

COMBATING ORGANISED CRIME: THE DRACONIAN CONCEPT IN INDIA

Author: Shaman Parween, V year of B.A., LL.B. from Alliance University, Bangalore

Co-author: Harsh Patel, V year of B.B.A., LL.B. from Alliance University, Bangalore

Abstract

The word 'transnational organised crime' is one of the concepts that has been attempted to be defined and regulated but somehow there still exists a void in determining appropriate measures to curb such activities due to various known issues such as defining the crime itself, the needed elements and also some snags that arise after the act is put into the consideration. The present paper intends to discuss the concept of organised crime in India and also the exclusive legislations that deal with it. Certain states such as Karnataka, Maharashtra have a special act dealing with organised crime in India that includes the transnational aspect as well. There are certain states such as Uttar Pradesh also have a bill pending to deal with organised crime. With the provisions of enacted laws, proposed laws, and international frameworks the paper also intends to discuss the problems and issues faced when dealing with organised crime on a transnational level in India. The paper discusses Other acts includes- The Karnataka Control of Organised Crime Act 2000, Andhra Pradesh Control of Organised Crime Act 2001, The Telangana Control of Organised Crime Act, 2001 and Gujarat Control of Terrorism and Organised Crime Act 2015. The Conflicting bind is related to other states transnational act and the real problem is not whether a specific action is criminal, but it revolves around calling a specific group of persons an organized crime syndicate. There is no provision specifically of the list of people considered to be organized crimes syndicates. A group of people can be framed with false cases, the cases brought before the court and a group of people can be labelled as an organized crime syndicate. The 'draconian laws' proper execution is necessary to ensure the hardships of the laws are applied to deserving criminals. The measures to control transnational organised crime within the national jurisdiction are composed of special measures and general preventive by systematization and completeness.

Keywords- organised crime, transnational, MCOCA, UPCOCA, UNTOC

Introduction

Transnational organised crime is an illegal business operation by the members with the same desire and interest to gain profit for those activities. It is crucial to identify the challenges related to transnational organised crime faced by the government of India. The transnational organised crimes undermine the development and weaken the economy of the country. In India, there isn't any specific act dealing with transnational organised crime *per se*. The MCOCA defined organised crime as-

any continuing unlawful activity by an individual, singly or jointly either as member of an organised crime syndicate or on behalf of such a syndicate by use of violence or threat of violence or intimidation or coercion or other unlawful means to obtain benefit, advantage or promoting insurgency¹.

Organised crime acts such as the Maharashtra Control of Organised Crime Act 1999 or the MCOCA although intends to strengthen the law enforcement mechanism it has been seen that investigators generally do not comply with the act by which the evidence becomes weak, and thus the accused is let off. Adding to it, there are many committee reviews as well which provide for the prevention against the misuse of MCOA. Usually, the problem with such legislation is that the definition itself contained in the act is considered too vague and the case dealt is already covered under other laws. The government of India faces particular challenges in combating transnational organised crime because of the lack of a specific control mechanism to combat it in real-time. One of the reasons for answering why already existing law is not adequate is since they only target groups or enterprises, which the procedural law is not sufficient to deal with the transnational organised crime at such level. According to the provisions under the act, it does not provide any provision for appeal and certain confessions made to police can also be taken into

¹ Nafiu Ahmed, Transnational Organised Crime in India: A New Framework Of Analysis, European Journal of Social Sciences, vol. 2 issue 5, 2017, (20th March 2021, 10:10 pm) https://www.researchgate.net/profile/Nafiu-Ahmed/publication/329862526_TRANSNATIONAL_ORGANIZED_CRIME_IN_INDIA_A_NEW_FRAMEWORK_OF_ANALYSIS/links/5c1dbcfda6fdccfc70600651/TRANSNATIONAL-ORGANIZED-CRIME-IN-INDIA-A-NEW-FRAMEWORK-OF-ANALYSIS.pdf?origin=publication_detail

2. Roderic Broadhurt & Nicholes Farrelly, Organised crime control in Asia experience from India, China & the Golden Triangle (15TH March 2021, 12:15 am), <https://poseidon01.ssrn.com/delivery.php?ID=15800612002709909406411912712309702302207300404107107507210510810111006600212007909900400910600604104300802012109308500212212502703400800604008001902802700711708302300400601610609400410311908000108100000708407111117008074120074066108085003079022078097&EXT=pdf&INDEX=TRUE>

consideration, which can be used against the victim. The other ambiguity under the act is that there is no such provision that deals with the prevention and penalising of misuse the provision of the act by the law enforcement itself. The proper meaning of promotion insurgency used in MCOCA has not been defined in the act and even the person protesting against the government could be easily held liable under MCOCA. Another factor that acts as a backdrop is the fact that the punishment under the act is not proportioned to the crime. For instance, In 1993 Mumbai serial bomb blast and several other contract killings of political and social leaders indicated organised crime in that area of the country is emerging and posed a difficult challenge for the state. The existing law and procedure were not powerful to bring and record adequate shreds of evidence against criminals and charge them against organised crime. As Bombay is considered as a financial capital of India, it is also the dominance of several criminal groups. During that phase, there was a liberal bail policy which was pronounced by the Supreme Court because of human rights which were again being misused by such organised crime offenders. The core problem in controlling crime is due to the inadequate legal structure. With time passing by, the present organised crime and transnational organised crime have turned out to be a complex issue that possesses a serious threat to a nation's internal security and also the law enforcement mechanism. One could say that one of the major reasons for the increase of transnational organised crime in India is globalisation, which has uplifted the cases of human trafficking, money laundering, smuggling and illegal drug activities in India. And in addition to this, the simplified process of moving across the national border also creates new criminal opportunities to commit crimes. The development of technology has upgraded such activities to the next level and made it possible to conduct and organise transnational organised crime in operation effectively in India. Apart from such technical problems, there have been instances where the validity of law is put in question before the court of law. In the case of the triple blast on July 13, 2011, Kaffel Ansari challenged the applicability of MCOCA to terror attack after 4 years of arrest. The argument which was put forward was that a terror attack is not for monetary gain and MCOCA has no applicability in such instances. The MCOCA constitutional validity has been challenged on the ground of lack of legislative competence related to investigation provision. The Supreme Court in the case of *State of Maharashtra Vs. Bharat Shanti Lal Shah*², the constitutional validity of MCOCA section 3&4, section 14 to16 and section 21& 25 were

² (2008) 13 SCC 5

challenged on two grounds. The first ground of challenge was on legislative competence and the second on fundamental ground. Further, in the case of **the Malegaon bomb blast**, the ground of lack of legislative competence of parliament to enact such law was also challenged³. Recently the Uttar Pradesh Control Organised Crime Act came into highlight which is drafted in line with the Maharashtra Control of Organised Crime Act to bring the check and curb the organised crime and mafia. In transnational organised crime, it is difficult to obtain proof and no legal backing of witnesses as there is a grave threat to their own lives. No law protects witnesses of such grave crimes⁴.

Research Problem

The laws on organised crime are strict and stringent, but there are still challenges occurring against it which makes it hard for the mechanism to function effectively. The problem rises when organised crime has an element of transnationality within it, which makes the enforcement of municipal laws (both central and state) even more difficult.

Existing Legal Situation

The existing legal framework governing organised crimes comprises provisions from the Indian Penal Code, The Customs Act 1962, The Narcotics Drugs and psychotropic Substances Act 1884, Immoral Traffic (Prevention) Act 1956, Foreign Exchange Regulation Act 1973, The Public Gambling Act 1867, National Security Act 1980 and other state legislative acts such as MCOCA, KCOCA. There is a strict approach made towards such cases under the purview of the law.

Literature Review

SAM MULLINS AND JAMES K. WITHER, Terrorism and Organized Crime

The article provides for an assessment of similarities and differences between terrorism and other acts of organised crimes. While discussing the categories within terrorism, the article also discusses the relationship between the terrorists and the criminals, providing for the concept of

³ *Prasad Shrikant Purohit vs State Of Maharashtra & Anr*, (2015) 7 SCC 440

⁴ See, Pierre Hauck and Sven Peterke, Organized crime and gang violence in national and international law, *International Review of the Red Cross*, vol. 92 no. 878, (22nd March 2021, 12:10 pm)
<https://www.corteidh.or.cr/tablas/r25263.pdf>

convergence between terrorism and organized crime and also the implications for law enforcement and counterterrorism.

EVE DE CONING & GUNNAR STOLSVIK, *Combating Organised at Sea: What Role for the United Nations Office on Drugs and Crime*, (2013). The article explores the issue of transnational organised crime occurring at sea such as drug trafficking, defining it to be transnational, multifaceted and interrelated. The article discusses the UNODC (United Nations Office on Drugs and Crime) functions and also provides suggestions for improvised response by the law enforcement sector to organised crimes at sea.

DICKIE, PHIL, AND PAUL WILSON. "Defining Organised Crime: An Operational Perspective." *Current Issues in Criminal Justice*, 1993. The paper discusses the approach towards organised crime under the jurisdiction of Queensland, defining the Queensland Criminal Justice Commission as the institution comprising research, intelligence and law enforcement. The paper also analyses the current models of organised crime as defined by academic researchers and law enforcement practitioners

MADAN LAL SHARMA, *Organised Crime in India: Problems and Perspectives*

The article provides for the Indian approach towards the organised crimes and the demographics of such crime. The article also provides statistics and other quantitative data towards the organised crime occurrences in India and discusses the pattern of occurrences and development of such crimes as well. In brief, the article also discusses the problems that are failing the controlling efforts such as the Slow Pace of Trials & Low Conviction Rate, Lack of resources etc and also discuss the areas of development for better protection and prevention against such crimes.

Research Objectives

The paper intends to discuss the legal framework and also the mechanism developed to deal with organised crime in India and also the issues faced when the organised crime has a transnational element present. The paper also intends to bring out certain key areas which can be improvised for better enforcement against transnational organised crime.

Research Scope

The paper has been limited to the jurisdiction of Indian Laws which includes the central as well as state legislatures which specifically deals with organised criminal acts. The paper does not intend to discuss the constitutional validity of the acts and the acts which partly discusses offences possessing partial organised character. Comparatively, in order to provide suggestions combating organised crime with transnational character, the relevance of international procedure has been taken where the measures/practises of other nations are taken into consideration.

Research Questions

1. What is the different mechanism created under special acts to deal with organised crime in India?
2. For the transnational character of organised crime, what are the ways by which better combat can be done against such crime?

Hypothesis

The existing legal framework governing organised crimes, including the penal laws such as the Indian Penal Code, MCOCA, KCOCA are enacted with full legislative competency. The laws enacted although strict and provide for strict measures still face some issues in curbing the organised crime in the state.

Methodology

The research rather than approaching straight for descriptive methods and restricting the study just to describing the state of issue/affairs as it is at present, has approached more fundamentally towards analytical methods where the available data, facts and reports have been analysed to derive a critical evaluation on the subject. The research has also been conducted in a flexible yet investigative manner which is exploratory. Various literature concerns with research problem are perused by the researcher which includes available books, Law journals, different provisions of laws of India and other developing developed nations, magazines, articles, research papers, news, newspapers articles published and seminars, various websites of internet sources and

various other primary and secondary sources etc. being pursued for examination, analysis, evaluation and critical study on the project topic.

MCOCA

The Maharashtra Control of Organised Crimes Act, 1999 was introduced with an intent to enforce special legislation in the economic capital state where there was an increasing rate of organised crime and terrorism. With an intent to tackle the upsurge of crimes committed by crime syndicate⁵, the act along with an extended jurisdiction⁶ to the National Capital Territory of Delhi, the act provides for special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang by way of special provisions created.

Punishment under the act

Under the act, there are various instances, which can lead to sanction against the perpetrator such as-

1. For offences that have resulted in the death of a person⁷, the person shall be punished with a death sentence or life imprisonment or/and liable with a minimum fine of Rupees One Lakh.
2. For other offences, the punishment awarded is between five and life imprisonment, and a minimum fine of Rupees 5 lakh⁸.

The act also provides punishment for cases such as-

1. One who conspires or attempts to commit or advocates abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime⁹,
2. One who r harbours or conceals or attempts to harbour or conceal, any member of an organised crime¹⁰ Any person who is a member of an organised crime syndicate¹¹

⁵ Section 2(f) defines 'Organised Crime Syndicate' as "a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime"

⁶ Vide notification dated 02.01.2002, Ministry of Home Affairs, Government of India

⁷ § 3(1)

⁸ Ibid

⁹ Section 3(2) provides punishment of five years, extendable to life imprisonment and a fine of five lakh Rupees

¹⁰ Section 3(3) provides punishment same as 3(3)

¹¹ Even being a part of a group/syndicate is punishable by a sentence minimum of five years which can extend up to life imprisonment, and a minimum fine of five Lakh.

3. holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds¹² or on behalf of any member of the syndicate¹³

Mechanism Established

The act also provides for an exclusive jurisdiction conferred to special courts¹⁴ whose constitution power vests with the State Government¹⁵, with the procedure and powers being mentioned in the act. However, unlike the normal penal procedure, the act provides the special court with substantiating power to act upon and take cognizance of any offence just upon receiving a complaint of such facts¹⁶, without the accused being committed to it for trial. The recognition the act provides to such a court is at par as that of a Sessions Court¹⁷, thus creating a seriousness even in the summary trial conducted. The seriousness established is to such a level that the special courts established have been granted precedence over the trial of any other case against the accused in any other court¹⁸. Treating the accused as special criminals, the act establishes upon a principle that leaving such types of criminals to move freely in the society, is against the interest of the State as well as the society itself. To overwatch upon the responsibilities and functions under the act, a competent authority¹⁹ is appointed to authorise wire interception, electronic or oral communication. This is in contrast with an earlier provision where permission for the same was sought from the Home Ministry²⁰. However, the act provides for a Review Committee, whose function is to review every order passed by the competent

¹² This intends to curb the benami financial transaction of assets by providing punishment of minimum three years, extending up to life sentence and a minimum fine of two lakhs.

¹³ With the same abovementioned intention, section 4 provides punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate with a sentence of imprisonment for a term of three years, which may extend to ten years and fine, minimum of rupees one lac and such property shall also liable for attachment and forfeiture, as provided by section 20(forfeiture and attachment of property)

¹⁴ Section 6 mentions "... only by the special court" within whose local jurisdiction the offence was committed.

¹⁵ Section 5(1) and the question of jurisdiction to be dealt by the State government is provided under §5(2)

¹⁶ For court to take cognizance, the precious sanction of the police officer not below the rank of ADG is a required prerequisite under §23(2) MCOCA

¹⁷ Just like other subordinate courts, the High Court has the power to make rules relating to Special Courts to carry out the purposes of the act.

¹⁸ See §10, where the conclusion of such offence shall only be in preference of the special; court and the trial of such other case, by virtue of MCOCA to be treated in abeyance.

¹⁹ Competent authority to be appointed by the state government under § 13, empowering to function under section 14

²⁰ Section 5(2) of Indian Telegraphic Act, 1885

authority. Acting a fail-safe, the committee also comprises ex officio members of the government, which exhibits the rare involvement of the judiciary in the review mechanism.

Under offences of the act, the rules of evidence also differ. Confession to police not being admissible in the court of law under normal circumstances²¹, is admissible under the MCOCA Act²². With that notwithstanding to other circumstances apart from the act, the act within its mechanism provides for presumptions²³ that are otherwise not valid under the court of law.

The act as a whole seems to have granted considerate powers to the executive and have created a working mechanism within itself. The act, however, seemed to be too empowering since the entire system involves only the executive and there is very little involvement of the judiciary, hence it cannot be wrong to say that the mechanism established under the MCOCA is one-sided, with a little involvement of the judiciary.

Status of Other Acts

The MCOCA being an Act first of its kind has laid down the blueprint on which other state acts are developed. Other acts include-

1. The Karnataka Control of Organised Crime Act, 2000
2. Andhra Pradesh Control of Organised Crime Act, 2001
3. The Telangana Control of Organised Crime Act, 2001.
4. Gujarat Control of Terrorism and Organised Crime Act, 2015

The outline and structure of the mechanism established by the abovementioned specialised acts are similar to the Maharashtra counterpart. Although there exist minute differences such as increases in punishment and fine²⁴, the inclusion of other offences etc., the working mechanism remains the same. The recently passed Gujarat Act governs the offences of organised crime and terrorism as well. It is the first of its kind, which specifically mentions terrorism²⁵ within its organised crime dealing specialised act. The inclusion of terrorist activities has expanded the

²¹ Under normal circumstances, section 25 Indian Evidence Act, 1872 invalidates confession made to a police officer

²² Section 18 MCOCA provides for certain confessions which are valid and admissible in trial of offence

²³ See § 22 MCOCA, Presumption of commission of offence in prosecuting the person, which involves certain instances such as possession of documents, rendering financial aid or discovery of fingerprints of accused at the site of the offence.

²⁴ See §3, The fine sanctioned under the Gujrat Control of Terrorism and Organized Crime Act 2015 ranges between 10 lakhs and 2 Lakhs, which is the highest as compared to other acts

²⁵ The Act defines terrorism under section 2(h) as an act which intends to disturb public order, threatening the unity, integrity and security of the state.

jurisdiction of the act than other state acts in dealing with a variety of criminal acts. Terrorist activities under the Gujarat Act includes activities which-

1. Involves the use of the explosive substance or inflammable material or firearms or any other lethal or poisonous weapons,
2. Intends to harm the public functionary or,
3. compelling state government to do or abstain from doing any act.

Out of all the other acts, the Gujarat Control of Terrorism and Organised Crime Act, 2015 has an increased jurisdiction which can be taken as an upgrade to the traditional model.

Certain earlier Acts such as The Bihar Control of Crimes Act, 1981(which inspired the Jharkhand Control of Crimes Act, 2002) are argued to be not a part of organised crime prevention acts, since such acts only cover the acts majorly of immoral traffic²⁶, hate speech²⁷, or violation of Arms Act 1959²⁸. Although most of the offences covered in the act may have a certain element of organised character within it, still the fact that no specific mechanism is created by such acts disproves their intention to deal with an organised crime specifically.

The conflicting bind

Under the state legislature's organised acts, it would be sufficient to make any organisation or individual suspect to be prosecuted. The word terror, anti-national, disruptive activities and overthrow of the government as part of organized crime brings conflict with UAPA and makes it ambiguous as to which law should be applied. It is wholly on the discretion of the police to interpret and activities to bring as the term 'terror', disruptive and anti-national is not defined. The term abet includes publication or passing of information without any lawful authority is likely to assist as organized crime syndicate or where any document or matter obtained from such syndicate. Hence, the definitions permit a person as an abettor who may have no intention or knowledge of abetting the crime, for instance, family members of those charged or human rights organisation or journalist that protest or any document against extra-judicial killings. The crimes listed in the Act constitute the crimes under IPC as well as under special laws to deal with

²⁶ See Suppression of Immoral Traffic in Women and Girls Act, 1956

²⁷ See §2(d)(iii) Bihar Control of Crimes Act, 1981 and §2(d)(iii) Jharkhand Control of Crimes Act, 2002

²⁸ see §2(v) Bihar Control of Crimes Act, 1981 and §2(v) Jharkhand Control of Crimes Act, 2002, convictions made under section 5, 26, 27, 28 or 29 of the Arms Act

particular situations. Many activities which are listed in the act are already crimes under many other laws. As the real problem is not whether a specific action is criminal, but it revolves around calling the specific group of persons an organized crime syndicate. There is no provision specifically of the list of people considered to be organized crimes syndicates. A group of people can be framed with false cases, the cases brought before the court and a group of people can be labelled as an organized crime syndicate. The enhanced punishment for long period jail as undertrials amounting to preventive detention, the imprisonment condition terrible for accused increasing the chances of innocents being convicted of a crime which they were never part of. The proportionality of punishment for an offence under the act normally carries a maximum of three years of punishment but now becomes eligible for punishment from seven years to life imprisonment. The charge of rioting or unlawful assembly, forcible acquisition of their home or opposing displacement results in no inquiry to property may become liable for harsh punishment once the group is termed as an organized crime syndicate. the protest and non-violent can be awarded the sentence more than criminals who have been convicted of a crime like rape or murder.

Also, in case of a second offence i.e., the repeated offence as per the act does not require the second offence to be committed after the conviction and serving a sentence for a previous offence. Where in a case a person is charged for two minor offences simultaneously and convicted for the first offence then the second minor offence can lead to life imprisonment, which is unjust.

The other issue concerning penal provision under the act is that it specifies the minimum punishment. It is in opposition to normal law which specified the maximum punishment. The Act denies the power of the judge to judiciously apply its mind to punish by the individual circumstance and the natural role of the accused in the criminal act. Adding to it, another troubling issue is the minimum monetary fine in the punishment, which is very heavy, large sums in lakhs are charged under a different section. The monetary fines bring up some serious concern about the intention of their imposition. It has been seen that organized crime syndicates generated their money through contract killing, extortion, terrorism, smuggling, kidnapping and money laundering, so the large sums were intended to be justified but it certainly does affect the

poor convicts and also enhancing penalties based on the lower access to monetary resources is against the equality before the law.

The act extends the period to 90 days maximum in case of heinous offences and 60 days maximum in other cases but there has been a good number of instances of failure and delay in the investigation which led to failure and delay to file the charge sheet. As a result of such, over lakhs of people had been jailed for almost one year. ²⁹The power given to the police to jail people for a longer duration without any charge had given a boost to corrupt practices and people not connected to any terrorism served one year in jail only to be declared innocent later ³⁰. The change in maximum period for investigation needs to be increased but the reason and object in the act do not even explain.

This Act made a condition that the accused is given the opportunity before a judge to state every argument or present evidence and witness to support the claim of innocence and in doing so, the principle of *Audi alteram partem* is secured where the accused must not feel pressure from the prosecution in speaking/representing his side. The Act however suppresses this principle of natural justice by providing the provisional power to the police to force the accused to self-incriminate where the accused is forced to answer the question put to them while in police custody. The recording of the same confession in the police custody can be preserved as admissible evidence³¹ and this legal provision not only enables self-incrimination but also prevents the accused from defending themselves in the court.

Within the mechanism, any inconsistency pointed out by the accused or witness if not identified in advance, then it is barred from being stated in the trial. On the inconsistency's basis, the prosecution is given a certain advantage to revise the charge sheet. In case of prosecution threatening the accused while he is presenting his defence, the police officer is empowered to take custody of the witnesses even if the accused proves inconsistencies in the charge sheet

²⁹ People's Union for Democratic Rights, A Criminal Act: Critique of the Uttar Pradesh Control of Organised Crime Act, 2017 (20th March 2021, 4:41 pm) https://puodr.org/sites/default/files/2019-02/upcoca_for_web.pdf

³⁰ As per the data available from the Home Ministry, around 876 people from 9 state had already spent one year long in jail while case was still being investigated of 30 September 1994 and On May 1985 and June 1994 out of those arrested across the country, only 1.11% were convicted, see *Black Law and White Lies: A Report on TADA 1985-1995*, People's Union For Democratic Rights, 1995

³¹ *supra* note 21

presented by the prosecution. The provision under the Act exempts the prosecution from disclosing the identity of the witnesses and the right to cross-examine the witnesses nullifies effectively.

Any accused booked under the UPCOCA will not be able to secure bail before 6 months of their arrest. The proposed bill has a provision for prolonged police remand of 30 days of an accused, apart from his closed-door interrogation. This also won't allow those taken into custody based on suspicion, to get bail early. The act also modifies identification parades, where the police will get the accused identified through videos and photos that can easily tamper with. The provision of the UPCOCA states that those arrested under the act will be lodged in the high-security area of the jail. Only after the permission of the district magistrate, their relatives or associates will be able to meet them in the jail and only after the approval of the medical board, the accused will be granted permission to stay in the hospital for more than 36 hours.

One of the provisions of the proposed bill requires journalists to take permission from competent authorities before publishing anything on organized crime, where passing on or publication of, without any lawful authority, of any information is to be treated as assist to an organized crime syndicate. The misuse of power and similar abuse of authority cases under it can only be dealt with on the recommendation of the committee of police executives such as Director General of Police, Commissioner etc³².

Conclusion and Suggestions

The organised crime act's provisions are generalised as draconian by nature. To some extent, we might agree the laws are stringent, but that's the need of the hour. Society needs airtight protection from organised crime and thus some draconian measures are necessary since normal penal laws are a bit soft in execution and also have many flaws in them, which act as a disadvantage against the complete intolerance against the organised crime in India.

However, within the ambit of such 'draconian laws' proper execution is necessary to ensure the hardships of the laws are applied to deserving criminals. Classification within the special

³² See, Pierre Hauck and Sven Peterke, Organized crime and gang violence in national and international law, International Review of the Red Cross, vol. 92 no. 878,(22nd March 2021, 12:10 pm)
<https://www.corteidh.or.cr/tablas/r25263.pdf>

criminals is necessary, which can be done on any legitimate classification such as trials and under trials, degree of involvement in crime etc. On the other hand, the role of the court and police under the act is also vital since the court can differentiate between guilt and innocence, where the first thing is that the police should conduct an unbiased and thorough investigation of the case which involves substantial effort. This will include the collection of evidence, careful questioning, analysis and interpretation, the search of witnesses and building and convincingly reveals the accused culpability. The other alternative adopted by the police officers in most of the cases is to force the accused and co-accused to confess or rely on the witnesses who corroborate with the police officers to show material evidence. This only carries substantial incentive to police officers for lesser work, with the number of the cases investigated and a better service record for it. There can be chances that the poorer sections, religious minorities and lower castes possibility of the accused being targeted and forced to confess for the offence not committed by them. Under such circumstances, the court's role is very crucial to separate the real culprits from the ones who are being unjustly framed.

There is a need for impartial characters, best if they are of the non-governmental portfolio to act within the mechanism. The mechanism established needs to incorporate measures to deal with the transnational character of organised crime. Provisions of extradition and deportation must be strengthened and also the following measures can help combat organised crime at the national as well as transnational level-

- a) Augment the assistance between Inter-agencies and law enforcement authorities.

The state authorities require robustness and assistance between inter-agencies to facilitate efficient exchange of information between them facilitating the initiative to fight against the Transnational Organized Crime on a national and transnational level.

- b) Management of Border

It is important to ensure that borders are effectively protected and managed as in India, loose border control has led to the expansion of organised criminal activities. On a transnational level as well, since India shares boundaries with 5 nations, it has to ensure that crime syndicates do not take geographical difficulties advantage by engaging in rampant trade particularly Arms and Drugs trafficking.

c) Establishing provision of information related to Beneficial Ownership Company

It has been observed that through different channels and companies' offenders use their anonymous name so it is important that countries need compulsory information sharing to the beneficial owner if they formed or ought to then it will be updated in the central register regularly, which must be shared effectively to curb their illegal organised trade.

d) Increased Multilateral and Bilateral cooperation between the nations

These Transnational Organised Crimes can be combated if the nations ought to agree by keeping a check on the record and track of these criminals. ³³Another strategy to combat the Transnational Organised Crime is by helping the partner State augment transparency and governance and break the correlative power of the offenders' network. To break the alliances of severe state crime which will help to defect the transnational threat to national security. It is necessary to defect the International or national network by preventing the terror activities and to build public-private cooperation to combat Transnational Organised Crime effectively. The State should take shared responsibility to combat the crime and establish a comprehensive strategy to defect the Transnational Organised Crime. The state should try to break the economic power of the transnational offender network and build multilateral cooperation. The strategy can be used in domestically combat TOC; protect the markets strategy and financial system against TOC, enhance information sharing and intelligence, disrupt drug trafficking, build cooperation, national capacity and partnership between the state and strengthen prosecutions, interdiction and investigation processes. ³⁴The measures to control transnational organised crime within the national jurisdiction are composed of special measures and general prevention by systematization and completeness.

³³ Nareem Vnss Usha Amulya, Transnational Organized Crimes: Beyond The Geopolitics Of States- Indian Perspective (22nd March 2021, 3:22 pm) <https://www.ijlmh.com/wp-content/uploads/2019/03/Transnational-Organized-Crimes-Beyond-The-Geopolitics-Of-States-Indian-Perspective.pdf>

³⁴ Strategy To Combat Transnational Organized Crime, Addressing Converging Threats to National Security, (March 27th 2021, 7:40 pm) https://obamawhitehouse.archives.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf

BIBLIOGRAPHY**Primary Sources**

Legislations

Andhra Pradesh Control of Organised Crime Act, 2001

Arms Act 1959

Constitution of India, 1950

Gujarat Control of Terrorism and Organised Crime Act. 2015

Indian Evidence Act, 1872

Indian Penal Code, 1860

Jharkhand Control of Crimes Act, 2002

Maharashtra Control of Organised Crimes Act, 1999

The Bihar Control of Crimes Act, 1981

The Karnataka Control of Organised Crime Act, 2000

The Telangana Control of Organised Crime Act, 2001.

Secondary Sources

Articles and Journals

Black Law and White Lies: A Report on TADA 1985-1995, People's Union For Democratic Rights, 1995

Madan Lal Sharma, Organised Crime in India: Problems & Perspectives

Narem Vnss Usha Amulya, Transnational Organized Crimes: Beyond The Geopolitics Of

States- Indian Perspective

People's Union for Democratic Rights, A Criminal Act: Critique of the Uttar Pradesh Control of Organised Crime Act, 2017

Pierre Hauck and Sven Peterke, Organized crime and gang violence in national and International law

Strategy to Combat Transnational Organized Crime, Addressing Converging Threats to National Security

Lexicons

Indian Kanoon.

Jstor

Lexis Nexis

Manupatra



BRILLOPEDIA