.
3. Every state operates in a unique manner because there is no overarching organization in charge of these tasks. These offenders frequently migrate and do not stay long at one location. Due to the absence of synchronization in these situations, catching them can be challenging or perhaps impossible.

V. CONCLUSION AND SUGGESTIONS

The first and most important stage in our control efforts should be to maintain "incidents" or regular crime under acceptable limits by applying constant pressure on criminal elements. If we are successful in this endeavour, the potential of unconnected criminal networks and the phenomenon of organised crime would have been eliminated or at least significantly reduced. Organised crime must be combated by a skillful blend of the strengthening of criminal

the-new-bills-to-overhaul-criminal-laws/article67183580.ece (Last Visited 16/08/2023).

⁷ BBC News, New IPC, CrPC bill: Is India's planned criminal law reform a game-changer? <https://www.bbc.com/news/world-asia-india-66495428>

⁸ The Maharashtra Control of Organized Crime Act, 1999, The Karnataka Control of Organized crime Act, 2001, The Gujarat Control of Organized Crime Act, 2003, Uttar Pradesh Control of Organized Crime Act, 2003, The Rajasthan Control of Organized Crime Bill, 2023, The Haryana Control of Organized Crime Act, 2023.

legislation and the criminal justice system, the institutionalisation of a national and State level co-coordinating mechanism, and the involvement of the media in control efforts. No matter how effective it is, law enforcement cannot succeed on its own without a strong political commitment. A democracy has innate flaws that show up in the way the criminal justice system operates. Despite greatest attempts, domestic crime is likely to and frequently does cross international borders. Therefore, there is a need for international cooperation to put an end to it through the swift extradition of wanted offenders, the deportation of unwanted foreigners, the sharing of legal help in investigations and prosecutions, and the swift implementation of Interpol Red Corner alerts. The international community must also work together to limit the definition of "political offences" in extradition laws and the Interpol charter, harmonise extradition and deportation regulations, and harmonise the definition of "crimes against humanity." Despite numerous pieces of law, the State has not been able to significantly reduce these offences. This is due to a number of difficulties the State is currently facing, including improper enforcement, a lack of resources, lengthy court proceedings, trouble gathering proof, etc. Due to the fact that many of these crimes are global in scope, it is essential that the Parliament enact legislation that expressly address organised crime and establish diplomatic ties with other countries.

The fight against organized crime in India requires a comprehensive and sustained effort. Strengthening laws, enhancing law enforcement capabilities, and addressing the root causes of criminal activities are crucial steps in this ongoing battle. With a concerted and coordinated approach, India can make significant strides in reducing the impact of organized crime on its society. Organized crime poses a significant threat to the social, economic, and political fabric of India. While the country has made considerable progress in enacting laws and implementing measures to combat organized crime, there is still room for improvement. The battle against organized crime requires a multifaceted approach that includes strong legal frameworks, enhanced law enforcement capabilities, and proactive measures to address the root causes of criminal activities.

(A) Suggestions:

1. **Strengthen Legal Frameworks:** India should continue to strengthen its legal frameworks for combating organized crime. This can include updating existing laws, such as the Prevention of Money Laundering Act and the Unlawful Activities (Prevention) Act, to make them more effective in dealing with the evolving nature of organized crime. Specialized courts and fast-track procedures for organized crime cases can help expedite justice.

2. **Improved Intelligence Sharing:** Coordination and intelligence sharing among law enforcement agencies at the state and national levels should be enhanced. This will help in tracking and apprehending organized crime syndicates that often operate across state boundaries.
3. **Witness Protection:** Witness protection programs should be established to encourage individuals with information about organized crime to come forward without fear of retribution. This will aid in the successful prosecution of criminals and dismantling of criminal organizations.
4. **Community Engagement:** Addressing the root causes of organized crime, such as poverty, unemployment, and lack of education, is crucial. Government programs that promote economic development and education in vulnerable areas can help reduce the appeal of organized crime to marginalized individuals.
5. **International Cooperation:** Organized crime is often transnational in nature. India should collaborate with other countries to share information, extradite criminals, and combat organized crime networks that operate across borders.
6. **Asset Forfeiture:** Strengthen mechanisms for the confiscation of assets acquired through organized crime. Asset forfeiture can be a powerful tool in undermining the financial strength of criminal organizations.
7. **Public Awareness:** Educate the public about the dangers of organized crime and the importance of reporting suspicious activities. Encourage citizens to be vigilant and report any information that could help in the fight against organized crime.
8. **Rehabilitation and Reintegration:** Develop programs aimed at rehabilitating and reintegrating individuals who have been involved in organized crime into mainstream society. Providing them with alternatives and support can help break the cycle of criminality.
9. **Regular Assessment and Review:** Periodic evaluation of the effectiveness of organized crime laws and measures is essential. This will allow for necessary adjustments and improvements as the nature of organized crime evolves.

VI. REFERENCES

1. Charles, M. (2001). The growth and activities of organised crime in Bombay. *International Social Science Journal*, 53(169), 359-367.
2. The Indian Penal Code, 1860.
3. The Maharashtra Control of Organized Crime Act, 1999.
4. The Karnataka Control of Organized crime Act, 2001.
5. The Gujarat Control of Organized Crime Act, 2003.
6. The Rajasthan Control of Organized Crime Bill, 2023.
7. The Haryana Control of Organized Crime Act, 2023.
8. The National Security Act, 1980 (Act. No. 65) of 1980.
9. Uttar Pradesh Control of Organized Crime Act, 2003.
