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GANGS AND THE SPECIAL LAWS DEALING WITH GANG CRIMES**1. INTRODUCTION**

At some time in our lives, we all must have seen a movie or a web series that involves a collision between criminals and police officers or different criminal organizations having violent enmity amongst each other and trying to eliminate one another or the various encounters that happen between undercover police officers and the goons of an established criminal organization or the midnight car chase that leads to a big accident, but later it was found that all of it was planned. We also must have watched all those movies where the story revolves around a person who was born in the gloomy slums of a metropolitan with no money or food to live by and how he overcame all of those struggles by committing petty crimes, frauds, scams, working for a mob boss and later killing him and claiming the throne of an underworld don. Now comparing all of these fictional stories to real life, we will find a meagre difference and as a matter of fact, these things are actually true and can be witnessed in the real world.

2. MEANING OF ORGANIZED CRIME

Organized Crime is the collection of all the activities of professional criminal enterprises involving highly specialized criminals who engage in illegal activities such as drugs, money laundering, prostitution, contract killing, kidnapping, etc. A small gang can be turned into a criminal enterprise if there are at least 10-20 criminals working together and there is a system of ranking which is established with each criminal being designated a rank. If a person performs well in certain tasks that has been assigned to him, he rises through the ranks and gets respect from the people working with him. The reason they are called

“organized” is because for years, they have been able to increase their earnings from criminal activities by evading the law enforcement authorities as well as bribing the right people in power to get insulation from time to time.

3. CHARACTERISITICS OF ORGANIZED CRIME

- a) **Sustenance:** - Sustenance is the most important characteristic which turns a group of bootleggers to become partners of a big criminal racket wanted by federal agencies. Forming a criminal organization is an arduous objective and the formation of such enterprises reflects upon the workings of corrupt officers (executive and judiciary) who are hampering the system of justice and the dirty work these criminals put in for years without getting a slap by the rule of law.
- b) **Structure:** - It is natural for a growing organization with a mechanism of management, irrespective of its legality. The leader of any criminal empire always hires a trusted comrade to handle the organization. The comrade then hires other recruits to handle different departments of the criminal empire thereby decentralizing different powers to subordinate ranks to keep the organization intact.
- c) **Membership:** - Just like Bollywood, nepotism is a key element for getting membership into a criminal enterprise. High-profile criminals usually trust someone from their bloodline rather than a stranger meddling into their work. However, an outsider can join the organization if he can prove his loyalty towards the gang and willing to die for them if the time comes.
- d) **Decoy:** - These tactics are often used by high-profile gangsters who try to maintain a certain reputation in the public domain but in reality, try to mislead the public of their actual business such as drugs, smuggling, money laundering, etc. Businessmen, Politicians, Producers, Investors etc. are some of the people who usually can pull off such tactics and remain irrelevant in the eyes of the public and the law.
- e) **Fear:** - Fear is also another important element that helps in cultivating organized crime. Creating a sense of fear among the locals as well as the members is necessary to establish a physical dominance of the criminal organization, especially of the leader. This way even if someone wants to snitch to the police, he can't because of the fear that someone from his family might kick the bucket.

- f) **Money:** - Earning money through illegal means is the fastest way someone can get rich and even faster when an entire criminal empire is funneling money into illegal establishments and filling the pockets of gangsters and mob bosses.

4. TYPES OF ORGANIZED CRIME

- a) **Drug Trafficking:** -Drug Trafficking is the most lucrative form of business and the fastest way to gain profit in a short period of time. Since the 1990s, the production of illicit drugs is booming and establishing a diversified black market in the country. Therefore, a substantial portion of youth in our country is spiralling down deep into a gloomy chasm by procuring drugs on a daily basis. The 5 main illicit drugs that are famous in India are opium, cannabis, heroin, hashish and methaqualone.
- b) **Smuggling:** - Smuggling involves shipping illegal goods such as guns, bombs, drugs or even humans themselves. These criminal organizations may join hands with terrorist outfits or rival governments to smuggle illegal goods into the country and in return have monetary as well as a political advantage.
- c) **Kidnapping:** - Kidnapping for ransom is also another medium to finance criminal enterprises. Criminal enterprises usually kidnap women and children of middle class and the rich class to extract as much money as possible and if things go south, they would kill the victim and throw away the body in the sewers. According to the Women and Child Development Ministry, a child goes missing every 10 minutes in India and as per the National Crime Records Bureau 70% of kidnapping and abduction are of girls.
- d) **Prostitution:** - Women and children are the most vulnerable groups that fall prey to the hands of criminal exploitation. The primary means of securing persons for exploitation are kidnapping, sale by the victim's family, and the false promise of work. Several other factors contribute to the success of the commercial sex industry, including demand, poverty, and cultural attitudes toward women which is why criminal organizations, in order to make big bucks, set up brothels in hideouts throughout the city and maintain a monopoly in the industry. As per the study by the India Health Organization, there are over 10,00,000 prostitutes in Bombay and an equal amount in Calcutta.
- e) **Contract Killing:** - Contract killing is also another indigenous activity that is usually time-consuming but a well-paid job. Highly skilled assassins or hitmen are hired by criminal organizations to terminate a target, who is usually a high-profile

person, without getting detected by the authorities. After termination, they are rewarded handsomely by the organization.

- f) **Money Laundering:** - It is the process of converting illegal money into legal money through various illegal means. With sacks money being generated through drugs, it is imperative to hide that money and more importantly convert that money into a legal currency to blend in with the public. It is a slow process but with an efficient technique of placement, layering and integration, crores of money can be injected into the economy without suspicion. Opening various business establishments and purchasing assets on regular basis would help in laundering the money and increase the overall wealth of criminals.

5. STATE GOVERNMENT LAWS AGAINST ORGANIZED CRIME

a) Maharashtra and Delhi

Mumbai and Delhi are the breeding grounds for organized crimes with criminal organizations engaging in day-to-day illicit operations ranging from kidnapping to murder. Corruption and abetment by government officers have dented the public's trust in law enforcement authorities which is also one of the main reasons why there is a need for drastic reforms to tackle organized crime. Without any delays, the Government of Maharashtra, on 24th February, promulgated an ordinance called "Maharashtra Control of Organised Crimes Ordinance 1999". After getting passed by both the houses of the legislature, it was later called the "Maharashtra Control of Organised Crimes Act, 1999". The provisions of the law were supported by the Central Government such that the applicability of this law was also extended in the National Capital by the Ministry of Home Affairs in January 2002. There can be no doubt that the provisions of this Act have been enacted to deal with organised criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted.¹

i. Definitions

- a. As per Section 2 (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

¹ State of Maharashtra v Lalit Somdatta Nagpal, (2007) 4 SCC 171

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.

- b. As per Section 2(d), “continuing unlawful activity” means 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.
- c. As per Section 2(f), “organised crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.
- d. The definitions in Section 2(1)(d), (e) and (f) 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.²
- e. Neither the definition of the term “organised crime” nor of the term “continuing unlawful activity” nor any other provision under the Maharashtra Control of Organised Crime Act declares any activity performed prior to 24-2-1999 to be an offence under the said Act nor the punishment provision relates to any offence prior to the date of enforcement of the said Act.³

ii. Punishments

- a. As per Section 3(1)(i), if an activity of organized crime results in the death of any individual, the accused shall be punishable with either death or imprisonment for life and shall also be liable for a hefty fine (minimum 1 lakh).
- b. As per Section 3(1)(ii), if an activity of organized crime does not result in the death of any individual, the accused shall be punishable with

² State of Maharashtra v Bharat Shanti Lal Shah, (2008) 13 SCC 5

³ Jaisingh s/o Asharfilal Yadav v State of Maharashtra, 2003 SCC OnLine Bom 349

- either imprisonment for life or a minimum punishment for 5 years and shall also be liable for a hefty fine (minimum 5 lakh).
- c. As per Section 3(2), if a person abets an activity of an organized crime or knowingly facilitated the commission of an organized crime or is actively involved in the preparatory stages of an organized crime shall be punishable with either imprisonment for life or a minimum punishment for 5 years and shall also be liable for a hefty fine (minimum 5 lakh).
- d. As per Section 3(3), if any person conceals or attempts to conceal any member of an organized crime shall be punishable with either imprisonment for life or a minimum punishment for 5 years and shall also be liable for a hefty fine (minimum 5 lakh).
- e. As per Section 3(4), every individual who is a member of an organized crime shall be punishable with either imprisonment for life or a minimum punishment for 5 years and shall also be liable for a hefty fine (minimum 5 lakh).
- f. As per Section 3(5), whoever tries to hold any property which is obtained from commission of an organized crime or has been acquired through organized crime syndicate funds shall be punishable with either imprisonment for life or a minimum punishment for 3 years and shall also be liable for a hefty fine (minimum 2 lakhs).
- g. As per Section 24, if a government officer abets in an activity of an organized crime before or after the commission of any offence or abstains from taking any lawful measures that he is supposed to perform or violates order of a superior police officer or of a court shall be punishable for a term which may extend to 3 years including a hefty fine.

iii. Special Courts

- a. As per Section 5(1), the State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.
- b. As per Section 5(3), a Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the

Chief Justice of the Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional judges to exercise jurisdiction in a Special Court.

- c. As per Section 5(4), a judge cannot be appointed in the Special court unless he is a sessions judge or an additional sessions judge.
- d. As per Section 6, notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed, or as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5.

iv. Other provisions

- a. As per Section 21, every offense punishable under the act shall be a cognizable offense which means the police can arrest the accused without hassling through the court procedures to apply for an arrest warrant. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction.⁴
- b. As per Section 18, a confession made in front a police officer not below the rank of Superintendent of Police will be admissible in the Special Court.
- c. As per Section 19(2), the state would provide protection to any witness who is willing to keep appear before the court anonymously. The court may issue orders to keep the identity of the witness anonymous and if any person tries to violate such order shall be imprisoned for a term which may extend to one year along with a fine.
- d. As per Section 21, strict bail conditions have been set for the accused and a bail would be granted only if the court deems it fit. If the court

⁴ Ranjitsing Brahmajeetsing Sharma v State of Maharashtra, (2005) 5 Supreme Court Cases 294

having regard to the materials brought on record, is satisfied in all probability the applicant for bail may not be ultimately convicted, an order granting bail may be passed.⁵

- e. It is to be noted here that, the MCOC Act is not a benevolent statute enacted by the legislature to construe and interpret the provisions of it liberally and therefore the intention of the legislature has to be literally construed and not otherwise.⁶
- f. As per Section 28, Special Powers have been conferred with the High Court to make rules to carry out the provisions mentioned in the Act. The justification of the order passed by the Special Judge has to be viewed in the context of the Act and not in the context of the Constitution because Article 21 clearly states that liberty of a citizen is subject to the due process of law.⁷
- g. The object of the Act is to prevent the organized crime and a perusal of the provisions of the Act under challenge would indicate that the said law authorizes the interception of wire, electronic or oral communication only if it is intended to prevent the commission of an organized crime or if it is intended to collect the evidence to the commission of such an organized crime.⁸
- h. This Act would be having jurisdiction to try cases for the offences punishable under the Prevention of Corruption Act as well at the same trial wherein the offense punishable under the Maharashtra Control of Organized Crime Act is being tried.⁹
- i. Section 2(e) of MCOCA cannot be invoked for petty offences. The legislative intent is clear that MCOCA is for curing the organized crime unless there is a prima facie material to establish that there is an organized crime syndicate and prima facie material, firstly, to establish that there is an organised crime syndicate and, secondly, that organized crime has been committed by any member of the

⁵ Ibid

⁶ Chandrakant Vishnu Sawant v State of Maharashtra, 2018 SCC OnLine Bom 17673

⁷ Mohamed Shakil Mohamed Shafi Jariwala v State of Maharashtra, 2000 SCC OnLine Bom 86

⁸ State of Maharashtra v Bharat Shanti Lal Shah, (2008) 13 SCC 5

⁹ Jaysingh Wadhu Singh v State of Maharashtra, 2000 SCC OnLine Bom 741

organized crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be invoked.¹⁰

b) Gujarat

Considering the need for a law to fight against organized crime. The Gujarat Government passed “The Gujarat Control of Organised Crime Act” in 2003 and received the President’s Assent in 2019. The provisions mentioned in this act align with the provisions mentioned in “The Maharashtra Control of Organised Crimes Act, 1999”.

c) Uttar Pradesh

Inspired by the implementation of laws against organized crime in Maharashtra, the Uttar Pradesh Government passed its own version of the law known as “The Uttar Pradesh Control of Organised Crimes Act, 2017. The provisions mentioned in this act are identical with the provisions mentioned in “The Maharashtra Control of Organised Crimes Act, 1999”.

d) Karnataka

After Maharashtra, the Government of Karnataka also passed “The Karnataka Control of Organised Crimes Act” in 2000. The provisions mentioned in this act are similar to the provisions mentioned in “The Maharashtra Control of Organised Crimes Act, 1999”.

e) Andhra Pradesh

Shortly after Maharashtra and Karnataka, Andhra Pradesh also followed suit after passing “The Andhra Pradesh Control of Organised Crime Act, 2001. The provisions mentioned in this act are in consonance with the provisions mentioned in “The Maharashtra Control of Organised Crimes Act, 1999”.

f) Other States

Many states have been inspired by the provisions mentioned in MCOCA and are actively interested to draft and table the bill in their respective legislative assemblies. Haryana, Punjab, Madhya Pradesh, Rajasthan, Kerala, and Tamil Nadu would be soon coming up with their versions of law against organized crime to protect and uphold law and order.

6. CENTRAL GOVERNMENT LAWS AGAINST ORGANIZED CRIME

¹⁰ State Govt. of NCT of Delhi v Khalil Ahmed, 2012 SCC OnLine Del 6375

Unlike State Government laws, there are no laws made by the Central Government that specifically deals with the actions of an organized crime. However, there are some provisions mentioned in the Indian Penal Code, 1860 as well as some special laws that deals with crimes committed by two or more persons.

a) The Indian Penal Code, 1860

i. Criminal Conspiracy (Section 120A)

When two or more persons agree to perform an illegal act or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. The essential ingredient of the offense of “criminal conspiracy” is the agreement to commit an offence. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

ii. Dacoity (Section 391)

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of Persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting or aiding is said to commit dacoity. All those people involved in dacoity shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years along with a hefty fine.

iii. Dacoity with murder (Section 396)

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, along with a hefty fine.

iv. Punishment for belonging to Gang of Dacoits (Section 400)

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be

punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years along with a hefty fine.

v. Kidnapping for ransom (Section 364-A)

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable for a hefty fine.

b) Special Laws

i. National Security Act, 1980

In order to protect the sovereignty and integrity of India, the Central Government can use the power of detention of a person if the government has full confidence that the person is about to commit a crime that will hamper India's sovereignty. The detention order can be extended upto 1 year and has to be approved by a board chaired by a High Court judge. This power has to be used carefully by the government since there is no trial given to the accused.

ii. Narcotics Drugs and Psychotropic Substances Act, 1985

It is the duty of Narcotics Control Bureau to take all measures that it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and their illicit trafficking. Therefore, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 gives the power to the Central Government to detain a person if he is engaging in the illicit business of narcotics. The detention can be made for one year but can also be extended for two years.

c) Other Special Laws

There are other special laws that also indirectly hamper the activities of the organized crime. These are as follows: -

- a. Foreign Exchange Regulation Act, 1973
- b. The Public Gambling Act, 1867

- c. Immoral Traffic (Prevention) Act, 1956
- d. The Customs Act, 1962

7. PROBLEMS IN DEALING WITH ORGANIZED CRIME

- i. **Poor Legal Recourse:** - One of the biggest problems in dealing with Organized Crime is the incoherent and inefficient handling of the judiciary in such matters. Our laws in the penal code are designed in such a way that prosecutes only one individual at a time, that too after months of hearings. Due to the lack of any specific laws dealing with organized crimes, big mob bosses easily evade accountability by forcing the accused to plead in the court that he was acting in an individual capacity and that there were no accomplices or abettors. Therefore, it is very difficult to even establish circumstantial evidence to link the criminal with a criminal organization.
- ii. **Corruption:** - Corruption acts as the biggest impediment for the law enforcement authorities to mop the entire criminal organization and try its leaders to justice. Police officers, Politicians, Bureaucrats, Witnesses and Judges are always bribed and made important stakeholder to the criminal enterprise to such an extent that they can't take any action without sacrificing themselves. Therefore, these criminal enterprises infect public departments and proliferate like bacteria to such an extent that it becomes almost impossible to get rid of.
- iii. **Lack of Professionalism:** - Our law enforcement is highly incompetent when it comes to different degrees of crime. From poor investigation tactics to gathering proper evidence, criminal organizations exploit such weaknesses and never allow the police to obtain the required evidence needed to prosecute the criminal organization. Therefore, most of the criminal lords are able to walk free from the courts due to lack of any proper evidence.
- iv. **Lack of Co-ordination:** - Lack of coordination between state and central authorities is also one of the serious problems that give an upper hand to criminal enterprises to get away with high-profile crimes. Most of the time, central and state governments fight over the jurisdiction of crime which ends up for the courts to decide thereby giving enough time for criminal organizations to evade from the scene of the crime and disappear from law enforcement authorities.
- v. **Red-Tapism:** - Delay in passing laws and introducing reforms is also another scar that is left in the rule of law. State Governments are not able to pass laws against organized crime due to condemnation from opposition parties and human rights

groups. For e.g.: - Gujarat had passed the “The Gujarat Control of Organised Crime Act” was passed in April 2003 but the bill took 16 years to get President’s assent since it was always rejected and sent back to the cabinet to change certain provisions.

8. SOLUTIONS TO DEAL WITH ORGANIZED CRIME

- i. Stringent Laws against Organized Crime:** - First and the foremost thing we need is a comprehensive and a scrutinised criminal law against Organized Crime. Police should be given extra investigative powers with an extended investigation period to gather evidence. Bail provisions should be tightened and nearly impossible for an accused. Confession made before the police should be admissible in the court of law. Evidence gathered by undercover agents should also be admissible in court. A sophisticated Witness Protection Programme should be introduced to protect the witness from any future harm after he gives his testimony.
- ii. Speedy and Effective Judiciary:** - The ultimate goal of trying the criminals to justice lies in the hands of the judiciary. Millions of criminal cases are pending for years and by the time a final hearing is given into a case, the witnesses are not able to recall the incident or are completely manipulated by the accused with money or death threats. Therefore, there is a need for special courts with adequate judges who would hear the case for a limited period of time. The burden of proof should lie on the accused and he should be presumed guilty until proven innocent. This way we can ensure that the accused would be tried to justice and the pending cases would be disposed of quickly.
- iii. Co-ordination among different agencies:** - It is imperative that the defenders of law should be united at all times and not have disputes regarding jurisdiction. Therefore, there should be a national plan laid down by the government to allocate different crimes to different law enforcement agencies. This plan should also include a coherent coordination module between the central agencies and the state police to gather and share intelligence and nab the criminals together.
- iv. Enhancing International Co-operation:** - Leaders of criminal organizations try to flee the country and seek asylum in those countries where there is no extradition treaty with India. Therefore, it is important to sign extradition treaties with those countries where underworld criminals are trying to seek asylum. Federal agencies of different countries should also work together by sharing intelligence and manpower

to undermine the dominance of various criminal organizations that commit transnational crimes.

- v. **Political Severance:** - Politics is the main reason which instigates Central and State Governments to tamper with the workings of various government institutions. Criminal Organizations are able to make deals with politicians to grant them protection from law enforcement authorities and in return, they would fund their party for election campaigns. Therefore, it is important that corrupt politicians are punished to sever the ties as well as the dominance which these criminal organizations have over the government.
- vi. **Public Awareness:** - It is not only the duty of the public officials to solve crimes but also of the public to actively participate and report any wrongdoings they witness in their surroundings. People should be educated about the rule of law and the consequences of breaking the law. Creating a healthy society in the status quo would be beneficial for future generations to live in a prosperous and safe environment.

9. CONCLUSION

With the failure of our wrongdoings in society we have allowed criminals to breed and prosper into criminal organizations. Organized Crime is a serious threat not only to our economy but also to the national integrity of our country. Their actions are no less than terrorists who exploit the public's money and create an army of their own to establish a silent dominance in society. But one thing that history has taught us is that "nothing lasts forever". We need to unite together and stand up against domestic terrorism. Together as a whole, we can combat the menacing elements of this world that are trying to ruin our society. With a promising government, incorruptible law enforcement authority, and good Samaritans, we surely can win this fight against organized crime.