

# **ORGANISED CRIME IN INDIA: PROBLEMS & PERSPECTIVES**

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## **I. INDIA THE LAND AND PEOPLE**

India is one of the oldest civilisations with a kaleidoscopic variety and rich cultural heritage. It covers an area of 32,87,263 sq. kms extending from the snow covered Himalayan heights to the tropical rain forests of the south. As the seventh largest country in the world, India is well marked off from the rest of Asia by mountains and the sea, which give the country a distinct geographical entity. It has a land frontier of 15,200 kms and a coast line of 7,516 kms. In 1996, India's population was 931.9 million. Apart from English and Hindi, India has 17 other official languages recognised by the Constitution.

India is a Union of States and is governed by a written Constitution which came into force on 26th November, 1949. It consists of 25 States and 7 Union Territories. Due to its colonial heritage, India follows the Anglo-Saxon common law system. Article 14 of the Constitution provides for equality before the law. Article 21 guarantees protection of life and personal liberty. Article 20 provides protection against double jeopardy. Article 39-A mandates the State to secure equal justice for all. Article 50 provides for separation of the judiciary from the executive in the public services of the State.

'The Police' and 'Public Order' are in the State List but the 'Criminal Laws' and 'Criminal Procedure' are in the Concurrent List. Resultantly, the basic criminal statutes, namely, India Penal Code, 1860; Criminal Procedure Code, 1973; Indian

Evidence Act, 1872; Indian Police Act, 1861 and several others have been enacted by the national Parliament. The States also have limited authority to legislate on the subjects falling in the State List. The Police, being a State subject, is raised and maintained by the State Government. Each State and Union Territory has a separate police force. Thus, registration of crime, investigation and finalisation thereof is the mandate of the State Police. In addition to the State Police Force, the Central Government has set up certain Central Investigating Agencies, including the Central Bureau of Investigation (CBI). CBI was set up under the Delhi Special Police Establishment Act, 1946. It has concurrent jurisdiction in the investigative field in the Union Territories. It can also take up investigation of cases falling within the jurisdiction of the States under the orders of the Central Government, but only with the prior consent of the State Governments concerned. In addition, the Central Government has constituted certain other investigating agencies, namely, the Narcotics Control Bureau, the Enforcement Directorate, the Central Board of Direct Taxes and the Central Board of Customs and Excise. These agencies investigate criminal cases falling in the ambit of special statutes being administered by them and are empowered to launch prosecutions. The CBI, however, is the premier investigating agency of the Central Government and has an omnibus charter.

## **II. CRIME SCENARIO IN INDIA**

Before I come to the subject of organised crime proper, it would be useful to have

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some idea about the general crime situation prevailing in the country. India, the land of Lord Budha and Mahatma Gandhi, is growing into a violent society. The violent crimes that constituted only 8.2 per cent of the total crimes registered under Indian Penal Code (IPC) in 1953 increased to 14.4% in 1994. Gulshan Kumar, a Bombay music magnate with Rs. 800 crore empire, was shot dead last year as he refused to pay a large sum of money demanded by Dawood Ibrahim gang. This was preceded by killings of several Bombay industrialists and politicians. 48 persons in 1995 and 71 persons in 1996 were lynched in West Bengal by the public. 61 Harijan were killed in Jehanabad District (Bihar) in caste based violence last month. The caste and communal strife claimed 511 lives in 1997, with 3701 injured. The kidnappings for ransom of rich industrialists, businessmen, top professionals and their wards are lucrative for the criminal groups in the metropolitan cities. Delhi witnessed 40 such incidents in 1994; 43 in 1995 and 23 in 1996. Brutal attacks by the domestic

servants of lonely housewives and old couples for looting are a recurring phenomenon in Delhi. A Benaras businessman was kidnapped by a gang headed by a Member of State Legislature and even after extortion of a huge ransom, he was killed lest he approach the police and reveal the gang's identity. Terrorist crimes have also taken their toll in terms of human casualties and damage to public property. 308 bomb explosions in 1997 left 197 people dead and 1109 injured. Delhi city alone witnessed 26 such incidents last year. The crime scenario is, thus, rather grim.

Table I shows the incidence and the rate of cognizable crimes under IPC and Special and Local Laws (SLL) from 1986 to 1996: IPC crime, in absolute number, remained at about 1.6 million since 1990 but the SLL crime is increasing rapidly. In 1996, IPC crime constituted 27.1% of the total crime registered. Over the decade 1986-96, the IPC crime increased by 19.2% but the SLL crime increased by 39.8%. However, the lesser increase in the IPC crime does not

**TABLE I**  
**INCIDENCE AND RATE OF COGNIZABLE CRIMES UNDER IPC AND SLL**  
**FROM 1986-1996 (IN LACS)**

YEAR	INCIDENCE			RATE**		
	IPC	SLL	TOTAL	IPC	SLL	TOTAL
1986	14.05	29.8	43.9	183.5	389.6	573.1
1987	14.06	35.8	49.9	180.1	459.3	639.4
1988	14.4	37.6	52.06	180.8	472.7	653.5
1989	15.2	38.4	53.7	188.5	474.0	662.4
1990	16.04	32.9	48.9	194	398.3	592.3
1991	16.7	33.7	50.4	197.5	396.8	594.3
1992	16.8	35.5	52.4	194.7	410.1	604.8
1993	16.2	38.03	54.3	184.4	430.4	614.8
1994	16.3	32.8	49.2	181.7	365.6	547.3
1995	16.8	42.6	59.4	184.2	465.3	469.6
1996	16.7	44.6	..614	179.8	479.1	458.9

\*Alac=1,00,000.

\*\*Crime per 1,00,000 of population

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appear to truly reflect the intensity, gruesomeness and social impact of violent and organised crime.

In this context, it is be useful to look at the incidence of IPC crimes under major crime heads as shown in Table II. There has been 44.3% increase in murders in 1995 over 1985. The incidence of rape has increased by 88.7% over this period. Similarly, kidnapping and abduction has increased by 27.3%. However, the dacoity shows decrease of 25.9%. While robbery shows a negligible decrease over the the decade, there is about 11% decrease in burglary and theft cases and 3.2% in riot cases. The incidence of currency counterfeiting increased by 46.5% over this period. Overall IPC crimes showed an increase of 22.5% over the decade.

In 1993, the crime rate in murder offences in India was 4.32 which is lower than that of Canada (5.63) but higher than that of Bangladesh (1.99), China (1.95), Hong Kong (1.55), Indonesia (0.84), Japan (0.99), Nepal (2.32) and Singapore (2.02). The crime rate in theft and dacoity cases

was 1.05 in India. It is much lower than that of Bangladesh (7.29), Hong Kong (390.86), Indonesia (28.39), Japan (205.97) and Singapore (146.18). In India, the crime rate in burglary offences was 13.91 which is much lower than most of the countries of the region. The crime rate in rape offences was 1.38 which is lower than that of China (3.62), Hong Kong (1.74) and Singapore (2.75) but higher than that of Japan (1.29), Nepal (0.98), Indonesia (0.71) and Bangladesh (0.44).

It is pertinent to mention that crime under the special and Local Laws (SLL) constitutes over two-thirds of the total cognizable crime in India (IPC crime constituting less than one-third).

Table V shows the incidence of SLL crime. About 4.29 million SLL cases were registered in 1995. There was 38.8% increase in SLL in 1985. Registration under the Arms Act has shown a marginal increase of 3.8% over the decade. However, there was increase of 41.4% under the NDPS Act. Suprisingly, registration under the Gambling Act, declined by 23.2 per cent

**TABLE II**  
**INCIDENCE OF IPC CRIMES UNDER MAJOR CRIME HEADS**

Crime Head	1985	1991	1992	1993	1994	1995
Murder	25970	39174	40105	38240	38577	67464
Attempt to murder	-	29778	31202	29725	30020	29571
Rape	7289	10410	11708	12218	13508	16754
Kidnapping & abduction	16051	20079	20518	19830	20983	20426
Dacoity	11254	10831	11308	9357	9271	8335
Robbery	22501	26428	26444	24354	23933	22443
Burglary	130354	132087	127281	123020	121536	116507
Theft	330554	36282	350582	320434	303564	294306
Riots	99757	105309	104749	93838	94344	96520
Counterfeiting	1504	4467	5133	3728	2851	2203
OTHER IPC CRIMES	696069	886287	907071	903082	924342	722583
TOTAL:	1384731	1678375	1689341	1629936	1635251	1695696

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**TABLE III**  
**INCIDENCE OF SLL CRIME UNDER MAJOR HEADS**

CRIME HEADS	1985	1991	1992	1993	1994	1995
ARMS ACT	61987	62025	63893	65532	60289	64331
NDPS ACT	14277	20944	99478	21087	20304	20194
GAMBLING ACT	179419	167113	167193	162800	156926	137737
EXCISE ACT	106183	95863	95108	96578	102096	114355
PROHIBITION ACT	106183	95863	95108	96578	102096	114355
EXPLOSIVES ACT	3373	5458	8899	6163	4641	5113
IMMORAL TRAFFIC ACT	14815	14639	12580	12496	10132	8447
ANTIQUITY & ART TREASURE ACT	-	10	40	18	66	69
OTHER SLL CRIMES	2327129	22844958	2401039	2513251	2793225	3232633
<b>TOTAL:</b>	<b>3096481</b>	<b>3773563</b>	<b>3350971</b>	<b>3808448</b>	<b>328638</b>	<b>4267476</b>

but, registration under the Prohibition policy being pursued by the States like Haryana and Gujarat, creating a fertile ground for organised boot-legging. Crime under the Immoral Traffic (Prevention) Act decreased by 43% which is rather surprising.

**A. Conviction Rate**

To secure high conviction rates is not the overall objective of the criminal justice system in any country. Even so, conviction rate is one of the main indices of its efficacy. Table IV shows the percentage of IPC trials completed in the courts and the percentage of cases convicted.

**TABLE IV**  
**DISPOSAL OF IPC CRIMES IN THE  
COURTS (PERCENTAGE)**

YEAR	TRIAL COMPLETED	CONVICTION
1961	30.3	64.8
1971	32.0	62.0
1981	23.9	52.5
1991	16.8	47.8
1993	16.7	45.9
1994	15.5	42.9
1995	15.1	42.1

The percentage of trials completed in a given year is going down steadily. While about 30% trials were completed in 1961 and 1971, the percentage came down to 23.9 in 1981 and 16.8 in 1991. The percentage has further come down to only 15.1 in 1995. Crime head-wise, conviction rate in IPC crime is shown in Table V.

**TABLE V**  
**PERCENTAGE OF CONVICTIONS**  
**UNDER MAJOR CRIME HEADS IN 1995**

CRIME HEAD	% OF CONVICTION
Muder	37.0
Attempt to Murder	36.0
Rape	30.0
Kidnapping & Abduction	30.3
Dacoity	27.3
Robbery	34.1
Burglary	42.7
Theft	45.7
Hurt	38.4
Sexual Harassment	73.1
Other IPC crime	45.9
TOTAL IPC CRIME	42.1

About one-third of the IPC crime are convicted by the trial courts, with the exception of sexual harassment cases wherein the conviction rate is quite high. This does not compare favourably with most other nations, including UK, USA, Japan, France and China. However, unlike IPC crimes, the conviction rate is much higher in non-IPC (i.e SLL crimes). Table VI shows the conviction rate under major crime heads.

**TABLE VI**  
**CONVICTION PERCENTAGE IN SLL**  
**CRIMES IN 1995**

CRIME HEAD	PERCENTAGE
Arms Act	59.6
NDPS Act	48.8
Gambling Act	82.9
Excise Act	74.3
Prohibition Act	69.1
Explosives Act	48.2
Immoral Traffic(P) Act	89.7
Indian Railway Act	96.7
Indian Passport Act	69.9
Forest Act	61.6
Other SLL Crimes	90.4
Total SLL Crimes	85.8

The cases instituted under the Arms Act, NDPS Act and Explosives Act are essentially recovery based. The Police recovers the contraband or illicit arms explosives from the possession or premises of the accused, filing the charge sheet. Almost 50% are acquittals in narcotic drugs related cases; which is mainly due to non-observance of statutory and procedural requirements by the investigating officers. This is rather disturbing and calls for proper training of officers and streamlining of systems and procedures.

### **B. Pace of Trial**

The accused has a right of speedy trial as per the tenets of natural justice. Such a right is inherent in Art. 21 of our Constitution. However, the reality is different. In the end of 1995, 7.12 million cases- 4.12 million under IPC and 3.0 million under SLL- were pending trial. Of the IPC crimes, 0.77 million were pending trial for more than 8 years. Thus, 18.6% cases were pending trial over 8 years. It is common ground that delayed trials violate natural justice and are also prejudicial to the interests of the prosecution.

No data for the average time taken in trials is available on an all-India basis. However, according to a study conducted by S.Venugopal Rao, a distinguished police officer, in regard to 16 police stations in Andhra Pradesh State, the average time taken for trial is 15 months in convicted cases of murder and 28 months in acquittal cases. In rape cases, it is 21 and 9 months respectively. In burglarly cases, it is 3 and 6 months but in robbery cases the time taken is 1 month and 21 months respectively<sup>7</sup>.

The study generally shows that the average time taken in trials is much higher when compared to countries like Japan, where the average time taken is only about 3 months. It is also higher compared to Korea, UK and USA. This is one of the main contributory factors to the low conviction rate.

### III. ORGANISED CRIME-TOWARDS A CONCEPT

The core organised crime activity is the supply of illegal goods and services to countless numbers of citizen customers. It is also deeply involved in legitimate business and in labour unions. It employs illegitimate methods-monopolisation, terrorism, extortion and tax-evasion to drive out or control lawful ownership and leadership, and to extract illegal profits from the public. Organised crime also corrupts public officials to avert governmental interference<sup>8</sup> and is becoming increasingly sophisticated. In India, in addition to its traditional spheres of activities which included extortion, seeking protection money, contract killing, boot-legging, gambling, prostitution and smuggling, now added is drug trafficking, illicit arms trading, money laundering, transporting illegitimate activities based essentially on its readiness to use brute force and violence. By corrupting public officials and thereby monopolising or near monopolising, organised crime aims to secure for itself power. Later, the money and power it begets are used to infiltrate legitimate business and several other related activities.<sup>9</sup> The recent experience has shown that it attempts to subvert and corrupt our democratic processes. Involvement of Bombay based criminal syndicates in the serial bomb blast in 1993, and the contract killings of several important social and political leaders in Bombay, indicates that organised crime in this part of the country is emerging as a serious challenge to the State. The destabilising effect that organised crime has on the country's economy, trade and commerce can hardly be over-emphasised. Organised crime continues to grow at a disconcerting speed as the existing laws and procedures are not powerful enough to help the law enforcement agencies to collect adequate evidence to bring criminal

charges and try other remedies against organised criminal syndicates as a whole and thereby incapacitate them from carrying out their nefarious activities. Since the real strength of organised crime lies in its money power with which it buys political power, it is imperative to destroy its money power base.

Organised crime is not confined to the boundaries of any one country and has become a transnational problem. This is evidenced in the fields of drug trafficking, money-laundering, terrorism, gun-running and illegal immigration rackets. Moreover, advances in science and technology enable members of organised criminal groups to operate with high mobility and sophistication, thereby aggravating the already grim situation.

Organised crime has been studied in depth in USA since the beginning of this century. The Kefauver Committee (1951) concluded that there was a nation-wide network of criminal syndicates in the USA, fundamentally based on 'muscle' and 'murder' indiscriminately used in running their criminal enterprises.<sup>10</sup>

The U.S Task Force Report, 1967<sup>11</sup>, aptly describes the scourge in the following words:

*"Organised crime is a society that seeks to operate outside the control of the American people and their government. It involves thousands of criminals working within structures as complex as those of any large corporation, subject to laws more tightly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits".*

In 1968, the US Congress enacted the Omnibus Crime Control and Safe Streets Act. According to it :

*"Organised crime includes the unlawful activities of the members of a highly*

*organised, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labour racketeering and other unlawful activities of such associations”.*

This language reflects both a growing knowledge of the extent and diverse nature of organised crime and a conscious effort to avoid restrictive definition that might limit application of the statute.

The 1976 Task Force on Organised Crime of the National Advisor Committee on Criminal Justice Standard and Goals did not endeavour to define organised crime but proposed a description that attempted to explain the nature of organised criminal activity. It listed seven characteristics of organised crime. It, *inter alia*, observed that organised crime is a conspiratorial crime, having profit as its primary goal<sup>12</sup>.

The Organised Crime Control Act, 1970, strengthened the existing laws in several respects in that it, *inter alia*, provided immunity to an organised crime witness and prescribed testimonial compulsion of the witness. It also criminalised use of money generated by the racketeering activity and prescribed longer jail terms<sup>13</sup>. The preamble of the Act captures the nature and magnitude of the threat posed by organised crime to the society<sup>14</sup>:

*“Organised crime in the US is a highly sophisticated, diversified and wide-spread activity that annually drains billions of dollars from America’s economy by unlawful conduct and illegal use of force, fraud and corruption; organised crime derives a major portion of its power through money obtained from such illegal endeavours as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; this money and power are increasingly used to infiltrate and corrupt our democratic*

*processes; organised crime activities in the US weaken the stability of the Nation’s economic system, harm innocent investors and competing organisations, interfere with free competition, seriously burden inter state and foreign commerce, threaten the domestic security and underline the general welfare of a nation and its citizens”.*

The Racketeer Influenced and Corrupt Organisations statute (RICO-1970) has become the centre piece of U.S federal law proscribing organised criminal activity. In lieu of a definition of organised crime, RICO defines racketeering activity:

*“Racketeering is an act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion or dealing in narcotics or dangerous drugs and other denominated crime.....A pattern of racketeering activity requires at least two acts of racketeering activity”.*

The Witness Security Reform Act, 1984, empowers the US Attorney General to change the identify of a witness, relocate them and financially support them till they become self-supporting. The witness is also given physical protection. The US authorities secured several convictions of important mafia leaders in the 1970’s under the deterrent laws (RICO) mainly due to the witness protection programme.

The penal statutes of several countries, including Italy, have criminalised organised crime. The Italian Penal Code does not specifically define ‘organised crime’ but it does define ‘criminal association’. According to Article 416 of the Italian Penal Code, the criminal association is:

*“When three or more persons associate for the purpose of committing more than one crime, who ever promotes or constitutes or organises the association, shall be punished, for that alone, with imprisonment from 3 to 7 years”.*

Japan has a special law on the

Prevention of Irregularities by gangsters. It is meant to exercise necessary control on acts of intimidation and violence carried out by gangsters, to protect the activities of Civic Public Organisations and to prevent danger to the life of citizens from gang-land war. Article 2 of the aforesaid law defines gangs as:

*"Gangs means any organisation likely to help its members (including members of affiliated organisation of the said organisation) to collectively and habitually commit illegal acts of violence".*

The law appears to have wide canvass as it purports to cover all types of illegal acts of violence. The main emphasis is on the collective and habitual commission of illegal acts of violence of by the members of an organisation. The Acts also provides for designation of a gang by the Prefectural Public Safety Commission after giving an opportunity to be heard by such gangs and their members. It criminalises the act of being a member or associate of a designated gang. The punishment, however, is light i.e, imprisonment up to one year.

Interpol has sought to define organised crime as :

*"Any enterprise or group of persons engaged in continuing illegal activity which has as its primary purpose the generation of profits irrespective of national boundaries".*

No definition of organised crime can be perfect and universally acceptable. The evolution and the forms of organised crime differ from one country to another, which may be the result of different social, economic, historical and legal factors. Hence, any attempt to define organised crime has to be in the light of each country's experience in dealing with the problem. Let us not restrict organised crime to Mafia type bodies or secret societies with rigid rules and initiation rites. This is more romantic that what is found in practice.

#### **IV. CHARACTERISTICS OF ORGANISED CRIME**

According to the Presidents Commission on Organised Crime 1986<sup>14</sup>, organised crime is the collective result of the commitment, knowledge and actions of three components :

- i) The Criminal groups;
- ii) The Protectors; and
- iii) The Specialist support.

##### **A. Characteristics of the Criminal Group**

- (1) Continuity: The criminal group operates beyond the life time of individual members and is structured to survive changes in leadship.
- (2) Structure: The criminal group is structured as a collection of hierarchically arranged inter-dependent offices devoted to the accomplishment of a particular function. It may be highly structured or may be rather fluid. It is, however, distinguishable as the ranks are based on power and authority.
- (3) Membership: The membership in the core criminal group is restricted and based on common traits such as ethnicity, criminal background or common interests. The potential members are subjected to a lot of scrutiny and required to prove their worth and loyalty to the criminal group. The rules of membership include secrecy, a willingness to commit any act for the group and intent to protect the group. In return for loyalty, the member of a criminal group receives economic benefits, certain prestige, and protection from law enforcement.
- (4) Criminality: The criminal group relies on continuing criminal activity to generate income. Thus, continuing criminal conspiracy is inherent in organised crime. Some activities such as supplying illegal goods and services



directly produce revenue, while others including murder, intimidation and bribery contribute to the groups ability to earn money and enhance its power. The criminal group may be involved both in legitimate as well as illegitimate business activity at the same time.

- (5) **Violence:** Violence and the threat of violence are an integral part of a criminal group. The violence or threat of it is used against the members of the group to keep them in line as also against the outsiders to protect the economic interests of the group. Members are expected to commit, condone or authorise violent acts.
- (6) **Power/Profit Goal:** The members of the criminal group aim at maximising the group's profits. The political power is achieved through the corruption of public officials, including legislators and political executive. The criminal group maintains power through its association with the "protectors" who defend the group and its profits.

### **B. Protectors**

They are corrupt public officials, attorneys and businessmen who individually or collectively protect the criminal group through abuses of status and/or privilege and violation of the law. As a result of the protector's efforts, the criminal group is insulated from both civil and criminal government actions. Corruption is the central tool of the criminal protectors. A criminal group relies on a network of corrupt officials to protect the group from the criminal justice system.

### **C. Organised Crime Support**

- (1) **Specialist Support:** Organised criminal groups and their protectors rely on skilled individuals or support to assist the criminal groups on an adhoc basis. They are nonetheless considered part of organised crime. The specialists

include pilots, chemists, arsonists, hijackers, shooters etc.

- (2) **Social Support:** Social support includes public officials who solicit the support of organised crime figures; business leaders who do business with organised crime figures at social gatherings and thus portray the criminal group in a favourable or glamorous light.

My experience shows, that all the aforesaid characteristics are not apparent in all the criminals group in India. Further, the degree of these characteristics may vary from group to group. The quintessential element of organised crime is continuing illegal activities for generating illegal profits. Conceptually, as long as this condition is satisfied, a group can be termed as an organised criminal group. Indian experience, however, shows that there is continuing illegal activity by organised criminal gangs, sometimes even in the absence of profit motive. Rigging of elections, preventing voters from exercising their electoral rights, preventing public servants from the lawful discharge of their duty, and recurrence of caste or communal violence on a continuing basis are such examples. In my view, it would be appropriate to bring such crime also under the ambit of organised crime.

## **V. LEGAL POSITION IN INDIA**

Organised crime has always existed in India in some form or another. It has, however, assumed its virulent form in modern times due to several socio-economic and political factors and advances in science and technology. Even though rural India is not immune from it, it is essentially an urban phenomenon. In India, there is no comprehensive law to control organised crime in all its dimensions and manifestations, There is, however, substantive law regarding criminal conspiracy. There are also penal provisions

in various statutes against specific violations of those statutes.

### A. Criminal Conspiracy

Sec. 120-A of the Indian Penal Code defines criminal conspiracy as:

*“When two or more persons agree to do, or cause to be done-*

- (1) An illegal act, or*
- (2) An Act which is not illegal by illegal means. Such an agreement is designated as criminal conspiracy: provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*

*Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object”.*

Section 120-B of the India Penal Code provides for punishment for criminal conspiracy. The punishment for the conspirator is the same as for the principal offender. It may, however, be emphasised that the criminal conspiracy by itself is a substantive offence. The conspiracy need not fructify and the mere proof of the existence of the criminal conspiracy is adequate to have the criminal punished for such criminal conspiracy.

### B. Dacoity and Related Offences

Dacoity is one of the oldest forms of crimes in India and is committed purely for the purpose of looting or extortion. Section 391 of the Penal Code defines dacoity as:

*“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’.”*

In other words, if five or more persons commit the offence of robbery, they commit ‘dacoity’. Dacoity is punishable with imprisonment for life or rigorous imprisonment up to 10 years and five months (section 395). The Code also criminalises preparation to commit dacoity (section 399) and assembly for the purpose of committing dacoity (section 402).

Importantly, section 400 of the Code criminalises the act of belonging to a ‘gang’ of persons associated for the purpose of habitually committing dacoities. The punishment is quite severe and may even extend to life imprisonment. Similarly, section 401 criminalises the act of belonging to a gang of thieves. It would, thus, appear that adequate legislative tools are available to the law enforcement agencies to deal with gangs of dacoits and thieves, but the proof of existence of a gang in Court requires painstaking investigation.

In view of increasing incidents of kidnapping for ransom, the parliament inserted Section 364-A in the India Penal Code to provide for stringent punishment for such offences, further strengthened in 1995. The amended Section 364-A reads as follows:

*“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 to do or abstain from doing any act or to pay shall be punishable with death, or imprisonment for life, and shall also be liable to fine”.*

### C. Law on Gangsters

There is no central legislation to

suppress 'gang activity' having country-wide applicability. The State of Uttar Pradesh, most populous and politically most powerful (population : 139.1 million in 1991), enacted Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, which is applicable in that State only. The gang has been defined as a group of persons, who, singly or collectively, indulge in anti-national activities by violence or threat of violence for gaining undue political, economic or physical advantages and includes, offences against the body, boot legging, forcible possession of immovable property, creating communal disturbances, obstructing public servants in the discharge of their duties, kidnapping for ransom, diverting an aircraft or public transport vehicle from its schedule path, etc <sup>16</sup> .

A gangster is punishable with minimum imprisonment of two years extendable up to 10 years (sec. 3). The rules of evidence have been modified and certain statutory presumptions can be raised against the gangsters by the trial court. Provision has also been made for the protection of witnesses. The trial may be held in-camera on the request of public prosecutor. The name and address of a witness can be omitted in the court records, if the Court so desires. The property of the gangster can be attached by the District Magistrate if satisfied that it was acquired through criminal activity.

This Act has a wide canvass and purports to cover large areas of organised criminal activity. It is, however, different from laws enacted in foreign countries, in that, apart from criminalising money making activities of the criminal gangs, it also criminalises infringement of election laws, causing obstruction or disturbance in the pursuit of lawful trade, business or profession and incitement to violence and disturbance of communal harmony etc. It appears to be more comprehensive than RICO.

There is no firm data available to assess its effectiveness. It appears that due to inadequate investigations and inordinately delayed trials by the courts, this legislation has not been able to make any dent on the criminal landscape of the State.

#### **D. Other Laws**

There are several other central statutes which deal with specific facets of organised crime. Some of them are: the Customs Act, 1962; the Narcotics Drugs and Psychotropic Substances Act, 1984; the Immoral Traffic (Prevention) Act, 1956; the Foreign Exchange Regulation Act, 1973 and the Public Gambling Act, 1867 etc. Besides, the State Government have also legislated on subjects like excise, prohibition and gambling etc.

#### **E. Preventive Action**

The National Security Act 1980, provides for preventive detention by the Central Government or the State Government or by the officers designated by these Government. The detention order is issued for one year with a view to preventing a person from acting in any manner prejudicial to the defence of India or to the friendly relations with foreign powers. The detention has to be approved by an Advisory Board headed by a serving High Court judge. The expression 'security of India' is open to liberal interpretation and this Act has been used, though sparingly, against anti-national elements and hard core gangsters. Detention is an executive action and the case does not go to the court for trial.

The illicit trafficking in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and the activities of persons engaged in such illicit traffic have a destabilising effect on the national economy. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988, provides for detention of such

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

persons. The Central Government or the State Government or designated officers of these Government, can pass an order for detaining a person with a view to preventing him from engaging in illicit traffic in narcotic drugs. The detention can be made for one year but in certain circumstances it is extendable to two years.

Thus, India has laws scattered in various statutes to deal with various facets of organised crime. The existing laws, however, drastically fall short of the requirements to curb the menace. The Government of India is conscious of this and has drafted the Organised Crime Control Act.

The draft Act defines 'Organised Criminal Gang' in a very comprehensive manner, incorporating most of the essential characteristics of organised crime. A gang is defined as:

*"A band of two or more persons who commit or attempt to commit or cause to be committed, either individually or collectively, in furtherance of a common object or objects and on a continuing basis, for material gains or otherwise, by taking recourse to use or show of violence or threat of violence, either direct or implied, or by fraudulent or dishonest means corrupting the public servants, any of the acts listed in Schedule I to this Act."*

Schedule I includes most major criminal offences, including murder, bodily harm, smuggling, traffic in drugs, kidnapping for ransom, espionage, causing bomb blasts, aircraft hijacking, hostage taking, mass killing, contract killing, gang rapes, extortion etc. The draft Act specifically provides for admissibility of scientific expert evidence; computer print-outs of telephone calls, confession of the accused person made to a police officer; identification by videograph; evidence obtained through Interpol and protection of witnesses. It also provides for the setting up of a national body to co-ordinate effort

against organised crime and the setting up of Organised Crime Cells at the State and District levels. The Act also criminalises laundering the proceeds of crime. The trial under the proposed Act is to be conducted by a Designated Court. The Act provides for stringent punishment to the accused. It is not known when the National Parliament will enact the law, but the above effort shows the government's deep concern and anxiety about the growing menace of organised crime and the need to curb it.

The most significant aspect of the draft Act appears to be that continuing criminal activity, based on violence, even when not impelled by 'material gain', is proposed to be brought within the ambit of organised crime. This is an obvious departure from prevalent definitions of organised crime in other countries.

## VI. PROFILES OF SOME ORGANISED CRIMINAL GANGS

Criminal gangs have been operating in India since ancient times. The gangs of 'thugs' usually preyed on travellers or wayfarers while traversing lonely regions that passed through thick jungles. The 'thugs' travelled in gangs, large or small, usually un-armed and appearing to be pilgrims, ascetics or other harmless wayfarers. By means of ingenious tricks and false pretences, they won the confidence of their intended victims who were looted and murdered<sup>17</sup>. Sir William Sleeman was mainly responsible for destroying the 'thugg' organisation. Lord William Bentinck passed a series of special legislation to crush the gangs. Sir William Sleeman in his book "Rambles and Recollections" claims that between 1831-1837, as many as 3,206 thugs were proceeded against; 418 out of that number being hanged and 483 taken as approvers<sup>18</sup>. Approvers and their descendents were detained for many years in a special

institution at Jabalpur. The thug crime is almost extinct now.

Dacoity was a serious menace in some parts of the country, particularly in the Chambal ravines (trijunction of the present States of Madhya Pradesh, Uttar Pradesh and Rajasthan) in the 1940's and 1950s. Some dacoit leaders like Man Singh became legends in their life time due to their Robin-hood image. Several such gangs continued to operate in the States of Madhya Pradesh and Uttar Pradesh which have more or less been neutralised now both as a result of police action and social reform movements.

Depredations of criminal gangs in Bombay compelled the first Governor of the island to constitute a Special Force consisting of about 600 men in 1669 to control the menace of the criminal gangs who robbed the citizens and visiting sailors alike<sup>19</sup>.

No systematic study of organised crime has been conducted in India either from a sociological or criminological angle. There is no firm data to indicate the number of organised criminal gangs operating in the country, their membership, their modus operandii and the areas of their operation. It would not be wide off the mark to say that thousands of organised gangs operate in the country side. Their structure and leadership patterns may not strictly fall into the classical Italian Mafia module, and they may sometimes be operating in loose structures, but the depredations of such criminal gangs are too well known to be recounted. However, the most essential characteristic of organised crime i.e making money or "maximisation of profits" and acquiring political power through such money, exists in most of the gangs. The purpose of organised crime in India, as elsewhere in the world, is monetary gain and this is what makes it a formidable force in today's socio-political set up.

In view of the complexity of the problem, the continental size of the country and lack

of authentic data, it is not possible to cover all, or for that matter even major, organised criminal gangs in this paper. I have, however, attempted to give profiles in brief, of some of the major gangs in metropolitan areas which considerably affect the nation's life.

### **A. Bombay Gangs**

Bombay, being the financial capital of India, is the playground of several criminal gangs and their continuing warfare for dominance. The first systematic study of organised crime was conducted by VK Saraf, retired Commissioner of Police, Bombay City, in 1995, in which he has traced the origin of organised criminal gangs in the city, their criminal activities and the inter-gang warfares. He has also enumerated the chief characteristics of the Bombay gangs<sup>20</sup>.

After independence, due to prohibition policy adopted by the Government of Maharashtra, boot-legging or trade in illicit liquor, became a lucrative business for the criminal gangs. They made lot of money by supplying illicit liquor to the local citizens. Their activities also extended to the neighbouring State of Gujarat which was declared dry at the time of independence and continues to be so ever since that time. Varada Rajan Mudaliar, who started as a porter at VT Railway Station, took to thievery at the Bombay Docks and graduated to boot-legging in the 1960s. He acquired considerable wealth through this activity and compromised the law enforcement system considerably. In the mid 1980s, he became so influential that he used to hold 'durbars' in his areas of influence, to settle disputes.

Similarly, Haji Mastan and Yusuf Patel started off as a small time criminals and later took to smuggling gold and silver: They made a lot of money and invested it in legitimate business, mainly construction and real estate. Haji Mastan had an attempt made on Yusuf Patel's life in the

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

1970s due to business rivalry but the latter survived. It was the beginning of gang warfare in Bombay which continues unabated to date and has claimed hundreds of lives.

The four major Bombay gangs are as follows:

1. Dawood Gang

Dawood is the most powerful, Bombay gangsters having a country wide networks with linkages abroad. He is one of the most powerful gangsters involved in trans-national crimes mainly narcotic drugs, smuggling, extortion and contract killing. He has lived in Dubai since 1985. He had a phenomenal rise in short time. Being the son of a Bombay Crime Branch Head Constable, he started off as a petty criminal and had the sympathies of Bombay Police due to his father's connections. He used to help smugglers recover money from those who did not keep up their word. In the 1970s other gangs had become relatively weak and he took advantage of the vacuum and took to smuggling gold and silver. He built up his criminal empire with the help of his brothers, and close associates. He is responsible for the elimination of hundreds of criminals belonging to rival gangs. He is now in narcotic drugs trafficking. The liberal bail policy pronounced by the Supreme Court helped him consolidate his gang. In 1980s he became the most feared gangster of Bombay. However, fearing risk to his life at the hands of rival gangs, he fled to Dubai, but his criminal network remains virtually intact. He operates his gang with impunity as there is no extradition treaty between India and Dubai, and his extradition has been refused by the Duabi authorities. He tried to win social respectability by playing host to influential politicians and film stars in Dubai.

His brother Anees Ibrahim looks after smuggling, drugs and contract killings. Noora looks after film financing and

extortion from film personalities. Iqbal, a low profile person, looks after his legitimate business activities including share markets in Hong Kong and jewellery and gold businesses. His gang consists of about 4,000 to 5,000 men. 50% of the members are from Bombay and the neighbouring districts. 25% come from Uttar Pradesh, including Abu Salem, his right hand man.

Due to changes in fiscal policies, smuggling of gold and silver has become less lucrative now. The main activities of this gang now are extortion, contract killing, film financing, drug trafficking, smuggling computer parts and illicit trade in arms and ammunitions. They have been supplying arms both to criminals and terrorists.

Dawood Ibrahim has invested heavily legitimate businesses. His brother Anees owns a Trading Company in Dubai. Dawood has invested about 20 crores in Diwan Shopping Centre in Bombay and is also said to have financial stakes in the Diamond Rock Hotel in Bombay. Noora runs Suhail Travel in Bombay, which has since come under severe enforcement pressure. Dawood reportedly has huge financial stakes in the East West Airlines. His legitimate business empire is estimated to have a turn over of about Rs. 2,000 crores per year.

Dawood's gang was secular in character before 1993 and used to attract volunteers from both the Hindu and Muslim communities. However, after his involvement in serial blasts in Bombay in 1993, most of the Hindu gangsters have parted company with him. Sunil Samant, a dreaded gangster who continued to be loyal to him, was shot dead in Dubai in 1995 by the Chota Rajan gang. Apart from his brothers, who are his chief counsellors, he now runs his empire through Abu Salem and Chota Shakeel. The heirarchical structure of his gang is shown in Appendix I.

## 2. Arun Gawli Gang

After the death of Ramya Naik, the mantle of leadership of this gang fell on the shoulders of Arun Gawli. There have been several inter-gang killings with the Dawood gang and they have been targetting the political and economic interests of each other. This gang consists of about 200 to 300 persons. Interestingly, Arun Gawli was sent to jail in 1990 and even though the Court granted him bail, he chose to remain in jail primarily to escape the wrath of the Dawood gang. He was running his criminal empire from within the jail premises by passing instructions through his visitors. His gang is involved in the collection of protection money from rich businessmen and contract killings. He came out of jail and started a political party, Akil Bhartiya Sena. He has again been sent back to jail for a contract killing case. Arun Gawli is politically very active and has considerable influence in the slum areas. He is posing a political challenge to the ruling Shiv Sena in Maharashtra.

## 3. Amar Naik Gang

This gang originated sometime in 1980 and was collecting protection money from the vegetable vendors in Dadar area of Bombay. When the leader of this gang (Ram Bhat) was sentenced to imprisonment in a robbery case, Amar Naik took over the reigns of the gang. The main thrust of his criminal activities was to collect 'haftas' from the vegetable vendors, hawkers, bootleggers and smugglers. This earned him good money. Due to a clash of interests, his gang had several violent skirmishes with the Arun Gawli gang, not only outside jail but even within the jail premises where gangsters of both the gangs were lodged, resulting in several killings. This gang has a strength of about 200 criminals. Amar Naik was killed last year and the mantle of leadership has now fallen on the shoulders of his younger brother, an

engineer by profession.

## 4. Chota Rajan Gang

Chota Rajan started his criminal career in the Dawood gang. After the 1993 bomb blasts in Bombay, Dawood's gang was divided on communal lines. Chota Rajan fell out with Dawood and fled from India. He raised a new gang in 1994-95. According to one estimate, the membership of this gang is about 800. His areas of operation are Maharashtra, Karnataka, Uttar Pradesh and Delhi. He essentially is a drug-trafficker and contract killer. He joined hands with Arun Gawli and was responsible for the killing of Sunil Samant, a trusted lieutenant of Dawood Ibrahim, in Dubai in 1995. It was a retaliatory killing. He has targetted many Dawood loyalists and his gang has also suffered in retaliatory actions. Chota Rajan is presently operating from a foreign base.

## 5. Characteristics of Bombay Gangs

Based on the study of the Bombay underworld, VK Saraf has concluded that:

- (i) 66% gangsters are in the age group of 19 to 28 years; 26% in that of 29 to 38 years and 6.5% are above 40 years.
- (ii) 29% studied up to primary school, 42.5% up to secondary school and 5% had a college education.
- (iii) Most have poor economic backgrounds and were propelled into the world of crime due to economic difficulties.
- (iv) Majority of the gangsters come from outside Bombay city and about 30% from outside the state of Maharashtra.
- (v) The gangs are not based on region or religion but after the 1993 bomb

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

blasts, the Hindu gangsters have diassociated themselves from the Dawood gang.

- (vi) The Bombay gangster is a cool headed schemer and ruthless and un-hesitatingly employs terroristic methods when he perceives his interest jeopardised. He is prone to taking to violence on the slightest provocation.
- (vii) There is no initiation ceremony or ritual for the members. However, a 'hopeful' is made to be involved in a criminal situation to test his metal.
- (viii) The leaders have a caring attitude towards the members. The families are well looked after by the leadership when the members are killed or are in jail.
- (ix) A gang leader is not a total autocrat. He consults experienced people in the gang. After the death of Sunil Samant, Dawood Ibrahim relies on his brothers and his decisions are executed through Abu Salem and Chota Shakeel.
- (x) There is evidence of a loose confederation of gangsters. A smaller gang may merge into a bigger gang but does not lose its identity completely. The smaller gang carries out the decisions of the main gang but is left free to involve in any activities of its choice, so long as it does not clash with the interests of the main gang.
- (xi) The gangsters have unflinching loyalty to the boss. Lack of loyalty means death.
- (xii) The gangsters are divided in three categories, namely, shooters, money

collectors and liaison workers. The liaison workers deal with the lawyers and law enforcement officials for helping the incarcerated gangsters. Each gang has certain auxiliary members. They have criminal records and generally provide shelter to the gangsters and act as a depository for weapons. Their premises are used for holding meetings and making telephone calls by the gangsters.

### **B. Delhi Gangs**

Delhi is the national capital of the country. It is a bustling metropolis, inhabited by about 10 million people, with high industrial and business activity. Despite heavy commitments, the police have hit organised criminal gangs hard, due to which they have not been able to develop such deep roots as in Bombay. Even so, there is large criminogenic population inhabiting the neighbouring States effecting Delhi.

As it is the home of rich industrialists, businessmen and professionals, kidnapping for ransom is a lucrative business here. The going rate of ransom ranges from Rs. 1.00 crore to Rs. 5.00 crores. Fortunately, most of the cases have been solved by the Delhi Police. Some victims paid huge ransoms to secure their release. Om Prakash Srivastava Babloo and other U.P gangs have been responsible for several kidnappings. Table 14 shows kidnappings for ransom in Delhi and the law enforcement action.

From the Table it is apparent that some fake cases were also registered. The proportion of cases worked out by police ranges between 80 and 90%. Most of the victims are rescued. Four gangs, namely, Tyagi gang, Dinesh Gang, Rajesh Dhahiya gang and O.P. Srivastava Babloo gang are most active in the city.



1. Veerappan Gang of Karnataka<sup>23</sup>

Veerappan is the most notorious criminal in the country today. The criminal 'empire' of Veerappan spreads over 6,000 sq. kms of thick tropical rain forests in the Nilgiri hills, stradling the trijunction of Karnataka, Tamil Nadu and Kerala. He started his criminal career as elephant poucher in 1965 and emerged as a real menace in 1986, when his gang started committing extortions, murders and kidnappings for ransom. According to one estimate, he has killed about 2000 elephants for their tusk and committed theft of 40,000 Kgs of ivory worth about Rs.12.00 crores. His gang has also indulged in large scale illegal felling of sandal wood trees which is used for cosmetics purposes in India and abroad. The gang has acquired expertise in laying land mines due to which a large number of police personnel were killed. At its peak, the gang had 150 members.

In view of the serious threat posed by Veerappan gang to wild life and forests, a Special Task Force was set up by the States of Tamil Nadu and Karnataka in 1993. Due to the relentless action of the Task Force, the gang has now been reduced to about

25 members, with only four original members of the gang surviving. 133 recorded cases of murder and attempted murder exist in the police records against this gang. Besides this, hundreds of grave crimes against innocent citizens remain un-reported to the police. Veerappan's gang is responsible for the killing of 119 persons and 60 police/forest officials. The police have recovered 125 firearms and 5 tons of explosives from the gang. Veerappan is an intrepid criminal who often expresses his wish to surrender to the authorities, but always backs out. Last month, he announced his surrender but it was turned down by the Government due to unrealistic conditions imposed by him. Interestingly, he demanded CBI inquiry into the death of his brother Arjunan in police custody. He is one of the longest surviving notorious criminals and has succeeded in escaping the law so far.

2. Om Prakash Srivastava@Babloo,Gang of Uttar Pradesh

Om Prakash Srivastava was born to an educated family in Uttar Pradesh. He took to street crime during his student days in 1983. He is a law graduate and is fond of

**TABLE VII**  
**KIDNAPPINGS FOR RANSOM IN DELHI - 1993-1997**

	1993	1994	1995	1996	1997 (upto 15.12.1997)
1.CASES REGISTERED	28	40	43	23	17
2.CASES CANCELLED	2	9	6	1	1
3.CASES ADMITTED	26	31	37	22	16
4.CASES WORKED OUT	26	27	29	20	13
5.CASES NOT WORKED OUT	-	4	8	2	3
6.VICTIMS KIDNAPPED/ ABDUCTED	30	41	44	23	17
7.VICTIMS RECOVERED	29	37	42	21	16
8.VICTIMS NOT RECOVERED	1	4	2	2	1
9.PERSONS ARRESTED	76	86	81	59	45

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

good living. To date, 41 cases of murder, attempted murder and kidnappings for ransom stand registered against him and his associates. Several cases remain unreported due to fear. His area of operation is Uttar Pradesh, Delhi and Maharashtra. He is responsible for organizing kidnappings in Delhi and Bombay in which ransom amounts were paid in foreign countries through 'hawala'. At its peak, his gang consisted of about 50 criminals, mostly from Uttar Pradesh and Delhi. He is presently in jail and half of his gang has been booked by the police. The gang, though still active, appears to have lost much of its power.

He was responsible for the killing of a senior Central Government Customs officer, L.D. Arora in 1993. Om Prakash Srivastava had organized this killing from a foreign country through his shooters. He was arrested in Singapore in April, 1995 on the basis of a Red Corner Notice issued by Interpol. He was extradited to India in August 1995 for four cases, including the L.D. Arora murder case. It was reported that he succeeded in organising some kidnappings from within the within the jail premises through his associates. The ransom amounts were paid abroad to his associates through hawala.

There are 744 powerful mafia gangs operating in Uttar Pradesh, according to the State Government sources. They hold nearly every sector of the economy in a vice like grip, running a parallel economy which runs into thousands of crores of rupees. The reach and power of these dons is evident from the fact that so far only 81 gangsters, only middle level members, have been arrested under the NSA and the Gangsters Act. These gangs have the wide support of politicians and policeman alike.

### 3. Latif Gang of Ahmedabad

Ahmedabad is the capital of Gujarat state and is situated in the western part of India. The Ahmedabad underworld is

synonymous with Latif who started his criminal career with a small time boot-legger in the mid 1970s and soon graduated to having his own illicit liquor and gambling dens in the city. The Latif gang, which is believed to consist of 200 persons, owes its genesis and growth to the prohibition policy adopted by the Government of Gjarat. As the adjoining State of Rajasthan is wet, it is a lucrative and low risk to transport truck loads of liquor into the Gujarat state. Latif set up an elaborate network of illicit shops in Ahmedabad city and made a fabulous amount of money. With affluence came political clout and his gang thereafter used the tactics of intimidation, extortions, kidnappings and even murder against rival boot leggers and, thus, established a total monopoly over the liquor business. The communal riots, a recurrent phenomenon in the Ahmedabad city, gave him a chance to promote a Robin-hood image in the community by helping the riot victims. The result was that even when he was jailed, he won municipal elections from five different cities in 1987.

Latif and his gang become more audacious and were responsible for daylight murders in the city. The high-profile murder of an ex-member of Parliament was organised through his gang from Dubai, where he joined with Dawood Ibrahim.

He is responsible for landing explosives on the Western coast, some of which were used in the Bombay blasts. The gang is now deeply involved in contract killings, drug trafficking and gun running. A part of the gang is also involved in settling business and land disputes. The gang uses 'hawala' channels for collecting ransom abroad. It has linkages in several States in the country.

In 1995 he was arested. 243 criminal cases including 64 cases of murder, 14 of kindnapping and 21 offences against the Arms Act have been registered against his gang. The details of the offences registered against the Latif gang and organisational

chart thereof is enclosed as Annexure II.

#### 4. Rashid Gang of Calcutta

Calcutta, a port town and one of the most populous cities in the country, is situated in the Eastern part of the country and is part of West Bengal. Several organised criminal gangs operate in this city and its surrounding areas. Examination of history sheets of 1,000 criminals involved in crimes of violence, insurgency and terrorist activities, between 1975 and 1985 revealed that the age group is between 21 and 25 years at the peak of crime. The criminals started their career rather early at the age of 16-18. More than 90% of them were unemployed and earned their living by smuggling and extortion. Most were from lower income group families and lived in slums. They were addicted to narcotics and alcohol. Most of them were without the benefit of education, though not illiterate. The study also revealed that the gang leaders (known as Dada or Nastan), generally, come from middle class strata of society. The gang leader is either semi-literate or an educated person with high organisational ability. The average age group of the gang leader is 40 to 50 years.

In Calcutta the most well known gang is that of Rashid Khan who started his career as a bookie in the 'satta' business, and developed a vast network of gambling business in the city. Due to his money power, he also became close to the ruling political party. Even though his activities were well within the knowledge of police, no serious effort was made to smash his network. However, his luck ran out when in March, 1993, a huge bomb explosion took place in a building under his control resulting in the death of 69 person and injuries to 46 others. The adjoining buildings also collapsed. Rashid Khan and his associates were arrested. Investigation disclosed that he had engaged his gang members in manufacturing bombs and was stock-piling them for use in communal riots

and against rival gangs. Due to the gravity of crime, his political connections or money power did not help and he is now in jail.

### VII. TYPES OF ORGANISED CRIME

#### A. Drug Abuse and Drug Trafficking

It is perhaps the most serious organised crime affecting the country and is truly transnational in character. India is geographically situated between the countries of Golden Triangle and Golden Crescent and is a transit point for narcotic drugs produced in these regions to the West. India also produces a considerable amount of licit opium, part of which also finds place in the illicit market in different forms. Illicit drug trade in India centres around five major substances, namely, heroin, hashish, opium, cannabis and methaqualone. Seizures of cocaine, amphetamine, and LSD are not unknown but are insignificant and rare.

Our borders have traditionally been most vulnerable to drug trafficking. In 1996, out of the total quantity of heroin seized in the country, 64% was sourced from the 'Golden Crescent'. The Indo-Mynamar border is also quite sensitive but the percentage of seizures is much smaller. Indo-Sri Lanka border has also started contributing considerably to the drug trade. The seizure of narcotic drugs from 1991 to 1995 and persons involved is shown in Table VII.

In 1996, 13,554 Persons were arrested under the Narcotics Drugs and Psychotropic Substances Act. Out of them 130 were foreign nationals. Besides, 80 persons were detained under PIT NDPS Act, in 1991; 80 each in 1992 and 1993; 123 in 1994 and 89 in 1995.

India has a draconian anti drug law, the Narcotics Drugs and Psychotropic Substance Act 1985, which provides minimum punishment of 10 years for offences under this Act. The conviction rate in drug offences is rather low. It was 48.8%

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

in 1995. The acquittals mainly result due to nonobservance of statutory and procedural safeguards viz, the enforcement officer failing to volunteer himself for personal search before conducting the personal or house search of the accused or failure in offering to have the accused searched by a gazetted officer or a Magistrate. It is being contemplated to amend the Act to plug the procedural loopholes and to calibrate punishments by grouping the offences.

Investigative skills need to be honed and trials expedited. Inter-agency exchange of information amongst the countries by the quickest possible means, coupled with expeditious extradition proceedings, would prove helpful in curbing the drug menace. India signed bilateral agreements with USA, UK, Myanmar, Afghanistan, UAE, Mauritius, Zambia, and the Russian Federation for 'drug control'.

### **B. Smuggling**

Smuggling, which consists of clandestine operations leading to unrecorded trade, is another major economic offence. The volume of smuggling depends on the nature of fiscal policies pursued by the Government. The nature of smuggled items and the quantum thereof is also determined by the prevailing fiscal policies.

India has a vast coast line of about 7,500 kms and open borders with Nepal and Bhutan and is prone to large scale smuggling of contraband and other consumable items. Though it is not possible to quantify the value of contraband goods smuggled into this country, it is possible to have some idea of the extent of smuggling from the value of contraband seized, even though they may constitute a very small proportion of the actual smuggling.

Table IX shows the value of goods seized. The high point of smuggling was in 1990 when contrabands worth Rs. 760 crores were seized. Introduction of various liberalisation measures, such as the gold and silver import policies in 1992-93, have had their impact on customs seizures. The total value of seizures came down by 30% (Rs. 536 crores in 1992) and subsequently to Rs.389 in 1993.

The value of seizures of important commodities from 1991 to 1996 is shown in Table IX. The value of seizures of gold and silver accounted for about 44% of the total seizures annually prior to the liberalised import policies. It came down to 21% after the invocation of the new policies. This value has been further falling. On the other hand, the seizures of commodities like electronic goods, narcotics, synthetic fabrics, wrist watches,

**TABLE VIII<sup>27</sup>**

**SEIZURE OF NARCOTIC DRUGS & NO.OF PERSONS INVOLVED 1991-1995**

Drug Type	1991	1992	1993	1994	1995
1.Opium	2145	1918	3011	2256	1183
2.Ganja	52633	64341	98867	187896	57584
3.Hashish	4413	6621	8238	6992	3073
4.Heroin	622	1153	1088	1011	1251
5.Mandrax	4415	7475	15004	45319	16838
6.Persons Arrested(No.)	5300	12850	13723	15452	14673
7.Persons Prosecuted(No.)	5546	7172	9964	9154	12918
8.Persons Convicted(No.)	855	761	1488	1245	2456

(in Kgs.)

Indian currency, foreign currency etc rose during 1994-95. The value of seizure of electronic items rose from Rs.35 crores in 1993 to Rs. 51 crores in 1995. The value of Indian currency and foreign currency seized rose from Rs. 5 crores and 20 crores respectively in 1993 to Rs. 10 crores and 43 crores respectively in 1995.

In 1987, gold occupied the top position amongst smuggled items followed by narcotics, electronic watches and silver. In 1995, however, narcotics occupied number one position followed by gold, electronics, foreign currency and synthetic fabrics.

Table XI shows the number of persons arrested, prosecuted and convicted under the Customs Act. In addition, 758 persons

were detained under COFEPOSA in 1991; 423 in 1992; 372 in 1993; 363 in 1994 and 350 in 1995.

### C. Money Laundering & Hawala

Money laundering means conversion of illegal and ill-gotten money into seemingly legal money so that it can be integrated into the legitimate economy. Proceeds of drug related crimes are an important source of money laundering world over. Besides, tax evasion and violation of exchange regulations play an important role in merging this ill-gotten money with tax evaded income so as to obscure its origin. This aim is generally achieved via the intricate steps of placement, layering and integration so that the money so integrated in the legitimate economy can be freely used by the offenders without any fear of detection. Money laundering poses a serious threat world over, not only to the only to the criminal justice systems of the countries but also to their sovereignty. The United National Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988, (known as the Vienna Convention) to which India is a party, calls for criminalisation of laundering of the proceeds of drug crimes and other connected activities, and the confiscation of proceeds derived from such offences. There is no knowing how much

**TABLE IX<sup>28</sup>**

#### **VALUE OF SMUGGLED GOODS SEIZED 1988-1995**

YEAR	VALUE OF GOODS SEIZED (in crores)
1988	443.14
1989	554.95
1990	760.08
1991	740.00
1992	535.71
1993	388.96
1994	535.22
1995	631.25

**TABLE X<sup>29</sup>**

#### **VALUE OF SEIZURES OF IMPORTANT COMMODITIES 1991-1996**

	(in crores)			
	1990-91	1991-92	1994-95	1995-96
Gold	198.8	188.5	55.4	50.8
Silver	146.6	147.7	3.6	0.54
Narcotics	25.1	21.8	54.3	77.94
Electronic Items	55.5	23.1	51.2	38.0
Foreign Currency	7.7	10.8	27.4	40.2
Indian Currency	6.5	5.6	6.6	5.6
Synthetic Fabrics	4.8	2.0	2.4	12.9
Watches	3.2	6.2	3.3	3.9

**TABLE XI**<sup>31</sup>

**NUMBER OF ARRESTED, PROSECUTED AND CONVICTED 1991-1994**

YEAR	ARRESTED	PROSECUTED	CONVICTED
1991	2358	1669	574
1992	1745	1051	381
1993	1234	679	350
1994	1210	301	352

money is laundered in India but the problem is quite serious. The tainted money is being accumulated and integrated into the economy by organised racketeers, smugglers, economic offenders and anti-social elements and is adversely affecting the internal security of the country. In order to curb the means of money laundering, the Central Government is in the process of enacting the Proceeds of Crime and Money Laundering (Prevention) Act, 1997. In the proposed Act, money laundering has been defined as:

- (i) engaging directly or in-directly in a transaction which involves property that is the proceed of crime; or
- (ii) receiving, possessing, concealing, transferring, converting, disposing of within the territories of India, removing from or bringing into the territory of India the property i.e proceeds of crime.

'Crime', as defined in the Act, covers, several Penal Code offences viz., waging war against the Government of India, murder, attempted murder, voluntarily causing hurt, kidnapping for ransom, extortion, robbery, dacoity, criminal breach of trust, cheating, forgery, counterfeiting currency etc; certain provisions of the Prevention of Corruption Act, 1988; NDPS Act, 1985; Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962. Thus, 'crime' has been defined comprehensively in the Act. The money generated through 'crime' is liable to be confiscated by the State.

Illegal currency transfers via non-

banking channels are called Hawala. It is an underground banking system. Secret flows of money can take place in free currency areas as well as in areas where currency conversion restrictions are practised due to the shortage of foreign exchange. It operates in the following manner. Someone in the USA, for example, deposits \$1000 with an under-ground banker for payment to be made in India. The US under-ground banker contacts their counter part in India immediately on the telephone or by wire service and sends a coded message for payment to the Indian recipient. The hawala operator in India would contact the recipient and fix a meeting place. The recipient, in the meanwhile, would have received instructions on the telephone about the code word s/he has to exchange with the hawala operator. Thus, the hawala operator in India and the recipient of the money would exchange code words and the hawala operators would hand over the money to the recipient. Of course, the hawala operator in USA would charge a fee for the service rendered. There is no physical transfer of money in hawala operations as in the regular banking channels. This channel is generally used by drug traffickers, smugglers and kidnappers.

Basically, the system operates on an ethnic network. The network may include more than 3 or 4 countries. The principal operators engage agents and sub agents in various countries for collection and disbursement of money. Hawala is wide-

spread in India. Families who have members earning abroad are clients of the system. The dangerous aspect of the hawala system is the nexus between hawala and illicit arms smuggling, drug trafficking and terrorist crimes.

Investigations in hawala related crimes are conducted under the Foreign Exchange Regulation Act. Even through the word 'hawala' has not been defined in FERA, the essence of the Act is that any person who retains foreign exchange abroad or sends foreign exchange abroad, without the Reserve Bank's permission is violating FERA provisions.

#### **D. Terrorism & Narco-Terrorism**

Terrorism is a serious problem which India is facing. Conceptually, terrorism does not fall in the category of organised crime, as the dominant motive behind terrorism is political and/or ideological and not the acquisition of money-power. The Indian experience, however, shows that the criminals are perpetrating all kinds of crimes, such as killings, rapes, kidnappings, gun-running and drug trafficking, under the umbrella of terrorist organisations. The existing criminal networks are being utilised by the terrorist leaders. India faced serious problems in the Punjab in the 1980s, which has since been controlled with the installation of a popular government. The North East still continues to be in turmoil due to the unlawful activities of ULFA and NSCN. The terrorist groups there are partly financing their operations by kidnappings for ransom of tea garden executives and extortion from businessmen. PWG and LTTE, in small pockets of southern India, continue to indulge in continual acts of violence.

Table XI gives profile of violence in Punjab. Besides, 9 judicial officers, 62 media personnel and 34 teachers were killed during this period. There was also a spill over of Sikh militancy in the neighbouring States.

In view of threat to the national security, the Central Government, enacted an anti-terrorist law, Terrorist and Disruptive Activities (Prevention) Act, 1985. About 60,000 terrorists were charged under this Act. However, the trials were slow and the conviction rate quite low. This Act was allowed to lapse in 1995. India at present does not have any anti-terrorist law.

India has become vulnerable to narco terrorism, bounded as it is by the 'Golden Crescent' on the West and the 'Golden Triangle' on the East. Narco terrorism assumes several forms, namely:

- (a) terrorists themselves indulge in drug trafficking to support their movements ;
- (b) sympathizers of terrorists living abroad indulge in drug trafficking and send part of their illegal profits to fund the terrorist movements ;
- (c) terrorists join hands with drug lords to gain access to the powers, in the countries sympathetic to their cause, in order to utilise their connections with political powers ;
- (d) terrorists give protection and support to drug traffickers with fire arms, and the drug traffickers, being acquainted with the routes, assist the terrorists in border crossings to bring arms and drugs in the target country; and
- (e) Smugglers supply fire arms to the terrorists who are also drug traffickers.

The areas affected by terrorism in India are the border States which also happen to be transit routes for narcotics to their destinations in the Western world. It is not a coincidence that the growth of terrorist movement in Punjab synchronised with the emergence of the Golden Crescent as a major drug producing area in the early 1980s. The emergence of drug mafias in the Golden Crescent countries and their linkages with smugglers in the border States of India have given impetus to gun-

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

running. There is positive evidence of narco-terrorism in the border States of India even though the magnitude there of is not significant. Some mixed consignments of narcotic drugs and arms were seized from smugglers in the Punjab. There is also evidence that the money generated abroad by the smugglers was used for purchase of weapons which were smuggled into the country for terrorist activities. To illustrate, Dawood Ibrahim, utilised the existing smuggling network in landing consignments of arms and explosives on the western coast in early 1993, used for causing serial blasts in Bombay.

**E. Light Arms Proliferation & Trafficking**

Light arms proliferation is a global phenomena. It has extracted a heavy toll in terms of human lives and socio economic development of entire regions, costs of which can never be adequately computed. In Afghanistan, the death toll has passed 1,00,000 and is still rising, while Cambodia, Sri Lanka and some African States continue to see conflict related deaths in their thousands. India has also suffered

due to trafficking in illicit arms. The twin phenomenon of rising crime as well as armed conflicts and terrorism are directly linked to the global proliferation and movement of weapons. Appendix III shows the inextricable links between gun running, terrorism, narcotics trafficking and crime.<sup>34</sup>

The Purulia Arms Drop Case is the most glaring example of illicit arms trafficking. On 17th December, 1996, an Antonov 26 aircraft dropped over 300 AK 47/56 rifles and 20,545 rounds of ammunition, dragnov sniper weapons, rocket launchers and night vision devices in a Purulia village in West Bengal State. The aircraft was bought from Latvia for US\$ 2 million and chartered by a Hong Kong registered company, Carol Airlines. Payments were made mostly through foreign bank accounts. The aircraft was ferried to a foreign country where it was registered. After a dry run over the air drop area, the aircraft moved to Bulgaria from where the consignment of arms was picked up using a end-users certificate issued by a foreign country.

The aircraft returned to a location in a foreign country and then flew over the air

**TABLE XII<sup>32</sup>**

**PROFILE OF VIOLENCE IN PUNJAB- 1981-92**

Year	No.of Persons Killed	No.of Policemen Killed
1981	13	2
1982	13	2
1983	75	20
1984	359	20
1985	63	8
1986	520	42
1987	910	95
1988	1949	110
1989	1168	152
1990	2467	493
1991	2586	493
1992	1461	252
<b>TOTAL</b>	<b>11,584</b>	<b>1689</b>



drop area, parachuting the arms and then flew on to Phuket. On the return journey, the aircraft was forced to land at Bombay, where the crew were arrested. CBI investigated this case and 7 persons were charged, including one British, 5 Latvians and an Indian. Several others absconded.

The seizures reflect only the tip of the iceberg. Similar caches have been seized in Punjab and the North East. Gun running in foreign-made and Indian made weapons is a lucrative business, in militancy affected and high crime areas. The premium on foreign made weapons is quite high, and relevant laws need to be made more stringent and speedy trials ensured.

#### **F. Contract Killings**

The offence of murder is punishable under section 302 IPC by life imprisonment or death sentence. Conviction rate in murder cases is about 38%. The chance of detection in contract killings is quite low. The method adopted in contract killings is by engaging a professional gang for a monetary consideration. Part of the prefixed amount will be paid in advance which is called '*supari*'. The rest of the payment will be made after the commission of the crime. The Bombay gangs specialise in contract killings. The amount they charge is quite large and varies with the socio-economic status of the targets. Dawood Ibrahim gang has been responsible for contract killings of several rich businessmen, industrialists and politicians. Gulshan Kumar, the music magnate of Bombay, was the latest victim of this scourge.

#### **G. Kidnapping for Ransom**

Kidnapping for ransom is a highly organised crime in urban conglomerates. There are several local as well as inter-State gangs involved in it as the financial rewards are immense vis-a-vis the labour and risk involved. Generally, no injury is caused to the kidnapee if the Kidnappers'

conditions are met. Terrorist gangs have also been occasionally involved in kidnappings for quick money to finance their operations. In one recent case, the kidnapee was killed even after his family paid a huge ransom amount to a U.P. gang. The leader of the gang was known to the victim and he feared the victim would disclose the gang's identity if released. Several arrests have been made in this case. Incidentally, the leader of the gang is a Member of the Legislative Assembly of the State of North India.

Delhi and Bombay are highly vulnerable to this crime. 43 cases were registered in Delhi in 1995, against 40 of 1994. The incidence was less in 1996 and 1997, as most of the cases were detected by the police and prominent gangs neutralised. The going rate in Delhi and Bombay ranges from Rs. 1.00 to 5.00 crores, depending upon the paying capacity of the victims. The gang headed by Om Prakash Srivastava is transnational in character and often operates from foreign bases, with payments made abroad through hawala channels.

In view of the aforesaid menace, a new section (section 364-A) was incorporated in the Penal Code to specifically criminalise kidnapping for ransom and prescribes a minimum punishment of 10 years.

#### **H. Illegal Immigration**

A large number of Indians are working abroad, particularly in the Gulf region. Young people want to move to foreign countries for lucrative jobs. Large scale migration is fostered by the high rate of unemployment in the country and higher wage levels in foreign lands. As it is not easy for the aspirants to obtain valid travel documents and jobs abroad, they fall into the trap of unscrupulous travel agents and employment agencies. These agencies promise to give them valid travel documents and employment abroad on the payment of huge amounts. Often the travel

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

documents are not valid, and sometimes they are simply dumped into foreign lands without giving them the promised employment.

A gruesome tragedy occurred in which 170 Indians and some others drowned in the high seas of the Malta-Sicily channel on 24th and 25th December, 1996. Investigation of this case was handled by the CBI which disclosed that the travel agents in India sent some groups of Indians to Alexandria (Egypt) and Istanbul (Turkey) by air in September 1996. Thereafter, they were taken in small ships to the high seas from Alexandria and Istanbul and were transferred to a big ship. There were about 460 people from India, and other countries on board. The ship headed towards Italy. In the Malta Sicily channel, they were required to shift to two smaller ships. While docking, the two ships collided and water started pouring into the small ship which created panic. There was rush to get back to the big ship and in the process 200 people, including 170 Indians drowned. Country-wide investigation was conducted by the CBI and 25 travel agents were charged with violation of the Emigration Act, 1983.

Emigration of Indians to foreign countries is regulated by the Emigration Act 1983, which empowers the Central Government to regulate functioning of the travel agents and employment agencies. The employment agencies are also required to give written undertakings regarding minimum wages and surety of employment to the emigrants. The loop holes in the system are, however, exploited by the unscrupulous elements by false representations and fraudulent deals. It is a transnational crime and involves unfathomable exploitation and human misery. International co-operation may play a vital role in curbing illegal migrations.

### **I. Prostitution**

Trading in sex and girl-running is a very

profitable business in which the underworld plays an important part. Flesh trade has been flourishing in India in various places and in different forms. The underworld is closely connected with brothels and call girl rackets, making plenty of money through this activity. They supply young girls to brothels in different parts of the country, shuttling them to and from the city to minimise the risk of their being rescued.

According to a study conducted by the Indian Health Organisation, there are over 1,000,000 prostitutes in Bombay and an equal number in Calcutta. Delhi and Pune have an estimated 40,000 each. Even the relatively small town of Nagpur has about 15,000 prostitutes. According to a survey conducted by Patita Udhara Samiti, it is estimated that the total number of prostitutes in the country is about 25,000,000. About 300,000 enter the profession each year<sup>36</sup>.

There is also evidence to show that it is a transnational crime. About 5,000 girls from Nepal enter the flesh market each year in India.

Prostitution is not an offence in India. However, running brothels, inducing girls for the sake of prostitution, detaining girls in brothels or running brothels in the vicinity of public places is a criminal offence. There is evidence of underworld networks running the brothels and the existing law has not been found strong enough to tackle the menace.

## **VIII. CASE STUDIES**

### **A. Shankar Guha Neogi Murder Case**

Shankar Guha Neogi, a top labour leader of Central India, was shot dead in September, 1991, while sleeping in his house. On the request of the Government of Madhya Pradesh, the CBI moved into action. Investigation disclosed that he had given a strike call to about 80,000 workers

of his union in Bhillai-Raipur Belt, demanding remunerative wages and permanency of jobs for them. As the strike continued for almost nine months, this naturally disturbed the functioning of several industrial units, particularly, that of steel manufacturing units of the Shah family. Investigation further disclosed that a member of the Shah family, along with three others, including two local dons, had gone abroad to purchase fire arms for murdering Neogi. The clue came in the form of an anonymous inland letter giving the above information and mentioning the names of persons who had gone abroad. Suspicion was strengthened due to the disappearance of a member of the Shah family after the incident. Working on this clue, CBI, with the help of the local police, arrested the perpetrators of this crime. The Shah family had assigned the task of eliminating Neogi to a local don who hired a professional killer belonging to a neighbouring State. It was a case of contract killing and some money was paid before the killing by the Shah family and the balance amount was to be paid after the commission of crime. The killer absconded after the incident and it took almost two years to track him down. There were three tiers in the conspiracy. In the first tier were the motivators i.e the Shah family who wanted Neogi killed. In the second tier was the local don who organised the killing. The third tier consisted of the actual shooter and his associates.

After painstaking investigation, the charge sheet was filed against nine accused persons. The case was decided last year and the trial Court convicted seven accused. While six persons were given life imprisonment, the killer was ordered to be hanged. The case is now pending High Court confirmation of the death sentence.

This is one of the few cases of organised crime in which three tiers of criminals, including two members of the Shah family, have been convicted.

### **B. L.D. Arora Murder Case**

L.D. Arora, a senior officer of the Customs Department, was shot dead in 1993, at point blank range, while getting out of his car in front of his residence in the Allahabad town of Uttar Pradesh. He had just returned from his office. The unknown assailant had been waiting for him under the stair case of the multi-storied building in which Arora lived. The Uttar Pradesh Police could not get a breakthrough. The case ultimately came to CBI. Investigation started from Bombay where the deceased was posted for a long time and had come down heavily on a number of smuggling gangs, including that of notorious smugglers Md. Dosa, Tiger Memon and Dawood Ibrahim. His general reputation and family life were also found to be good, therefore it seemed that the killing was committed due to professional reasons. Arora had been threatened by the smugglers in the past. Even after his transfer from Bombay to Allahabad, he was running his sources and passing on information to his counter-parts in Bombay, resulting in large scale seizures of contraband. A suspect telephone number of a neighbouring country and scrutiny of the telephone print out revealed that several calls had been made to several numbers in Bombay and Delhi. Subscribers of the called numbers were questioned and one in Delhi disclosed that he was being called by notorious criminal Om Prakash Srivastava from abroad. When questioned about his relationship with Babloo, he disclosed that Babloo was his neighbour, living in a rented house, about a year back and had absconded after a murder case (not Arora murder case). The Delhi Police records were checked and it was found that Babloo was suspected in that murder case. It was also found that Babloo was a contract killer and smuggler. This made him a strong suspect. Investigation also disclosed that Babloo had repeatedly called a hotel number in Allahabad, several times

on the days proceeding Arora's murder and also on the day of the murder. The hotel register disclosed that some of his associates had stayed in that hotel and received calls from Babloo. Babloo's associates had given correct names in the hotel records but wrong addresses. However, on further verification the names and addresses of the suspects were confirmed. The shooter was caught in Delhi and his disclosure revealed that Babloo had organised this killing on the instructions of smuggler Md. Dosa from Dubai. He also disclosed how the conspiracy was planned, how the transport and arms were provided by Babloo and his associates, and how Arora was eliminated. The car involved in the crime was seized. He got Rs. 1.00 lac for the killing and Babloo got 15.00 lacs from Md. Dosa. Arrest warrants were taken from the Court and Interpol alerted.

In 1995, information was received that Babloo was travelling to Singapore from Dubai on a Nepalese passport. Interpol Singapore, was alerted and they detained Babloo at the airport. On being informed of this development, Indian officials flew to Singapore and submitted the arrest warrant and other relevant documents in the Court. The disconcerting aspect of this case was that Babloo was travelling under an assumed name on a genuine Nepalese passport. During questioning by the Singapore Police, he pretended that he was not the person wanted by CBI. It was necessary not only to establish a prima facie case in the Extradition Court at Singapore but also to firmly establish his identity. Indian officials persuaded his elder brother to swear an affidavit to prove his identity and fingerprints from Singapore and India were matched. The Extradition Magistrate held that there was a prima facie case against Babloo in all the court cases. He was extradited to India in August 1995 and is facing trial now. This was the first extradition case in 45 years.

### **C. Terrorist Funding Case**

A militant was arrested by Delhi Police sometime back along with some foreign currency and objectionable documents, including letters written by a top militant leader from abroad to his associates in India. His interrogation revealed foreign links and remittance of a large amount of money into India from a foreign source through the 'hawala' channel. Due to its importance, CBI was asked to take over the case. One more accused was arrested whose questioning disclosed that he had gone abroad and entered into a criminal conspiracy with some terrorist sympathisers to develop a terrorist network in India. The money was to come from a foreign source via the 'hawala' channel. The money did come and the payment was made in Delhi by a low level 'hawala' operator. The money so received was used for purchasing bank drafts in the name of fictitious persons. This was, perhaps, done to keep the identity of the recipients secret so that this money could be used for terrorist funding without detection.

During investigation a number of 'hawala' operators were arrested who disclosed the names of their principals. Large scale searches were conducted in the business premises of the main 'hawala' operators which led to the recovery of Rs. 1.5 crores in cash and a personal diary showing payment of about Rs. 58.00 crores to various politicians and bureaucrats in India. This case is now popularly known as Jain Hawala Case. The charge-sheets were filed against several recipients of hawala money even though the evidence was not corroborated. While the main case (i.e terrorist funding case) is progressing well in the Court, the Jain Hawala Case, which was monitored by the Supreme Court under its writ jurisdiction, is presently embroiled in litigation in the Delhi High Court.

**D. Advocate Shanmughsundram Case**

Mr. Shanmughsundram, a practising lawyer, was brutally attacked in his residence in May 1995, in a southern State. The attack came in full view of his personal staff. The victim was attacked as he was about to file a petition in the High Court against the corrupt activities of a powerful politician. The local police made some arrests but that did not evoke the confidence of the legal community. The case was handed over to the CBI by the High Court. Investigation disclosed that the victim, though politically affiliated, was trying to seek judicial intervention. This angered the politician who had the attack organised through his underlings. The role of the local police was suspect in that they orchestrated the surrender of certain criminals who were actually not involved in the attack, but agreed to own responsibility with a view to shielding a politically powerful criminal gang. CBI investigation established the identity of the real culprits. They were arrested and sent to trial. Welding Kumar, the don who had organised the attack, was himself not present but was charged with criminal conspiracy. All the assailants, including Welding Kumar, have been convicted for life. However, the investigation could not go beyond Welding Kumar as adequate evidence could not be built up against the motivators, the third tier. This is a common problem faced in investigations of organised crime.

**IX. PROBLEMS IN CONTROL EFFORTS**

**A. Inadequate Legal Structure**

There are several difficulties in combatting organised crime. First of all, India does not have a special law to control/suppress organised crime. Being a continuing conspiracy, the incidents of organised crime are dealt with under the

general conspiracy law and relevant special Acts. The existing law is inadequate as it targets individuals and not the criminal groups or criminal enterprises. Conspiracies are hatched in darkness and proving them in a court of law is a herculean task. Being a member of the gang of dacoits or thieves is punishable under the Penal Code, but being a member of any other criminal gang is not. The prime purpose of organised crime is money through muscle power, comprising the officials operating the criminal justice system and the officials and politicians in power. It is, therefore, imperative that the criminal group and being its member or associate, is criminalised, as has been done in many countries.

Similarly, there is need to deprive the criminal groups of their ill-gotten wealth. India does not have a consolidated law on the subject.

The procedural laws in India are grossly inadequate to deal with organised crime. Under section 167 of the Code of Criminal Procedure, the police are mandated to file the charge sheet within 90 days from the date of arrest, failing which the accused is liable to be freed on bail. Organised crime is complicated in nature and has inter-state and even international ramifications which makes it difficult to conduct a thorough investigation within the statutorily prescribed time frame. This often results in the charge-sheets being filed on the basis of half-baked investigations. Such cases often result in acquittals. Besides, the bail provisions are quite liberal (sections 437 to 439 CrPC). In the early 1970s, the Supreme Court laid down that 'bail and not the jail' is the rule. This emboldened criminal syndicates and they took advantage of this judicial dispensation, frustrating efforts of the law-enforcers in curbing crime. Further, section 438 of the CrPC provides for anticipatory bail even in heinous offences. This has been misused by politically influential and rich people.

Further, a confession made before a police officer is not admissible under section 25 of the Evidence Act, but a confession made before a Customs Officer or a Income Tax Officer is admissible. As it is difficult to get the eye-witness evidence in cases of criminal conspiracy, it makes the task of the police really very difficult. Furthermore, the investigating agencies look for oral, documentary and circumstantial evidence during investigation. With rapid advances in science and technology, forensic science has come to play an important role in criminal investigations. However, an accused or suspect is not legally bound to give his handwriting, finger prints, blood samples, photographs and intimate and non-intimate body samples viz hair, saliva, semen, blood etc to the Investigating Officer, despite the order of the Court. Thus, valuable pieces of evidence are lost due to this legal lacunae.

#### **B. Difficulties in Obtaining Proof**

As organised criminal groups are structured in a hierarchical manner, the higher echelons of leadership are insulated from law enforcement. It may be possible to have the actual perpetrators of crime convicted, but it is difficult to go beyond them in the hierarchy because of rules of evidence, particularly, non-admissibility of confessions made by criminals before the police. The witnesses are not willing to depose for fear of their lives and there is no law to provide protection to the witnesses against organised gangs. The informers are not willing to come forward as some kind of stigma is attached to being an 'informer'. In crimes of violence, there is hardly any documentary evidence. In some crimes like gambling and prostitution, the people in general are willing participants. Incidents of killing of witnesses or their being bribed or threatened do surface from time to time. Several judges and magistrates were killed

in Punjab. These difficulties hamper the control efforts.

#### **C. Slow Pace of Trials & Low Conviction Rate**

'Justice delayed is justice denied' is a well known maxim. The pace of trials in India is very slow. Out of 7.12 million cases pending in the country, 0.77 million have been pending trial for more than 8 years (18.6% of the total). The average time of trial in grave offences varies from State to State but it is quite substantial and may run into years. This, coupled with other factors, has resulted in low conviction rates. Only about 38% murder and rape cases result in conviction in India. The percentage of conviction in dacoity cases is still lower. Hence, people are losing faith in the efficacy of the criminal justice system and have become cynical, apathetic and non-cooperative in control efforts.

#### **D. Lack of Resources & Training**

In our Constitutional frame-work, the police are the State's subject. Investigation of cases, their prosecution and the setting up of the criminal courts is the responsibility of the State Government concerned. Most of the States face a resources crunch and are not in the position to spare adequate resources for the criminal justice system agencies. The number of police personnel posted in police stations is inadequate. Besides, hardly any training facilities exist for the investigation of organised crime. Further, there are no special cells to handle organised crime investigations. The prosecutors neither have any special aptitude nor any specialized training for conducting organised crime cases. Moreover, they are vulnerable to frequent transfers resulting in discontinuity in prosecution efforts. Moreover, the number of courts is inadequate as organised crime case are tried by ordinary courts, there is inordinate delay in their disposal due to heavy

backlogs.

### **E. Lack of Co-ordination**

India does not have a national level agency to co-ordinate the efforts of the State/city police organisations as well as central enforcement agencies, for combating organised crime. Further, there is no agency to collect, collate, analyse, document and function as a central exchange of information relating to international and inter-state gangs operating in India and abroad. Similarly, there is no system of sustained pursuit of selected gangs at the national and State level. Apart from lack of institutional frame-work, there are problems of co-ordination between the Central Government and the State Governments and between one State Government and another State Government due to differences in political perceptions. This problem becomes quite acute when different political parties are in power at the centre and in the States. Thus, there appears to be no sustained effort to combat organised crime. The information that comes into the hands of Central and State investigating agencies is not exchanged and, if exchanged, not in real time. Thus, valuable clues are lost.

### **F. Dual Criminality**

The crime syndicates do not respect national boundaries. Certain crimes, particularly drug trafficking, are planned in one part of the world and executed in another. Criminals also move fast from one part of the globe to another. Different nations have different legal structures. A certain act may be 'crime' in one country but not in another. To illustrate, money laundering is crime in USA and several European countries but not in India. Similarly, some countries have laws against terrorism but others do not. Extradition of criminals from one country to another is possible only when the

principle of dual criminality is satisfied. India has faced problems in the extradition of certain fugitive criminals on this count.

### **G. Criminal, Political & Bureaucratic Nexus**

There has been a rapid spread and growth of criminal gangs, armed Senas, drug mafias, smuggling gangs, drug peddlers and economic lobbyists in the country which have, over the years, developed an extensive network of contacts with the bureaucrats, government functionaries, politicians, media persons and democratically elected individuals at the local level. Some of these syndicates also have international linkages, including with the foreign intelligence agencies. In certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local level politicians cutting across party lines. Some political leaders become the leaders of these gangs/armed senas and over the years get themselves elected to local bodies, State Assemblies and even the National Parliament through dubious means including rigging and killing of their political rivals. Some of them collect large funds from the criminal syndicates for electioneering. Resultantly, such elements have acquired considerable political clout seriously jeopardising the smooth functioning of the administration and the safety of life and property of the common man, causing a sense of despair and alienation among the people. Due to the political influence of these syndicates, the investigating and prosecuting agencies are finding it extremely difficult to deal effectively with them.

In view of the gravity of the problem. The Government of India constituted a Committee under the Chairmanship of the Union Home Secretary, N.N. Vohara in 1993. The Vohra Committee observed:-

“(i) On the basis of extensive experience gained by our various concerned intelligence, investigative and

enforcement agencies, it is apparent that crime syndicates and mafia organisations have established themselves in various parts of the country.

- (ii) The various crime syndicate/mafia organisations have developed significant muscle and money power and established linkages with Governmental functionaries, political leaders and others to be able to operate with impunity (as recently exemplified by the activities of Memon brothers and Dawood Ibrahim).”

The law enforcement agencies are finding it difficult to smash criminal syndicates in the existing legal framework due to the money power and political linkages of the organised criminal gangs. The problem becomes compounded when the leaders of the gangs themselves become Parliamentarians and, sometimes, even Ministers. A Minister in the Central Government was prosecuted and convicted (later acquitted by the Apex Court) for harbouring members of a criminal gang. Another person who headed a dacoity gang 15 years ago and is still facing trial in several dacoity cases, rose to be a member of the National Parliament. Another individual who is facing trial in 12 serious crimes, including a murder case investigated by CBI, rose to be a Minister. When the law breakers become law makers or political superiors of the law enforcers, it is unrealistic to expect the latter to come down heavily on criminal syndicates.

## **X. COMBATTING ORGANISED CRIME**

It is the universal experience that organised crime is spawned by social economic and political factors and advances in science and technology have lent it a transnational character. Organised crime, like ordinary crime, cannot be rooted out

completely from any society. It can certainly be kept within reasonable bounds by a deft mix of legal and administrative measures, coupled with social and political commitment. International co-operation can sound its death bell. I now propose to suggest some measures for combatting organised crime, keeping in view the Indian ground realities.

### **A. Strengthening of Criminal Laws**

#### **1. Substantive Law**

India does not have a special Act to control/suppress organised crime. The draft of the Suppression of Organised Crime Act is on the anvil but it is not known when it will be passed into law. Organised crime and money laundering have close nexus warranting immediate legislative intervention. The proceeds of Crime and Money Laundering (Prevention) Act is at a final stage and is likely to be passed into law soon. Besides, the ancillary laws such as the Arms Act, 1959; the Explosives Act, 1884; the Explosives Substances Act, 1906; the Immoral Traffic (Prevention) Act, 1956 need to be strengthened. Punishment provided for public gambling in the existing law is grossly inadequate resulting in recidivism by the same criminal groups.

#### **2. Procedural Law**

Certain amendments need to be made in the Code of Criminal Procedure. The maximum time for police custody remand in section 167(2) of Code of Criminal Procedure is 15 days from the date of arrest of an accused. It is our experience that this time is inadequate for investigating organised crime cases having inter-state and international ramifications. The police custody remand should be enhanced from 15 to 30 days in cases of grave crime. Further, the police are mandated to file the charge sheet in 90 days from the date of arrest of the accused, failing which s/he is liable to be released on bail. This period needs to be enhanced to 180 days in grave



crimes for in-depth investigation.

'Bail and not the jail' is the rule pursuant to a Supreme Court order of 1970s. Legislature should intervene to make the bail provisions more stringent. The provision for anticipatory bail (sec.438 CrPC) in grave crimes (i.e punishable with 7 years or more) should be deleted. Further, no ex parte bail orders should be passed by a court in grave crimes without hearing the public prosecutor.

### 3. Evidenciary Law

(i) *Confession made to a police officer*: The Indian police are legally handicapped in collecting fool-proof evidence against ordinary criminals and, more so, against organised criminal gangs due to certain archaic provisions of evidenciary law. According to section 25 of the Evidence Act, a confession made before a police officer is not admissible in the court. Due to this valuable evidence gathered during questioning of the accused persons is lost. Such confessions are admissible in most countries of the world. Of course, this is not to say that the Court should base conviction only on the un-corroborated confession of an accused. What is being argued is that the Court should take into consideration the confession made by the accused before a police officer along with other corroborative evidence in formulating its opinion.

(ii) *Forensic evidence*: Forensic evidence plays an important role in criminal investigations. The police are duty bound to collect forensic evidence which may include the following types:-

- (i) Hand writing ;
- (ii) Finger/foot prints ;
- (iii) Blood samples for DNA profiling;
- (iv) Photographs ; and
- (v) Intimate and non-intimate body samples viz. hair, saliva, semen, blood etc.

There is no law which legally binds an

accused to give specimen hand-writing, blood samples, foot prints or intimate or non-intimate body samples, even under the order of the court. The result is that valuable forensic evidence is beyond the ambit of the investigating agency. It is suggested that a provision should be incorporated in the Criminal Procedure Code legally binding the accused to give finger prints, samples of hand writing, blood samples and intimate and non intimate body samples, if required by the investigating agency. This will go a long way in building up forensic evidence against criminal gangs, particularly in violence-related crime.

(iii) *Monitoring of telephones etc* : The telephone facility is freely used by the gangs in organising criminal activities. Section 5 of the Indian Telegraph Act, 1885, empowers the Central Government or the State Government to monitor telephones and intercept telegraphic messages for a period of 60 days. However, the evidence thus gathered is not admissible in the trial. In the U.S.A, telephones can be monitored by law enforcement agencies under the orders of Federal Courts and the evidence so gathered can be used in the trial. The Indian Telegraphic Act should be suitably amended to provide for admissibility of evidence gathered by interception of telephonic conversation or telegraphs. Similarly, the evidence of computer print-out of telephone calls or fax messages sent or received on a particular telephone terminal should be made admissible as evidence.

(iv) *Undercover agents* : Law enforcement agencies run under-cover agents in most countries to gather information about criminal gangs, study their modus operandi and evaluate their future plans and strategies. This information is used both for preventive

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

and investigative purposes. In the USA, the evidence gathered by under cover agents is admissible as evidence - whether it is in the form of their oral testimony or recorded in audio or video form. Indian law does not permit this. The information so gathered can be used only as information but not as evidence. This handicaps the law enforcement agencies in building up cast-iron cases against organised gangs. It is suggested that the law should be amended to provide for admissibility of such evidence.

#### 4. Witness Protection Programme

In cases of organised crime and terrorism, the witnesses are reluctant to depose in the open court for fear of reprisals at the hands of criminal syndicates/terrorists. The cases of threat or criminal intimidation of potential witnesses are too many to be recounted. Some witnesses have also been killed by the criminal gangs/terrorists. As the courts go by evidence on record for establishing the guilt of the accused, it is essential to protect the witnesses from the wrath of criminal gangs. Hence, legal and physical protection should be provided to crucial witnesses in sensitive cases so that they can depose fearlessly in the court. After the enactment of Witness Security Reform Act 1984, the US authorities could secure the conviction of several notorious mafia leaders. The US Witness Protection Programme, essentially involves changing the identity of the witness, relocation, physical protection if needed, and financial support till such time as s/he becomes self-supporting, subject to the condition that s/he deposes truthfully in the Court. It is extremely necessary to provide protection to witnesses in India also, which could cover cases of national/State importance involving criminal syndicates/terrorists.

#### 5. Mode of Trial

The trial is generally held in the open court (section 297 CrPC). The court can, however, order in-camera trial if either of the two parties asks for it or the Court so desires (section 237(2) CrPC). Despite the express provision of law, the Supreme Court has discontinued this usage. It would be appropriate to legally mandate in-camera trial in organised/terrorist crimes.

#### 6. Confiscating Proceeds of Crime

The main object of organised crime is acquisition of money and through money, power. It is through money power that the gangs corrupt the criminal justice agencies and the political leadership. A stage comes when the criminal gangs put a question mark on the existence of the State. It has already started happening in small pockets of India. It is, therefore, essential to deprive the criminal gangs of their ill-gotten wealth via stringent legislative measures. The laws relating to confiscation of proceeds of crime are strewn in several statutes. Some of the important Acts relating to this are as follows :

- (a) Sections 102 and 452 of CrPC ;
- (b) Sections 111 to 121 of the Customs Act, 1962;
- (c) Sections 68 of the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (d) The Criminal Law (Amendment) Ordinance, 1944 (Ordinance XXXVIII of 1994);
- (e) Foreign Exchange Regulation Act, 1973 (Section 63) ;
- (f) Smugglers and Foreign Exchange Manipulations (Forfeiture of Property) Act, 1976 ; and

Notwithstanding the existence of the aforesaid legal provisions, it is common ground that organised criminal gangs have acquired huge assets. Annual turnover of Dawood Ibrahim gang is estimated to be about 2000 crores a year. Several Bombay smugglers have invested hundreds of

crores in real estate and other front businesses. This clearly shows an inadequacy of law. Hence, consolidation and strengthening of laws regarding seizure/confiscation of proceeds crime is essential. I must, however, add that the provisions in the Narcotics and Psychotropic Substances Act 1985, on the subject are quite stringent, but this Act is applicable only to drug related money and not to the money amassed through other crimes.

#### 7. Immunity from Criminal Prosecution

As per section 306 of the CrPC, on the request of a police officer or a public prosecutor, a court may tender pardon to an accused at the investigation or trial stage subject to the condition of making full and true disclosure of facts and circumstances concerning an offence. This provision is applicable in offences punishable with imprisonment of seven years or more. The witnesses are not keen to turn approvers (State witnesses) as they have to remain in jail till the conclusion of the trial. As the trials take years, there is little incentive for them accept immunity from the State. As the evidence in conspiracy cases is rather weak, approver testimony helps a lot in securing convictions. It is suggested that the law should be amended to the effect that the 'approver' will be released on bail soon after the conclusion of his testimony in the Court. This may encourage some accused to turn approvers.

#### 8. Presumptions against the Accused

An accused is presumed to be innocent until proved guilty. The entire burden is thus cast on the prosecution to prove the guilt of the accused. Silence of the accused in a given crime situation or his presence at the spot of crime at or about the time of the commission of crime is not presumed to be a circumstance against which he must explain. This casts unfair and un-

reasonable burden on the prosecution. The British Government has updated their laws by empowering the courts to draw adverse inferences against the accused in certain circumstances in Criminal Justice and Public Order Act, 1994. Keeping in view the low conviction rates in grave crimes in India, and the reluctance of witnesses to depose against organised criminal syndicates/terrorists, it would be of immense help to the prosecution to raise certain presumptions against the accused, including that the following<sup>38</sup>:

- (i) If the arms or explosives are recovered from the possession of the accused and there is reason to believe that similar arms or explosives were used in the commission of an offence, the Court shall presume that the accused committed the offence.
- (ii) If the fingerprints of the accused were found at the site of the offence on anything, including arms and vehicles, used in connection with the commission of an offence, the Court shall presume that the accused had committed the offence.
- (iii) If the co-accused has made a confession, the Court shall presume that the accused had committed the offence.
- (iv) If the co-accused has made a confession, the court shall presume that the accused committed the offence.
- (iv) If the accused had made a confession of the offence to any person other than a police officer, the court shall presume that the accused committed the offence.

#### 9. Need for Speedy Trial

It is said that justice should not only be done but should be seen to be done. Punishment should visit the crime within a reasonable time, otherwise the confidence of the public in the efficacy of criminal justice institutions will be shattered. India has been enacting and enforcing modern laws for over a century now and has evolved a fair and equitable jurisprudence.

Nevertheless, about 0.77 million criminal cases have been pending trial for over 8 years. This does not include cases pending in High Courts all over the country. The slow pace of trial adversely affects the conviction rate and witnesses suffer from memory loss or are not available. Even prosecutors and judges lose interest in old pending cases. Speedy trial can be achieved by streamlining the procedural laws; improving the quality of judicial manpower; increasing the number of courts and giving modern gadgetry to the courts. Co-operative disposition of the prosecutors and defence counsels is also essential. Besides, judges trying organised crime cases and the prosecutors handling them need to be given specialised training, and continuance in their respective offices ensured for a reasonable length of time.

## **B. Improving Co-ordination and Setting Up Specialised Units**

### **1. Setting Up National Level Coordinating Body**

India has a federal structure in which the States have the exclusive jurisdiction to investigate and prosecute criminal cases. The police forces in the States gather intelligence about organised criminal activities within their States and generally do not share it with other States or the central agencies. This insular attitude is equally true of central investigative agencies. It would, therefore, be advisable to set up a national level co-ordinating body outside the gamut of the present enforcement agencies. The main function of this body would be co-ordination between the police forces of different States and the Central investigative agencies. It would also conduct selective operations jointly with State Police Forces and Central enforcement agencies for nabbing the members of criminal gangs, including those living abroad and for seizure of their financial assets and arms. Further, this body would be responsible for collecting,

collating, analysing, documenting and acting as central exchange of information relating to international gangs operating in India, the Indian gangs operating abroad and major gangs operating in the States. It would also be the duty of the national body to keep selected major gangs under surveillance and collect intelligence regarding them. It would be expected to take up investigation of specific and important organised crime cases having inter-State and international ramifications, unmindful of the views of the State Government concerned. The body would also be responsible for sustained pursuit of selected gangs having national and international dimensions until such time as the gangs disintegrate and all important members are proceeded against under the law.

### **2. Setting Up of Organised Crime Wings in City Police Organisations**

Except for metropolitan cities, awareness about organised crime in the police force is very low. There is no system of collecting intelligence and pursuing investigations in a sustained and systematic manner. It is suggested that each State/Metropolitan force should have an Organised Crime Wing, the same at the State level as that of the apex body at the national level. The Chiefs of the Wing would keep in constant touch with the national body and their counterparts in other States/Cities.

### **3. Setting Up Organised Crime Cells at The District Level**

The district is the basic administrative unit in India. The work of police stations is supervised at the district level. However, there is very little awareness about organised crime, its dimensions, and the harmful effect it eventually has on the national economy and security, at the district level. As districts are the most fundamental operational units in the police

hierarchical structure, it would be useful to set up organised crime cells directly under the control of District Superintendent of Police. Their main job would be investigation of important organised crime cases, collection of intelligence against the criminal gangs and proper documentation about their activities. They would also keep surveillance upon important gangsters.

#### 4. Strengthening of Police Stations

Police stations are the pivotal points in the enforcement machinery. No specialised body like the National Co-ordinatory Body or organised crime wings at the State level can function unless the police stations work effectively. It is, therefore, imperative to strengthen the police stations in areas affected by organised crime. This would be possible only if they are equipped with well-trained personnel, good systems of communication and means for mobility as also modern gadgetry necessary for investigation.

#### 5. Common Database for Enforcement Agencies

No mechanism or institutional arrangement exists for collection of data regarding organised crime gangs either at the Central level or the State level. This hampers investigative efforts and planning. It is suggested that a common data base be built up and stored in a computer accessible to all enforcement agencies, through networking of the computers. National Crime Records Bureau could take up this job as it has the technical wherewithal to do so.

#### 6. Education and Training

One of the weakest links in the struggle against organised crime is education and training at the local level. Public administrators, who are aware that organised crime exists in their community, are not spending sufficient time in

educating and training citizens, law enforcement officers and other members in the criminal justice system. Consequently, local persons with interest in curbing organised crime are left to their own resources in securing information about those engaged in organised crime. There are three modes for transmitting information to those concerned with organised crime control. They are (i) education in academic institutions (ii) specialised training for law enforcement officers and (iii) greater public co-operation. To implement one mode of learning without the other will not produce the desired level of information about the criminal confederations.

It would be desirable to impart intense and highly select training to the police, probation officers, judges and public prosecutors about the impact of organised crime on the society, the intelligence system, the statutes relating to organised crime, technology for investigation and the various types of organised crime and strategies for combating it.

#### 7. Defending Honest Officers

There is strong evidence of a criminal-political nexus. The officers who have taken initiative to fight organised crime are sometimes transferred leading to their demoralisation. Crime syndicates by themselves or in concert with politicians sometimes launch a campaign of character assassination against honest officers, discrediting them. It would, therefore, be desirable that officers of integrity and professional competence be posted in organised crime prone areas and given a reasonable length of tenure, say 3 years. This would immunise them from the machinations of unscrupulous politicians and organised crime leaders.

### **C. Enhancing International Co-operation**

We are living in an era of "globalisation

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

of crime". Speedy means of communication enable the transnational criminals to flee from one country to another within hours after the commission of crime, and to organise crimes spanning continents via the telephone. Illicit trafficking in narcotics drugs, illicit immigration, proliferation of illicit arms and smuggling of contrabands are the main transnational crimes affecting India. According to Section 3 and 4 of the Penal Code, any Indian national committing a crime abroad is liable to be tried in India. Similarly, any foreigner committing a crime in India is also liable to be tried in India. It is not possible to bring the fugitive criminals to justice without cooperation of the countries where they are living. In fact, international cooperation is the key to suppress transnational crimes. The international cartels comprising of criminals of various ethnicity regions and religions require response by the international community. International cooperation may entail various legal and governmental interventions.

1. Speedy Extradition of Fugitive Criminals

Speedy extradition can be a very effective method of bringing the fugitive criminals to justice. Extradition proceedings presuppose the existence of an extradition treaty between the Requesting State and the Requested State. Extradition requests must satisfy the principles of dual criminality and speciality. Besides, the identity of the fugitive criminal must be firmly established by the Requesting State.

India has signed extradition treaties with several countries. Such countries fall in three categories. The first category consists of 33 Commonwealth countries with which India has extradition arrangements, even though no formal extradition treaties have been signed. In the second category falls countries such as Bhutan, Belgium, Nepal, Netherlands,

Canada, Switzerland, United Kingdom and USA with which extradition treaties have been signed. The third category consists of countries with which the treaties have been renegotiated. USA is one such country. Old treaty of 1931 with USA was renegotiated last year but is yet to be ratified. This Treaty provides for a 'political offence' clause, excluding some crimes such as murder of the Head of the State, aircraft hijacking offences, acts of aviation sabotage and crimes against internationally protected persons including diplomats, hostage taking and drug related offences etc. The Treaty also provides for a waiver clause which means that if the extraditee agrees to be extradited, the Requested State shall not go through the motions prescribed in law. India is negotiating extradition treaties with several countries, including the Russian Federation, Germany and UAE.

The basic problem with the extradition treaties is the 'political offence' clause. The world 'political' is open to varied interpretations both by the extradition courts as well as by the executive authority of the Requested State. Terrorist violence is often motivated by some kind of political considerations. If this logic is accepted, then it would not be possible to seek extradition of any fugitive terrorist from abroad. It may not be possible to totally exclude 'political offence' clauses from the existing treaties or the treaties which are under negotiation, but the scope of this clause should be narrowed down as much as possible. Article 1 of the SAARC Convention excludes certain terrorist offences from the 'political offence' clause viz, murder, manslaughter, kidnapping, hostage taking and offences relating to fire arms, weapons, explosives and dangerous substances. This principle could be adopted in bilateral and multilateral arrangements at the international level. This issue should be taken up in the international arena and effort made to narrow down the scope of

the 'political exception' clause, if not eliminate it all together.

India has succeeded in securing extradition of several notorious criminals including Om Prakash Srivastava from Singapore in 1995. We also succeeded in the securing extradition of two top terrorists from the USA last year. However, the case of another two is pending in the US courts since the last 10 years. Recently, two Karsen executives, namely, Tuncay Alankus and Cihan Karanci, involved in Rs.133 crores Urea import scam, were extradited to India from Sweden. India has also extradited certain criminals to the UK, USA and other countries.

As extradition is an important instrument to bring fugitive criminals to justice, the laws and procedures prevailing in different countries need to be standardised on the basis of the model extradition treaty drafted by UNO.

## 2. Deportation

It is our experience that extradition is a time consuming and lengthy process, where, apart from satisfying the legal requirements of the Requested State, the judicial requirements of a foreign court have also to be satisfied. On the other hand, deportation of an undesirable alien is swift and speedy. India had sought extradition of a notorious drug smuggler Iqbal Mirchi from UK in 1996 but the request was turned down as the Extradition Magistrate held that the evidence on record was not sufficient to establish a prima facie case. This often happens in transnational crimes wherein the principal offenders organise crimes through telephone systems in foreign lands. After the failure of the extradition proceedings, the Government of India cancelled his passport and, thus, he became an illegal alien in UK. Some countries have deported Indians back to the country on finding them without valid travel documents and we have also reciprocated in equal measure.

As deportation is one of the easiest methods of getting rid of undesirable elements, standardised and universally acceptable norms should be evolved in the international community in this regard.

## 3. Agreement on Mutual Legal Assistance

Assistance from foreign countries is often required for effective investigation and prosecution of transnational crimes. Help is required in the matter of collecting information; collecting evidence during investigation; identification and location of persons and service of documents on them; access to records of financial institutions; production of foreign witnesses; conducting searches and seizures; forfeiture of proceeds of crime (including money deposited in banks); transfer of prisoners to give evidence or assist in criminal investigations. Help is also sought from a foreign country in the execution of Letter Rogatories. India has enabling provisions in the Criminal Procedure Code (SECTION 105) in the above matter (166-A and 166-B of the Code) .

India's experience shows that the response from foreign countries, with few exceptions, has generally been positive. India has made Mutual Legal Assistance arrangements with several countries in the recent past. Some of the recently concluded Agreements on Mutual Legal Assistance are - India and UK (1992); India and Russia (1993); India and Bulgaria (1994); India and Canada (1994); India and Egypt (1995); India and China (1996) and India and Oman (1996). We are also in the process of signing Mutual Legal Assistance Agreements with Kazakhstan, Poland, Slovak Republic, Italy France, Hong Kong, Greece, and Georgia.

The agreement between India and UK provides for assistance in investigation and prosecution of crime and tracing, restraint and confiscation of the proceeds and instruments of crime (including crimes involving currency transfers) and terrorists

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

funds.

The agreement between India and Canada is quite comprehensive and covers all types of crimes, including crimes relating to taxation, duties, customs and international transfer of capital or payment. The assistance includes :

- (i) measures to locate, restrain, forfeit or confiscate the proceeds of crime ;
- (ii) taking of evidence and obtaining of statements of persons ;
- (iii) provision of information documents and other records including criminal and judicial records ;
- (iv) location of persons and objects including their identification ;
- (v) search and seizure ;
- (vi) delivery of property, including lending of exhibits ;
- (vii) making detained persons and others available to give evidence or assist investigations ; and
- (viii) Service of documents, including documents seeking attendance of persons.

Our arrangements with UK and Canada are working well. Canada has deported a terrorist to India recently. We also assisted the Canadians in the Kanishka Bomb Blast Case. Such bilateral agreements go a long way in effective investigation and prosecution.

#### 4. SAARC Convention for Suppression of Terrorism: Multilateral Arrangements

Apart from bilateral arrangements, India has also made multi-lateral arrangements for suppression of terrorism with its neighbors. India is a signatory to the South Asia Association for Regional Cooperation (SAARC) Convention for Suppression of Terrorism. SAARC countries consist of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. Pursuant to the SAARC Convention, India enacted the SAARC Convention (Suppression of Terrorism) Act,

1993. It is important to mention that in Article 1 of the SAARC Convention, terrorist activities have been excluded from the 'political offence' clause for the purposes of extradition. Extraditable crimes include unlawful seizure of aircraft; unlawful acts against the safety of civil aviation; crimes against internationally protected persons, including diplomatic agents; and common law offences like murder, kidnapping, hostage taking and offences relating to fire arms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property.

It would thus appear that SAARC Convention is an improvement on bilateral Extradition Treaties and Agreements on Mutual Legal Assistance in that the scope of 'political offence' has been drastically reduced.

#### 5. Role of Interpol

Interpol has serviced law enforcers all over the world in their fight against crime in last 75 years of its existence. 'The Red Corner Notice' for the arrest of fugitive criminals are generally executed by Interpol. Sometimes difficulty arises when the requested Interpol does not have enabling provisions in the domestic laws for effecting arrests. Section 41 of the Indian Criminal Procedure Code empowers a police officer to arrest on the basis of a Red Corner Notice. Similar provisions need to be incorporated in the criminal laws of countries where such provisions do not exist. Secondly, help in investigations is sometimes declined by some Interpols on the perceived ground of the offence being 'political' in character. This problem is going to persist in the foreseeable future but its impact can be drastically reduced if the principles enunciated in the SAARC Convention are adopted at the regional and even international level regarding grave offences i.e terrorism, organised crime etc.



#### **D. Political Commitment**

Incidence of organised crime is proportional to the will of the people to tolerate it. If there is strong political commitment, it can be suppressed by legislative action, strengthening of criminal justice system and building up of strong public opinion against it. Organised crime thrives when political commitment is lacking. The Vohra Committee Report has exposed the linkages between unscrupulous politicians and the criminal syndicates. A segment of politicians, cutting across party lines, are dependent on organised crime figures for financing their elections as well as giving them muscle power for rigging elections or overawing their political opponents. One of the ways of breaking the nexus between the criminals and politicians would be to enact stringent laws regarding election funding, with a view to preventing the tainted money from whatever source, including from the crime syndicates, seeping into the political system. Once this happens, people are likely to be elected to the State and National Parliament that would have no obligation towards the organised crime figures and are likely to have higher political commitment to stamp out organised crime. Another method would be to amend the election laws to prevent, apart from convicts, those against whom charges have been framed by the court in at least in two grave crimes, from running for elective offices. This would impel the political figures to keep themselves at a safe distance from the crime figures and thereby help in cleansing the political process. It needs to be reiterated that enforcement action, however efficient, is not by itself adequate to stamp out organised crime.

#### **E. Public Awareness**

The surest means of curbing organised crime is to involve people in its prevention and investigation and to build up public

opinion against it through the print and electronic media, workshops, seminars, and by socially boycotting organised crime figures. It is not unusual to see leaders of criminal syndicates acquiring Robin Hood images and becoming legends in their life time. Quite a few have become Members of the State Assemblies and the National Parliament. Some have become Ministers in the State Governments and occupy other elected offices. They can be prevented from occupying high political offices by heightened public awareness.

#### **F. Role of Mass Media**

Mass media-both print and electronic media-can play an important role in exposing organised crime and help build public opinion against it. Indian mass media has been doing this job quite well and everyday we read lurid accounts of the activities of crime syndicates in the newspapers and magazines. Notable newspapers and magazines have also taken to investigative journalism in this field. In this process, some media persons have suffered at the hands of the criminals but undaunted by it, they are going ahead with the exposes. This is a very heartening trend and must be encouraged.

### **XI. CONCLUSION**

Organised crime is first of all a domestic problem and, when unchecked, it assumes a transnational character. Organised crime succeeds so long as nations permit it to succeed. The first and foremost step in our control efforts should be to keep 'incident' or ordinary crime within reasonable bounds by keeping criminal elements under relentless law-enforcement pressure. If we succeed in this effort, we would have obviated or at least diminished the possibility of unattached criminal networks and the phenomenon of organised crime. Organised crime, depending upon its intensity, spread and dimensions, must

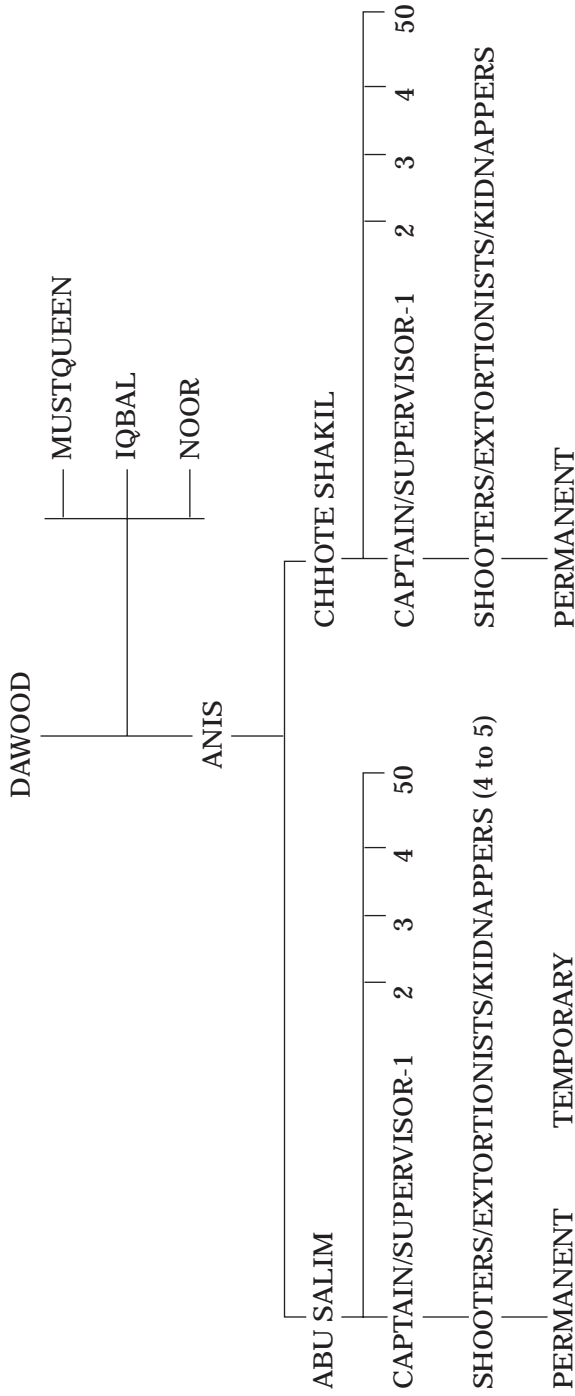
108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

be combated by a deft mix of strengthening of criminal laws and criminal justice system; institutionalising a national and State level co-ordinating mechanism and involving the mass media in control efforts. Law enforcement, however efficient, cannot succeed by itself without strong political commitment. This pre-supposes exclusion of criminal elements and their political sympathisers from elected public offices. As organised crime is for the acquisition of money power, it is imperative that the flow of money to organised criminal groups is dried up through stringent legislative and enforcement action.

A democracy has inherent infirmities which manifest themselves in the functioning of criminal justice agencies. Despite best efforts, domestic crime is likely to spill into the international arena and often does. Hence, the need for international co-operation in suppressing it in the form of expeditious extradition of fugitive criminals, deportation of undesirable aliens; mutual legal assistance in investigations and prosecutions and speedy execution of Red Corner notices issued by Interpol. Further, the international community must put their heads together to harmonise extradition and deportation laws and to narrow the scope of 'political offences' in extradition laws and the Interpol charter.

The fight against organised transnational crime is a formidable task, but heightened public consciousness, increasing governmental concern and mutually dependent interests of the international community do give us a ray of hope.

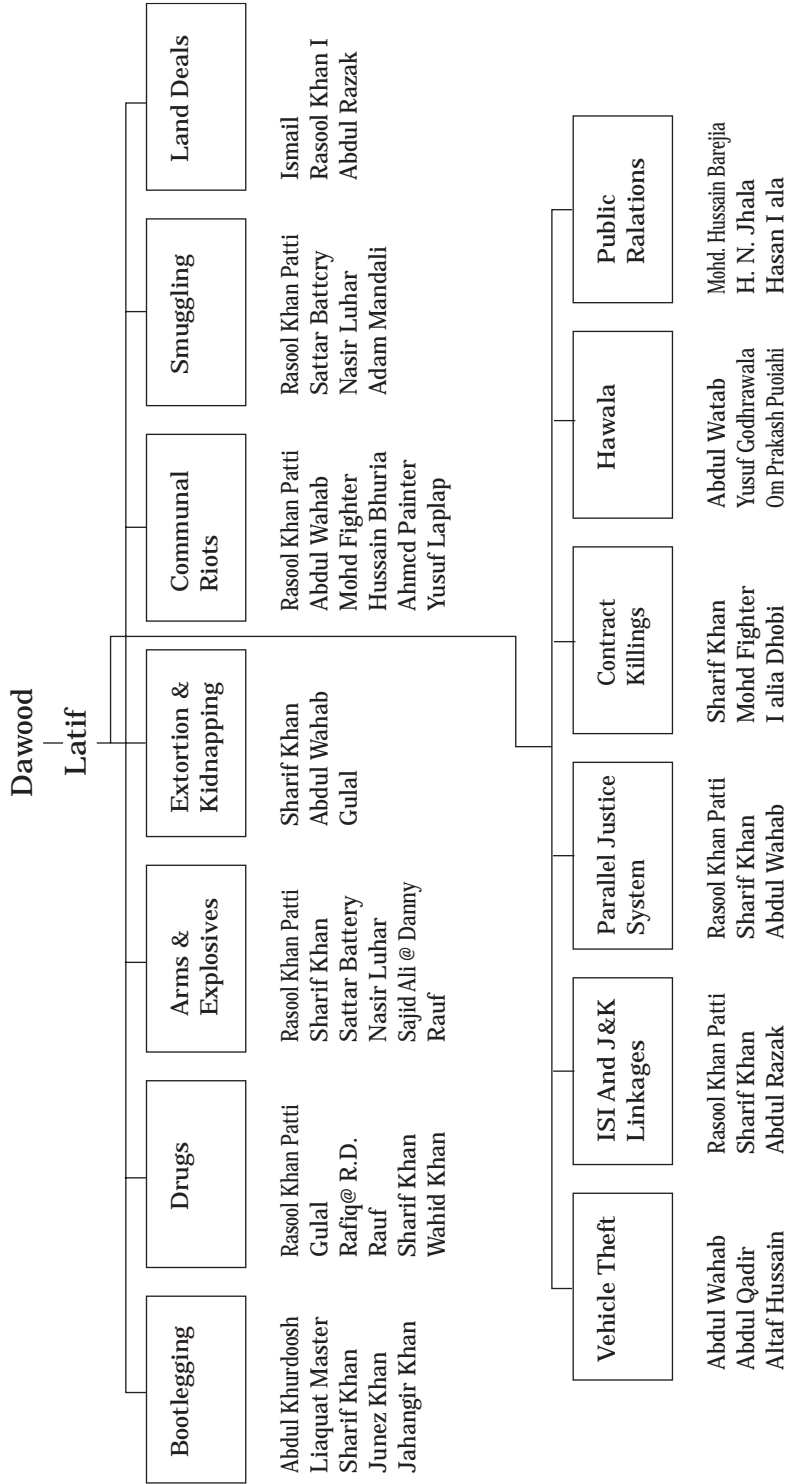
**APPENDIX I**



- (1) PERMANENT MEMBERS PAID ON MONTHLY BASIS-work or no work.
- (2) TEMPORARY MEMBERS PAID ON JOB BASIS.
- (3) WEAPONS ISSUED THROUGH INTERMEDIARIES FOR JOBS AND RETURNED WHEN JOB IS OVER.

APPENDIX II

ORGANISATIONAL CHART



RESOURCE MATERIAL SERIES No. 54

**APPENDIX III**

COUNTRY	Gun Running	Militancy/ Terrorism	Narcotics Trafficking	Crime
Australia	✓	✗	✓	✓
Cambodia	✓	✓	✓	✓
Indonesia	✗	✓	✓	-
India	✓	✓	✓	✓
Japan	✓			
Macau	✓	✗	✓	✓
Malaysia	✓	-	✓	
Myanmar	✓	✓	✓	✓
Phillipines	✓	✓	✓	-
Sri Lanka	✓	✓	✓	✓
Taiwan	✓	✗	✓	✓
Thailand	✓	✗	✓	-
Latin America	✓	✓	✓	✓
Central America	✓	✓	✓	✓
United States	✓	✓	✓	✓
Vietnam	✓	✗	✓	✓

(Sources:Patterns of Global Terrorism, US State Department, International Narcotics Control Strategy Report.)

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

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7. Criminal Justice : Problems and Perspectives by S. Venugopal Rao (page 131).
8. Task Force Report - The Presidents' Commission on Law Enforcement Administration of Justice, 1967 (page 1).
9. Formation of Criminal Gangs in Big Cities by VK Saraf, former Commissioner of Police, Bombay (unpublished study sponsored by the Government of India).
10. Kefauver Committee concluded that :
  - (a) There is a nationwide crime syndicate known as the Mafia, whose tentacles are found in many large cities. It has international ramifications which appear most clearly in connection with the narcotics traffic.
  - (b) Its leaders are usually found in control of the most lucrative rackets in their cities.
  - (c) There are indications of a centralised direction and control of these rackets but leadership appears to be in a group rather than by a single individual.
  - (d) The Mafia is the cement that helps to bind the Costello-Adonis-Lansky syndicate of New York and Accardo-Guzik-Fischeddi syndicate of Chicago as well as smaller criminal gangs and individual criminals throughout the country. These groups have kept in touch with Luciano since his deportation from this country.
- (d) The domination of the Mafia is based fundamentally on 'muscle' and 'murder'. The Mafia is a secret conspiracy against law and order which will ruthlessly eliminate anyone who stands in the way of its success in any criminal enterprise in which it is interested. It will destroy anyone who betrays its secrets. It will use any means available-political influence, bribery, intimidation etc. to defeat any attempt on the part of law enforcement to touch its figures or to interfere with its operations".
11. Op. cit note 8 (page 1)
12. The Politics and Economics of Crime by Herbert E. Alexander and Gerald E. Caiden (page 9). The Task Force listed the following seven characteristics of organized crime:
  - (i) "Organised crime is a conspiratorial crime.
  - (ii) Organised crime has profit as its primary goal.
  - (iii) Organised crime is not limited to illegal enterprises or unlawful services but includes sophisticated activities as well.
  - (iv) Organised crime is predatory, using intimidation, violence corruption and appeals to greed.
  - (v) Organised crime's conspiratorial groups are well disciplined and incorrigible.
  - (vi) Organised crime is not synonymous with the Mafia but knows no ethnic bounds.
  - (vii) Organised crime excludes political terrorists, being politically conservative, not radical."
13. Organised Crime : Concept and Control by Denny F. Pace and Jimmie C. Styles (page 248).
14. Op cit note 12 (page1).
15. The Presidents Commission on Organised Crime, 1986 (pages 26-32).
16. Section 2 of the Act defines a gang as :

“Gang means a group of persons, who acting either singly or collectively by violence or threat or show of violence or intimidation or coercion or other unlawful means, with the object of gaining undue political, physical, economic or other advantage for himself or any other person, indulge in anti-social activities, namely:

- (i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the IPC ; or
- (ii) distilling, manufacturing, storing, transporting, importing, exporting, selling or distributing any liquor or intoxicating or dangerous drugs or other intoxicants or narcotics or cultivating any plant in contravention of any of the provisions of the UP Excise Act, 1910 or the Narcotics, Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force; or
- (iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting up false claims for title or possession of immovable property whether in himself or any other person; or
- (iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties ; or
- (v) offences punishable under the Suppression of Immoral Traffic in Woman and Girls Act, 1956 (Act No.104 of 1956) ; or
- (vi) offences punishable under section 3 of the Public Gambling Act, 1867 ; or
- (vii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith ; or

- (viii) activities enumerated in clause (b) of Section 2 of the Uttar Pradesh Control of Goondas Act, 1979 ; or
- (ix) offences punishable under section 171-E of the Indian Penal Code or in preventing or obstructing any public election being lawfully held by physically preventing the voters from exercising electoral rights ; or
- (x) inciting others to resort to violence to disturb communal harmony ; or
- (xi) creating panic, alarm or terror in public ; or
- (xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties ; or
- (xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country ; or
- (xiv) kidnapping of abducting any person with intent to extort ransom ; or
- (xv) diverting of otherwise preventing any aircraft or public transport vehicles from following its scheduled course.”

A gangster “means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities, or harbours any person who has indulged in such activities.”

- 17. The Indian Mafia by S. K. Ghosh.
- 18. Ibid.
- 19. Ibid.
- 20. Formation of Criminal Gangs in Major cities by VK Saraf (an unpublished study sponsored by the Government of India).
- 21. Ibid.

108TH INTERNATIONAL SEMINAR  
VISITING EXPERTS' PAPERS

22. Based on the data collected from the Office of the Commissioner of Police, Delhi.
23. Based on the report of Joint Task Force, Karnataka.
24. Based on a paper prepared by this author (unpublished).
25. Based on a report prepared by the Office the Commissioner of Police, Ahmedabad.
26. Based on the investigation conducted by CBI.
27. Narcotics Control Bureau Report (1995).
28. Data compiled by the Departmental of Revenue, Government of India, New Delhi.
29. Ibid.
30. Ibid.
31. Ibid.
32. Uncivil Wars by Med Marwah (page 390).
33. Ibid.
34. Paper on 'Proliferation and Smuggling of Light Weapons within the Region' by Tara Kartha Reseach Fellow, IDSA, New Delhi.
35. Op cit. note 32.
36. Op cit. note 17.
37. Based on a paper published by the author titled 'Crime Scenario in India : Need to Strengthen Criminal Laws' in CBI Bulletin (1996).
38. Such presumptions could be raised under Section 21 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, which was allowed to lapse in 1995 and has not been substituted by another anti-terrorism law.