

# INDIA JOINT SEMINAR

## Main Theme

### PREVENTION AND CONTROL STRATEGIES AGAINST ORGANIZED CRIME

## RECOMMENDATIONS

1. The existing laws — substantive, procedural as well as the laws of evidence — are grossly inadequate to deal with the vicious menace of organized crime. Many democratic countries, such as the USA and the UK, have enacted effective laws to deal with organized crime. In India too, the State of Maharashtra has prepared draft legislation. The NDPS Act and the since-elapsed TADA are the other Indian models. Drawing on these and other sources, and the experience in implementing such laws, special, comprehensive legislation is required to be enacted by Parliament, to deal exclusively with organized crime.
2. The proposed legislation should include:
  - a) a suitable definition of ‘organized crime’;
  - b) detailed procedures for the investigation, prosecution and trial of organized crime cases and special treatment and rehabilitation of criminals belonging to organized crime groups, syndicates and cartels; and
  - c) provision for adequate punishment for the commission of, as well as attempt to commit, organized crime, by a single individual or a group of criminals.
3. The legislation should contain provisions for:
  - a) harsher punishments for commission of organized crime;
  - b) minimum mandatory sentences and fines;
  - c) imposition of costs for recovery of expenses of investigation and prosecution from convicts of organized crime; and
  - d) forfeiture and confiscation, even on reasonable presumption, ill-gotten property and wealth (including ‘Benami’ properties) found in the possession of organized crime offenders.
4. The new legislation should provide for:
  - a) creation of special courts, exclusively for undertaking trials in organized crime cases;
  - b) expeditious disposal of such trials within fixed time limits for framing of charges and final disposal;
  - c) in-camera trial proceedings, where necessary; and
  - d) trial and conviction in the absence of the accused, where necessary.
5. The proposed statute should provide for shifting the onus of proof and guilt, with adequate checks and safeguards, and the examination and cross-examination of an accused on oath in defence evidence and drawing of adverse inferences against him in case he fails to appear in his own defence.
6. On the recording and admissibility of evidence, the proposed legislation should contain provisions for:
  - a) recording the evidence of witnesses on affidavits;
  - b) admissibility of confessions voluntarily made by organized crime offenders before police officers of and above the rank of superintendent of police, subject to adequate checks and safeguards;
  - c) presumption in favour of commission of or involvement in criminal group activities on proof of recovery of unexplained property, arms, ammunition, narcotics, other contraband and, or such other items as prescribed;
  - d) reception of evidence and recording of evidence by wire-tapping, electronic surveillance, cellular decoding of messages and by such other modern devices as may be used with the prior

permission of the authority specified in the legislation.

7. The new legislation should contain:
  - a) provision for making all such crimes as are included in the definition of organized crime, cognizable, non-bailable and non-compoundable;
  - b) no provision for anticipatory bail in such cases;
  - c) provision for extension of remand to police custody of up to 60 days; and
  - d) effective provisions for search and seizure of properties, including 'Benami' properties, involved in or acquired through organized crime.
8. It should provide for:
  - a) special security arrangements for judges, prosecutors and police officers dealing with organized crime cases;
  - b) adequate arrangements for protection of witnesses;
  - c) release of approvers from jails on bail;
  - d) restrictions on transfer of organized crime offenders from one jail to another;
  - e) restriction on grant of parole around election time; and
  - f) total restriction on remissions in respect of persons convicted in connection with organized crime.
9. The proposed Act should provide for the creation of a National Council against Organized Crime at the Central level and a State Council against Organized Crime for each State, with adequate provision for effective coordination between the National and the State Councils, to monitor and oversee prevention, detection and control of organized crime.
10. It should also contain provision for the creation of Special Task Forces at the national, state and district levels for dealing exclusively with organized crime with adequate provisions for effective coordination and exchange of information, data and criminal intelligence with all concerned law enforcement agencies. These task forces should be manned by officers specially skilled and extensively trained in the investigation of organized crime. All cases of organized crime should be investigated by these Task Forces alone.
11. These investigation agencies should be placed under the control of a "Specified Authority" in each case and their freedom from political or any other type of influence, interference or overtures, should be ensured.
12. The new legislation should provide for:
  - a) classification of jails, and notification of special security jails for organized crime offenders;
  - b) arrangements to separate remand prisoners from convicts;
  - c) reformatory and rehabilitative measures for young and peripheral offenders so as to prevent them from graduating into gangsters.
13. The Central and the State Governments should take effective measures to strengthen the investigation and prosecution machinery dealing with organized crime. This will include:
  - a) technologically upgrading of investigation and criminal intelligence gathering capabilities;
  - b) empowering the police with better weapons and protective systems;
  - c) substantial increase in the grants for modernisation of police forces by the Central Government to the States with specific allocations for modernisation of investigation machinery for organized crime;
  - d) measures to attract the best legal brains in the country as prosecutors by improving the remuneration package and other conditions of their service and through necessary modifications in selection procedures. At the same time, the mechanism of control over the functioning of prosecutors should be reviewed.
14. The Governments will also need to take urgent steps aimed at improving the functioning of the Prison System including the creation of a new 'Indian Prisons Service', to upgrade professionalism in prison administration. The more-than-a-century old prison laws require extensive reform and re-enactment. Measures are also required to be taken to ensure strengthening of the security of jails, particularly the

ones where organized crime offenders are imprisoned.

15. The Central Government should take immediate steps to formulate and execute treaties with as many countries as possible to ensure speedy extradition of organized crime offenders and inter-country coordination in the investigation of organized crime cases in curbing the criminal activities of transnational organized criminal groups.
16. These recommendations should be followed up by NICFS with the appropriate Ministries, authorities, Governments of States and the Government of India.