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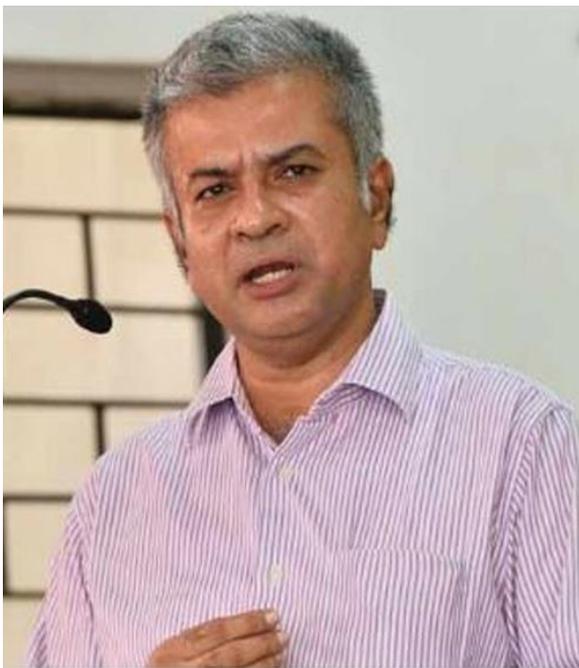
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



AN INSIGHT ON THE NEW PROVISION INTRODUCED IN BNS: ORGANIZED CRIMES IN INDIA

AUTHORED BY - PALLA NAVANYA

ABSTRACT

Organized crime has become a global issue, extending beyond national borders and growing increasingly complex. Though it has existed throughout history, modern organized crime is far more sophisticated. Advances in technology, communication, and transportation, combined with globalization, have weakened traditional state boundaries, facilitating cross-border activities with both positive and negative effects. Rapid development has intensified issues such as population growth, resource scarcity, poverty, and unemployment, which often lead to deviance or, in extreme cases, criminal behavior. These factors have created an environment where organized crime flourishes, emerging as a serious and violent aspect of the modern criminal world.

This paper focuses on the types of organized crime and the main reasons as to the reason of why it's inclusion into the national code. Further an analysis of an article is presented to gain further understanding.

KEY WORDS

Organized crimes, cross-border activities, unemployment, deviance

INTRODUCTION

Organized crime has become more complex in modern India. The aspirational gap widened between aspirations and their realization in urban areas has amplified the issue. Since independence, the socio-political environment of India and the democratic framework have allowed the development of such patterns. Conditions created by the Directive Principles of state policy, in its objective of fostering socio-economic equality in a diverse and constantly evolving democracy unintentionally have legitimized certain forms of deviance and criminal activity. It has led to the increased rate of economic crimes including financial frauds, tax evasions, and money laundering.

The sentiment of the US Task Force Report for the year 1967 best described organized crime as a "society" that existed outside of and in control of the government and the people. It involved thousands of criminals operating within complex organizations, as highly sophisticated as large corporations, following rules that were more strictly enforced than those of legitimate governments. Their crimes were not random but, instead, interrelated in intricate conspiracies to various activities and were all meant to reap enormous profits.

The legal definitions of organized crime are critical in addressing and prosecuting it, though they vary from one nation to another. While some countries clearly criminalize organized crime, others embrace more general concepts. For example, the Italian Penal Code does not clearly define organized crime. Instead, it describes a "criminal association" as three or more individuals committed to several crimes, with the organizers and promoters subject to imprisonment for 3 to 7 years. Similarly, in the US Omnibus Crime Control and Safe Streets Act of 1968, organized crime is defined as the illegitimate activities of disciplined associations engaged in supplying illicit goods and services, such as gambling, drug trafficking, and prostitution. The sweeping terminology of this act makes it a catch-all law to encompass all possible criminal activities. The RICO Act of 1970, however, focuses on racketeering, which consists of offenses such as murder, kidnapping, extortion, and drug trafficking, where a pattern of at least two such acts has to be established to prosecute. In Japan, there is specific legislation that aims to curb gangster activities, focusing on the prevention of violence and intimidation by criminal groups. Japanese law defines a gang as any organization facilitating its members or affiliates in habitually engaging in illegal acts of violence. Meanwhile, Interpol defines organized crime as any enterprise or group involved in continuous illegal activities, often catering to public demand for illicit goods and services through a client-public relationship.¹

Organized crime also has some defining features. According to John Dellow, Assistant Commissioner of the Metropolitan Police in London, it involves highly structured and sophisticated groups operating across nations, functioning outside governmental control, and perpetuating themselves as criminal conspiracies. These groups use fear, corruption, and legal protections to gain power and profit.

M.N. Singh, former Commissioner of Mumbai Police further emphasized that such organized

¹ <https://www.satp.org/satporgrp/publication/faultlines/volume12/article5.htm#5>

crime is actually the result of well-planned criminal activities for the pursuance of profit and power.

It also establishes a client-public relationship through supplying illegal goods and services. The MCOC Act of 1999 strengthens the same argument through its definition of organized crime as persistent unlawful activities done by a single person or a group of people employing violence, intimidation, or other forms of compulsion to achieve economic or personal gains in which some promote insurgency.

Examples of organized crimes are involvement of Bombay based criminal syndicate in the serial bomb blast which was happened in 1993. The contract killing of political leaders and social leaders which emerged as a serious challenge to the state.²

Organized crime in India is as old as ancient times with gangs like the 'thugs' targeting travelers. Sir William Sleeman broke their network in the 1830s, prosecuted thousands. In modern India, cities like Mumbai saw the rise of gangs involved in smuggling, bootlegging, and other illegal activities, headed by stalwarts like Haji Mastan, Dawood Ibrahim, and Chota Rajan. Kidnapping emerged as the major activity of organized crime in Delhi, and it was mainly the Tyagi and Rajesh Dahiya gangs that were controlling the field.

TYPES OF ORGANIZED CRIME

A. DRUG TRAFFICKING AND DRUG ABUSE

Drug trafficking is the most notorious illicit activity and a major source of revenue for organised groups, regulated by three international conventions controlling production, distribution, and possession for medical purposes.³ India's geographical situation between the Golden Crescent and the Golden Triangle positions it both as a transit and destination country for illicit opiates, largely fueling drug trafficking trends there. Heroin seizures concerning diversion of legitimate opium remains debated. According to a joint survey conducted by UNODC and the Ministry of Social Justice in 2004, high substance dependence rates were reported: 10 million for alcohol, 2.3 million for cannabis, and 0.5 million for opiates. The opiate consumption rate in India is twice that of global averages, but treatment infrastructure only

² [Madan Lal Sharma],[Organized Crimes in India: Problems and perspectives],[82],

https://unafei.or.jp/publications/pdf/RS_No54/No54_10VE_Sharma.pdf (18/9/2024)

³ <https://www.unodc.org/e4j/zh/organized-crime/module-3/key-issues/drug-trafficking.html>

covers part of the demand. India is also experiencing growing rates of HIV/AIDS, with IDU augmenting the impact. HIV prevalence among IDUs in Delhi rose from 7.4% to 14.4% in 2003 and was strongly linked with female sex workers and their partners and contributed to the 'feminization' of the epidemic.⁴

B. HAWALA AND MONEY LAUNDERING

Money laundering is the concealing of the illicit source of criminal proceeds. For instance, a trafficker would invest in a legitimate construction firm so that illicit earnings could "blend" with legitimate income from the company. This process makes the illegal money seem legitimate. Money laundering is very important to organised crime because it can integrate illicit funds into lawful businesses, banks, or real estate, thereby becoming difficult to detect.⁵ A FATF review showed that corrupt public officials used money-laundering tactics very much like those of organized crime: concealing ownership through corporate structures and trusts and using intermediaries to send proceeds of crimes through both domestic and international financial systems. They exploited their positions to grab state assets, influence law enforcement, and even banks. The FATF observes some common red flags of potential money laundering, such as frequent large cash transactions, cash payments rather than through checks, multiple wire transfers to or from known tax havens, large and rapid withdrawals from wire transfers, a focus on secrecy about personal or business details, and a lack of understanding about the customer's business.

C. TERRORISM AND NARCO TERRORISM

Organized crime and terrorism are closely interlinked through illegal activities such as drug and arms trafficking, human smuggling, and money laundering. Terrorist groups, both locally and foreign-backed, need arms and funding for their operations, and organized crime syndicates provide the necessary infrastructure for trafficking and smuggling across borders. In India, this connection operates at both domestic and international levels. For northeastern India, a number of militias control areas with the collection of money from inhabitants and indulges into extortion, black marketing, sometimes even influencing some government contracts and many essential products are diverted and sold at inflationary prices, transnational crime - drug and arm syndicates keep these groups also alive as their couriers would transport illegal stuff. This

⁴ https://www.unodc.org/pdf/india/publications/south_Asia_Regional_Profile_Sept_2005/10_india.pdf

⁵ <https://www.unodc.org/e4j/en/organized-crime/module-4/key-issues/money-laundering.html>

network of organized crime syndicates and militants has penetrated the major entry points such as Moreh and Cox's Bazaar, assuming control over trafficking routes that were once dominated by criminal networks.

In Kashmir, the nexus between terrorism and organized crime is unique. Militant groups are funded by external sources, including large sums from Pakistan and Gulf countries, often routed through organizations like Markaz Dawa al Arshad. Money laundering, including hawala, is the primary means of transferring funds to these groups. In addition, counterfeit currency is in circulation in Kashmir, further linking organized crime to terrorism. The connection is also evident in incidents like the Bombay blasts, which exposed the overlap between organized crime and terrorism in India.⁶

To sum up, organized crimes have been prevalent in the northern parts of India, the escalation of this offence all over India ascribed to the rocketing social network and internet and the tremendous need of money as a consequence of poverty, unemployment or even social grudges. Organized crime has become a common event across the country requiring it to be established as an offence in the Indian code as a result organized crimes as a non-compoundable offence has a place in the BNS under section 111 and 112.

The intention behind this provision is to reduce the crime rate, augment trust and intensify fraternity and unity among the people of the country.

RESEARCH METHODOLOGY

This paper is of descriptive nature and the research is based on secondary sources for the deep analysis of the offence of organized crime in India. The methodology used here is that of a doctrinal research methodology, which includes analyzing legal principles and legal precedents.

REVIEW OF LITERATURE

Topic: “Unorganized” crime under the Bhartiya Nyaya Sanhita, 2023

Author: Sharmin Kapadia, Priyam Sharma

⁶<https://www.ipcs.org/focusthemselves.php?articleNo=973#:~:text=While%20organized%20crime%20involves%20many,fight%20against%20the%20security%20forces.>

Source: Bar and Bench Website

The newly enacted Bharatiya Nyaya Sanhitha (BNS) discourses and integrates provisions wrapping organized crimes at a national level. The organized crime is defined under Section 111, as an economic offence. It is indeed a commendable step to unify the offences which are of continuing nature. Unfortunately, the terms have been inserted inconsistently, which has affected clarity and made the scope more complex.

Earlier, the Indian Penal Code, 1860 did not engrave a special provision for organized crimes. The special laws such as the Prevention of Money Laundering Act, 2002, the Prevention of Corruption Act, 1988, the Narcotic Drugs and Psychotropic Substances Act, 1985 and the State Laws such as the Maharashtra Control of Organized Crime Act, 2015 and the Gujarat Control of Terrorism and Organized Crime Act, 2015 described various organized crimes and have provided harsh punishments.⁷

AMBIGUITY OF THE PROVISION

The BNS replicates the definition of organized crime from the MCOCA, a state law which is applicable in Maharashtra and Delhi AND the GCTOCA, a state law applicable in the Gujarat. Under the MCOCA the definition of organized crimes, is wide enough to cover within its ambit any continuing unlawful activity by an individual on behalf of the syndicate or as a member of the syndicate by use of (a) violence (b) threat of violence (c) intimidation (d) coercion (e) other unlawful means; to gain pecuniary benefits or economic advantage or to promote insurgency.

Under the GCTOCA, an attempt has been made to further broaden the definition by including crimes such as extortion, land grabbing, contract killing, economic offences, cyber-crimes, gambling rackets, and human trafficking.

Under the Section 111 of the BNS Act sculpts out an inclusive definition of organized crime, such as kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, and human trafficking. The definitions of these words have not been mentioned in the Sanhita leading to an ambiguity.

⁷ <https://www.barandbench.com/columns/unorganized-crime-under-the-bhartiya-nyaya-sanhita-2023>
(19/9/2024)

Some of the sections has been defined under the special acts that are follows:

1. The Hawala Transaction has been explained under Section 2(c) of the Foreign Exchange Management Act of 1999.
2. Cybercrime is explained under the Information Technology Act, 2000
3. Human trafficking was explained under the Immoral Traffic Prevention Act, 1956
4. “Land grabbing” has been defined in varied state laws such as the Gujarat Land Grabbing (Prohibition) Act, 2020 (GLG Act) and the Andhra Pradesh Land Grabbing (Prohibition) Act (APLG Act), 1982.
5. “Drug” has been defined under Section 2 (b) of the Drugs and Cosmetics Act, 1940. It also remains unclear if the term “drug” would incorporate “narcotic drugs” and “psychotropic substances”.

The BNS does not clearly specify whether a special court or a sessions court should be approached in the case of a suit. Another concern is whether the Special State Act takes precedence over the BNS. Additionally, the provisions related to organized crimes under the BNS appear ineffective.

Recently, during an investigation into land-grabbing cases in Bengaluru, authorities discovered that the cases were linked to a gang of 18 individuals led by John Moases. The Karnataka Control of Organized Crimes Act (KCOCA) has been invoked against three of the accused. Moases, the mastermind behind the fraud, was out on bail. However, CID police officers arrested him and presented him before the court, which subsequently remanded him to judicial custody.⁸

The officers stated that a total of 108 cases have been registered against the gang, with charge sheets filed in nearly 51 cases, while the remaining cases are still under investigation. The gang was involved in forging property documents, falsely presenting themselves as owners or tenants, and either seizing the land or extorting money from property owners. Additionally, numerous cases of murder and money laundering highlight the need for stricter laws and more efficient enforcement to address such crimes in society.

⁸ <https://timesofindia.indiatimes.com/city/bengaluru/organized-crime-gang-leader-john-moases-arrested-in-bengaluru/articleshow/112000431.cms> (19/9/2024)

Characteristics of organized groups (Mumbai Gangs)

V.K. Saraf's study of the Mumbai underworld reveals the following profile of gang membership and activities:

Demographics: The majority of gangsters (66.5%) are between the ages of 19 and 28, while 26% fall within the 29 to 38 age group, and only 6.5% are over 40. In terms of education, 29% have completed only primary education, 42.5% have a secondary education, and 5% hold college degrees. Many come from economically disadvantaged backgrounds, with approximately 30% originating from outside Maharashtra.

Gang Structure: Gangs are not formed based on regional or religious affiliations. However, following the 1993 serial blasts, many Hindu gangsters distanced themselves from Dawood Ibrahim's gang. Gang members are often violent and resort to terrorist tactics when confronted or threatened.

Membership and Loyalty: While there are no formal initiation rituals, potential members are tested through involvement in criminal activities. Gang leaders show concern for members' families during times of crisis, and decisions are often made collectively. However, loyalty to the boss is of utmost importance, and betrayal is met with the severest consequence ie death.

Gang Composition: Gang members are classified into sharpshooters, money collectors, and liaison agents, with the latter handling legal matters. Smaller gangs may merge with larger ones while retaining some level of independence. Additionally, auxiliary members play a crucial role by supporting gang operations, providing shelter, and supplying necessary resources.⁹

SUGGESTIVE MEASURES:

The increasing number of gangs and organized crimes can be attributed to individuals fulfilling their political and economic needs. Groups that already exist would rather continue their illegal ways of doing business since there is a demand for such goods and services that they supply. They are inclined to ignore the law and sometimes cooperate with government agencies. The lack of political will and insufficient support from the government are also causes of the development and proliferation of criminal gangs.

⁹<https://www.satp.org/satporgtp/publication/faultlines/volume12/Article5.htm#:~:text=Chota%20Rajan%20Ganesh%20festival%20at%20Tilak%20Nagar.&text=Subsequent%20to%20the%201993%20serial.operating%20from%20South%20East%20Asia>. (19/9/2024)

In our society, liquor, drugs, smuggled electronics, and lack of solidarity between individuals are some of the main causes for illegal activities. This trend is particularly noticeable in cities, where political or business rivalries often lead to contract killings, also known as "Supari." However, there are various ways to address and curb these causes of organized crime.

One of the measures to struggle with organized crime effectively is the identification, listing, and holding accountable criminals within such networks. With unclear and ambiguous legal provisions, it will be challenging to eradicate organized crime. The development of effective laws and investigation methods is pivotal in the effective process of prosecution. The essential step to prevent organized crime is to differentiate between traditional crimes and organized crimes. This requires an efficient legal framework that can clearly identify and address the various criminal groups without confusion. Law enforcement authorities must be given the necessary powers to enforce strict laws against organized crime and gangs.

Key provisions of new laws may include:

- Amending the bail provisions for criminals involved in organized crime.
- Holding government servants, professionals, and others who assist criminals accountable.
- Confiscation of assets and properties gained through organized crime.
- Offering protection to the police from frivolous charges and inquiries.
- Expanding the period of investigations and charge sheeting.
- Ensuring prompt trials for organized crime cases.

The Maharashtra Control of Organized Crime Ordinance 1999 was a milestone in dealing with organized crime, and similar laws should be set up for high-security jails in each state for gangsters. These prisons should not be allowed to detain more than 100 inmates at any given time, and the staff of these prisons must be supervised by other higher officials. In addition, an auditing wing must be formed in the Special Task Force to oversee the extensive movable and immovable properties that gang members and their associates possess.

Political will is an important answer to the challenge of organized crime. If the government is truly serious about the annihilation of organized crime, this can dramatically limit illegal activities. Assuming that the authorities are seriously interested in following through with measures, there has to be a multi-dimensional assault on the criminal empires operating in

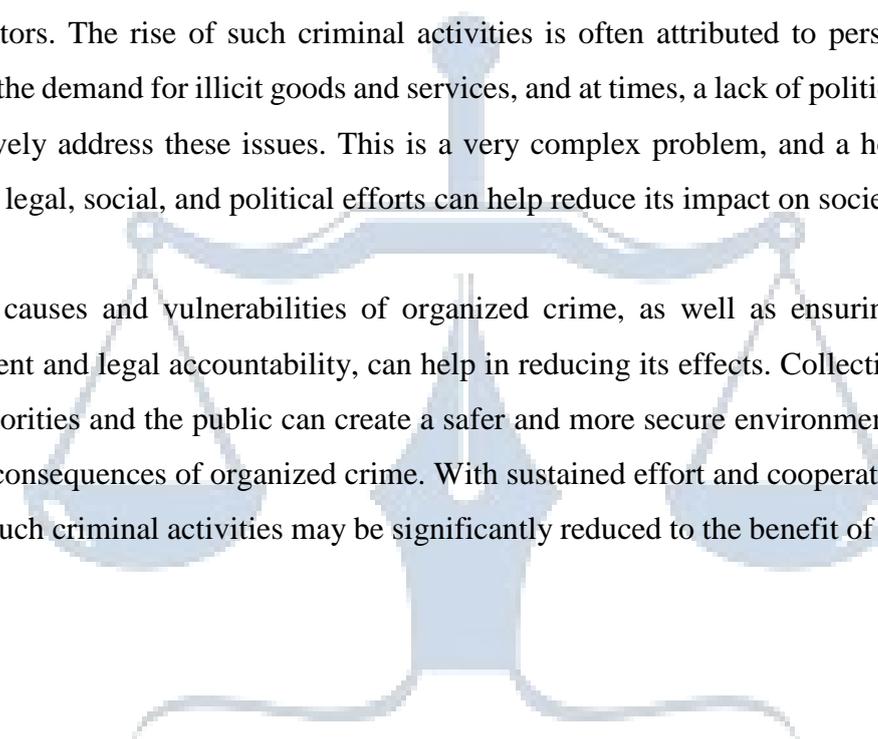
India. The initial effort should focus on the weak underbelly of the underworld-in other words, their power base, which should be degraded before the knockout punch.

Other measures that include neutralizing abettors, taking appropriate action, and proper organization of task forces may reduce the impact of organized crimes.

CONCLUSION

Organized crime remains a serious problem and is often linked to political, economic, and social factors. The rise of such criminal activities is often attributed to personal and group interests, the demand for illicit goods and services, and at times, a lack of political commitment to effectively address these issues. This is a very complex problem, and a holistic approach involving legal, social, and political efforts can help reduce its impact on society.

The root causes and vulnerabilities of organized crime, as well as ensuring efficient law enforcement and legal accountability, can help in reducing its effects. Collective commitment from authorities and the public can create a safer and more secure environment, free from the negative consequences of organized crime. With sustained effort and cooperation, the harmful reach of such criminal activities may be significantly reduced to the benefit of society at large.



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