

Transnational Organised Crime: Challenges to Criminal

Justice Functionaries

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1. Introduction

With the changing social structure from simple to complex, crime trends are also changing. Traditional crimes like Thuggee (a crime that used to be committed in ancient India where groups of offenders with prior planning used to attack travellers in the forest who used to travel from one to another place by foot), robbery etc. have taken the shape of organised crime. Organised offenders have been committing crime with prior planning using a complicated modus operandi (method of committing crime). In India, after independence (India became independent on 15th August, 1947), due to prohibition policy adopted by the State of Maharashtra, bootlegging, the trade in illicit liquor, became a lucrative business for the criminal gangs. They started making money by supplying liquor through illegal means to the local citizens in Mumbai. Varada Rajan Mudaliar, one of the noted criminals who started his career as a porter at VT (Victoria Terminus) now known as CST Railway Station in Mumbai took to thievery at the Mumbai Docks and graduated to bootlegging in the 1960's (Purshottam, S. 2000). He acquired considerable wealth through this activity. In the mid 1980's, he became so influential that he used to hold 'durbars' (a Hindi term for holding a meeting under the leadership of one person where the head listens the problem of people and gives orders) in his areas of influence to settle disputes (Zaidi, S. 2012).

Thereafter, big Mafia, namely Dawood Ibrahim (from here on referred to as Dawood), started as a petty offender and became a noted member of the Mafia in 1970s. He took to smuggling gold and silver and started committing crimes on a large scale with his brothers.

In the 1980s, Dawood became the most feared gangster of Mumbai. He later relocated to Dubai out of fear of Law Enforcement Agencies in India (Purshottam, S. 2000). Chota Rajan, another organized crime offender and mobster who served as the boss of a major crime syndicate based in Mumbai started his career with Dawood's gang in Mumbai. Later, he left Dawood's gang and formed his own gang in the year 1994-95. Amar Naik, another gangster, started operating in Mumbai in the year 1980. There were around 200 criminals in his gang. Amar Naik was killed, and his brother is now looking after the gang (Sarkar, S., n.d.).

Later, Delhi, being the capital of India, has become a centre of organized crime. Kidnapping for ransom is a lucrative business for organized crime offenders in Delhi. In addition, land grabbing and murder have also become the part of their criminal activity. Rate of ransom ranges from 10 to 50 million rupees (Sinha, M. 2020). Srivastava alias Babloo, a law graduate, leading a gang of 50 members, had been an active member of organized crime in Delhi with transnational linkages (Combating Organised Crime: A case study of Mumbai City n.d.).

In addition to this, globalization, urbanization and industrialization have helped organised crime offenders to develop transnational links. Slowly and gradually, organised crime offenders have spread their activities all over the country. At the transnational level, Europol reported the presence of at least 3,600 internationally operating Organised Crime Groups (OCGs) in 2013, in European Union only (Europol identifies 3600 organised crime groups in the EU 2013). In 2017, approximately 5,000 organised crime groups having transnational connections are reported to be operating in countries of the European Union (World Drug Report 2017). The global market for illicit firearms is estimated at US\$170-320 million per year. Around 2.5 to 3 million migrants are smuggled from Latin America to the United States of America every year, generating US \$6.6 billion profit to the smugglers (UNODC 2010).

The cost to the global community caused by transnational organised crime offenders includes not only the loss of billions of dollars, the loss of life and physical injuries, but also threats to the security of sovereign nations (Berg.J 1998) and posing serious challenges to criminal justice functionaries conducting investigations and prosecutions of such cases.

2. Methodology

Against this background research was conducted by the author to identify the challenges faced by criminal justice functionaries in the investigation and prosecution of transnational organized crime offenders in India. While identifying problems and constraints in the investigation and prosecution of transnational organized crime cases, factors behind the increasing rate of such crimes were also analysed. Data was collected from various stakeholders involved in the investigation and prosecution of transnational organized crime in the two metropolitan cities of Delhi and Mumbai.

3. Meaning and definition of organized crime

The first and foremost issue involved in handling organized crime cases is the ambiguity in the definitions used by various agencies. According to Block, organized crime offenders have “both a social system and a social world. The system is composed of relationships binding professional criminals, law enforcers and various entrepreneurs” (Block, A. 1983). Article 2 of the United Nation Convention Against Transnational Organized Crime provides that an “organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this convention, in order to obtain, directly or indirectly, a financial or other material benefit” (UNODC 2018).

Interpol defines organized crime following the definition given by the United Nations Convention against Transnational Organized Crime that “any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption” (Bresler 1993).

In addition to this, section 2(i) (e) of The Maharashtra Control of Organized Crime Act, 1999, India, herein after shall be abbreviated as (MCOCA) (The Maharashtra Control of Organized Crime Act 1999), defines that “organized crime means any continuing illegal activity by an individual singly or jointly either as a member of Organized crime syndicate or on behalf, such syndicates, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary or other undue economic

or other advantage for himself or any other person or promoting insurgency (The Maharashtra Control of Organized Crime Act 1999)".

"Continuing illegal activity" means that more than one charge sheet should have been filed against the suspect in proceeding 10 years and cognizance had been taken. Only then the case may be investigated under The Maharashtra Control of Organized Crime Act, 1999, India, against such accused (section 2 (1) of MCOCA) (The Maharashtra Control of Organized Crime Act 1999).

Based on the above definitions, the following major **characteristics** of organized crime have emerged:

3.1 Continuity

The criminal group operates beyond the lifetime of individual members and is structured to survive even if the leadership changes. The gang remains continuously involved in criminal activity.

3.2 Structure

The criminal group is structured as a collection of hierarchically arranged, interdependent persons devoted to the accomplishment of a particular function. It entails distinguishable ranks based on power and authority. These groups are not formed on a temporary basis but exist for a long time. United Nation Convention against Transnational Organized Crime also provides that structured group shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership is important (UNODC 2000).

3.3 Membership

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 significant scrutiny and are required to prove their worth and loyalty to the criminal group. The rules for members 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 and a certain prestige.

3.4 Criminality

The criminal group relies on continuous criminal activity to generate income. Thus, ongoing criminal conspiracy is inherent in organized crime. Some activities such as supplying illegal goods and services directly produce revenue, while others including murder, intimidation and bribery contribute to the group's ability to earn money and enhance its power. The criminal group may be in legitimate as well as illegitimate business activity at the same time..

3.5 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 well as against outsiders to protect the economic interests of the group. Members are expected to commit, condone, or authorize violence.

3.6 Conspiracy

Organized crime is conspiratorial in nature. Members of the syndicate engage in criminal activity after having consensus of its members. It is committed through planning and coordination of individual efforts with prior meetings. Conspiracy is hatched in all the criminal activities. As a matter of principle, in prior planning all the members should be involved into conspiracy. However, in reality only people holding higher posts know what crime has to be committed, sometimes even the criminal working at the grass-roots level does not know who the boss is. The head of the organization issues orders to the person who is second in command who in turn may instruct others to commit the crime.

3.7 Specialist support

Organized criminal groups and their protectors rely on skilled individuals or specialist support to assist in the attainment of the groups' goals. The specialist assists the criminal groups on an ad-hoc basis and not permanently. They are nonetheless considered part of organized crime. The specialist includes pilots, chemists, arsonists, hijackers, shooters etc.

3.8 Corporate structure

Organized crime functions like a corporation. They appoint a leader who assisted by other members in hierarchical structure. Members are appointed on the basis of skill, relationship with existing members etc. Group continuously remains engage into committing crime.

4. Forces operative behind preparation of organized crime

4.1 Sociological causes

Criminal behaviour is closely linked with the society it occurs in. Organized crime is a normal response to pressure exerted on people due to changing social structures wherein institutional control becomes less effective. According to R. K. Merton 'innovation', a non-acceptable means to achieve the goal is adapted by some persons who are not able to bear the pressure when social change takes place (Merton, R. K. 1968). The views of Merton are supported by 96.6% of respondents who stated that lack of institutional control was most prominent reason for increasing trend of organized crime (Sinha, M. 2021). They further elaborated that institutions includes family and society. Due to increasing demands for costly goods, sometimes the head/bread earner of the family is not able to earn money as per the demand of the family members and indulges in illegal activity and becomes a member of organized crime gang to earn money (Supported by 80% respondents (Sinha, M. 2021).

Besides, institutional control of crime is also linked with particular areas. There might be illegal supply of liquor in the places where its supply was prohibited. There might be demand for brothels in the area where migrant labourers had been living that came to earn money leaving family behind.

Not only this, but organized crime racketeers learn the technique of committing crime in close interaction with other criminals (Southerland, E. H. 1992). The idea of Sutherland was supported by 59.1% of respondents stated that large number of petty offenders become habitual offenders and involved in committing serious crimes after coming out of prison because they learn the technique to commit crime while interacting with co-prisoners in jail (Sinha, M. 2021).

It is concluded that not only social causes are responsible for the increasing rate of organised crime, organised crime is increasing due to other reasons also.

4.2 Economic factors

Steven F. Messner and Richard Rosenfeld (2001) believe that the desire to succeed economically becomes so strong in some society that other social institutions lose their ability to control behaviour. Therefore, poor criminals are becoming rich easily. The idea of Messner is supported by 96.6% of officials in Mumbai and 88.7% of respondents in Delhi (Sinha, M. 2021). They said that the Mafia had been paying large sum of money to the offenders involved in committing crime on their behalf. In addition to this, destitutes who did not get proper employment were more vulnerable to get involved in commission of organized crime, large number of respondents said (87.7%). Not only this but 32.2 % officials in Mumbai and 59.3% officials in Delhi considered demand of goods and services as one of the reasons for increasing rate of organized crime cases. Every destitute does not become organised crime offender. Other dimensions are also contributing to the criminal activity (Sinha, M. 2021).

4.3 Psychological Factors

Organized crime may be committed by a person having a weak superego. According to Sigmund Freud, for people whose superego is strong, it prevents them from committing anti-social acts. But people whose superego is weak they adopt anti-social behaviour and commit crime. People having weak superego if come into the contact of criminal group, they easily get involved into criminal activity (told by more than 78.5% respondents) (Sinha, M. 2021). Many offenders even having strong superego also indulge into crime when there is weakness in laws and policy.

4.5 Legal and Administrative Reasons

According to Hirschi, 1969 (Hirschi, T. 1969), the crime is committed when individuals' bond to society is weak either by internal or external restraints. External restraints include fear of punishment. The view of Hirschi was supported by 90.8% of criminal

justice functionaries who opined that organized crime has been increasing due to lack of proper implementation of laws (Sinha, M. 2021). Besides this, 90.2% officers revealed that complicated and time-consuming legal procedures are also the biggest loophole in the Criminal Justice System weakening the external restraints and as a result a large number of cases end in acquittal, reducing the fear of punishment. Once the fear of punishment is reduced, crime rates increase (Sinha, M. 2021).

5. Challenges to Criminal Justice Functionaries in handling transnational organized crime

The reduced fear of punishment and the transnational dimension of organized crime is causing multiple problems to criminal justice functionaries in the investigation and prosecution of such crimes. The problem of criminal justice functionaries is aggravated if offenders abscond to a foreign country after committing crimes, evidence is available in the foreign country, witnesses may be available in the foreign country, property purchased out of the proceeds of crime is available in the foreign country, and illegal money is kept in foreign banks.

To reduce the constraints of criminal justice functionaries, the United Nations have adopted the United Nations Convention against Transnational Organized Crime on 15 November, 2000. In addition, the Model Treaty on Extradition (UNODC 1997), Model Treaty on Mutual Assistance in Criminal Matters (MLAT) (UNODC 1990) had already been adopted by the General Assembly of United Nations. INTERPOL provides a unique range of essential services for the law enforcement community to optimize the international effort to combat transnational crimes, yet the criminal justice functionaries are facing constraints.

5.1 Constraints in Sharing of Data Base

If offenders abscond to a foreign country after committing crimes and data relating to crime is available in foreign nations, sovereign nations are mostly reluctant in sharing such databases under the pretext of inconsistency with domestic legislation (80% respondents disclosed) (Sinha, M. 2021) despite there being a provision under Article 1 of The United Nations Convention against Transnational Organised Crime that sovereign nations should foster

and enhance close international cooperation in order to tackle the crime. Further, Article 3 of the Convention mandates that member countries should provide the widest measure of mutual assistance to one another in investigation, prosecution and judicial proceedings in relation to the offence committed by foreign nationals. This indicates that existing United Nations instruments are not implemented even by member nations. The United Nations should organise workshops where representatives of member countries may express the ways and means for sharing such data bases.

5.2 Issues in Joint Investigation in Foreign Nations

Article 19 of the United Nations Convention against Transnational Organised Crime provides that sovereign nations shall enter into bilateral or multilateral agreements for establishing joint investigation bodies in collaboration with foreign nations to handle transnational crime cases.

Yet, 65 % of respondents informed that the governments of the foreign countries where the investigation is to be conducted do not permit access of records to the joint investigation team consisting the members of foreign nationals (Sinha, M. 2021). Not only this, but controlled delivery and undercover operations are also not successfully conducted because permission for undercover operation and controlled delivery is refused by foreign states (80% of respondents disclosed) (Sinha, M. 2021). Stakeholders further elaborated that sovereign nations did not want to take a risk as both the operations are risky.

For example, on 13 June, 2011, French authorities requested Moroccan national security agencies to organize a controlled delivery, to arrest a criminal organization involved in drug trafficking between Morocco and the Paris region in France. French nationals were appointed to supervise the transport of an unknown amount of controlled drugs, concealed as oil cargo. Avan was closely monitored until reaching the location of the cargo's unloading. 11 people were apprehended, and cannabis was seized while in another case in the United States of America, a young lady, Rachel Hoffman, was caught in a raid by police forces possessing cannabis with intent to sell and maintaining a drug house. She was made an undercover agent by the police. While conducting a major undercover operation for the Tallahassee police, she was killed

and her body was found in Perry, Florida. She was not trained in handling undercover operations. The above examples show that in some cases, the undercover operation is conducted successfully, in other case it may not be successful. In this situation, it is observed that there are certain situations wherein such risk has to be taken. But undercover agents should be trained properly before being sent on such missions. Any person having no experience should not be made an undercover agent (UNODC 2011).

5.3 Problems in Victim & Witness Protection in foreign nations

Article 24 of the United Nations Convention against Transnational Organised Crime mandates that each State party shall take appropriate measures for witness and victim protection. But the situation is different sometimes due to differences in legislations of various countries and lack of infrastructure; many sovereign nations are not able to provide protection to victims and witnesses belonging to foreign nations, informed by 50% shareholders (Sinha, M. 2021). Not only this, but many times foreign nations do not co-operate in recording testimony of witness through video conferences. Only in 30% of cases the shareholders were able to get cooperation from requesting nations while getting testimony recorded through video conferencing and relocation of witnesses. As a result, cases are resulting in acquittal.

For example, in *Jag Mohan @ Mohar Singh v/s Commissioner of Police Delhi* (*Jag Mohan @ Mohar Singh vs Commissioner Of Police And Ors 2006*) the accused was acquitted in six cases out of seven pending trial either due to witnesses turned hostile or killed. Thus, there is a dire need to formulate strategies for written protections following the guidelines of Article 24 of the United Nations Convention against Transnational Organised Crime.

5.4 Difficult to obtain Information of Offenders and Property in Foreign Nations

There is a provision under Article 26 of the United Nations Convention against Transnational Organised Crime that each state party shall encourage to supply information useful for investigative and evidentiary value to the investigator belonging to a foreign

state. But the reality is different. 60% respondents informed that mostly on the pretext of administrative reasons foreign nation do not share data specially relating to nationals of their country, involved in crimes (Sinha, M. 2021). Many times, this is due to a lack of time among the persons involved in investigation of crime relating to foreigners in the requesting nation. Sometimes, foreign nations do not want to disclose the information about the offender. This causes delays in the investigation and makes it difficult for the investigating agencies to find the clue about the actual culprit. The issue should be resolved with discussions among the concerned agencies of various nations.

5.5 Constraints in Examining Objects, Sites and Recording Statements of Witness in Foreign Countries

Article 1 (e) of the Model Treaty on Mutual Assistance in Criminal Matters permits mutual assistance in examining objects, sites and recording statements of witnesses in foreign nations. Despite this, more than 60% of stakeholders revealed that in large number of cases requested nations refused the permission to examine objects and sites relating to organised crime suspected to be committed in their country on the pretext of prejudicing the sovereignty, security and public order of the requested state, if they do not want to provide assistance to the requested nation (Sinha, M. 2021). 75% of investigating officers found it difficult to record statements of witnesses (Sinha, M. 2021). They further elaborated that, if the permission to conduct investigation is given by the concerned authorities in foreign country after lot of persuasion, investigating officers are not able to record statements of witnesses due to non-cooperation from witnesses. As a result, cases remain pending for investigation. The United Nations should provide a forum to the member states wherein sovereign nations may discuss issues and try to find ways and means for cooperation.

5.6 Difficult to get Documentary Evidence from Abroad

75% of respondents informed that it is difficult to obtain documentary evidence from a foreign country because time taken to obtain judicial order for obtaining document from abroad is too long and 80% of respondents elaborated that banks in the foreign

nations are reluctant to give information on the ground of secrecy (Sinha, M. 2021). After long struggle even if the permission is granted and banks provide information it is not possible to receive evidence in legally acceptable form as required by the court of law in the requesting nation. 91.7% of investigating officers further clarified that authorities in foreign countries are not aware of the legally accepted form of producing evidence required by the requesting nation though Article 6 of Model Treaty on Mutual Legal Assistant in Criminal matters (herein after it will be abbreviated as MLAT) provides that the request for mutual assistance shall be carried out promptly, in the manner provided by the law and practice of the requested state (Sinha, M. 2021). This shows that even in treaty state Article 6 of MLAT is not implemented in its true spirit.

5.7 Difficulty in arresting Fugitive Criminals

If the accused absconds to a foreign country after committing crime a Red Corner notice is issued by INTERPOL to the locate foreign nations where the fugitive criminal. In many countries Red Corner Notice is not treated as arrest warrant. For example, in *Bhavesh Jayanti Lakhani v. State of Maharashtra* (Bhavesh Jayanti Lakhani v. State of Maharashtra 2009) it was laid down by the court that arrest in India is not automatic in case of Red Corner Notice and a fugitive criminal can only be apprehended according to the provisions of the Extradition Act, 1962. A Red Corner notice per se does not give equal the status of an arrest warrant. It is merely a request of the issuing authority to keep surveillance on the person and provisionally or finally arrest the wanted person for extradition. This type of problem occurs due to differences in domestic legislation of requesting and requested nations. The United Nations should issue guidelines in this regard.

5.8 Non-Sharing of Analytical Expertise

Article 28 of the United Nations Convention against Transnational Organised Crime provides that each State party shall analyse trends of organized crime in its own territory with the help of academic and scientific communities. It further, provides that after analysing the trend its outcome should be shared among various nations. Many sovereign nations do not share data collected and analysed, by academic communities in their country relating to

organised crime offenders on the pretext of confidentiality (70% respondents told) because sovereign nation might not be clear whether they should share data or not (Sinha, M. 2021). The United Nations should hold workshops and sensitize sovereign nations so that sovereign nations may share such data with foreign nations and data should also be uploaded on United Nations website also.

5.9 Delay in Extradition

Extradition of offenders is complicated and time consuming and without satisfying the requirements of domestic legislation of the requested States, offenders cannot be extradited. According to Article 16 (8) of the United Nations Convention against Transnational Organised Crime, state parties must subject to their domestic laws endeavours to expedite extradition procedures and to simplify evidentiary requirements situation is different. But the noted organised crime offender (Abu Salem) started his criminal carrier from 1989 as a driver for the Dawood Ibrahim gang in India. He used to deliver weapons, illegal cash and goods to different gang members in Mumbai (India) and became a member of the organised crime mafia. He played an active role in left in Mumbai serial blasts case in India and moved to Dubai when good number of cases were registered against him including the Mumbai serial blasts case. On 18.09.2002, Abu Salem was detained by Portuguese police at Lisbon on the basis of Red Notice. In December 2002, the government of India requested his extradition. The request was made on the basis of International Convention for the Suppression of Terrorist Bombings and on the assurance of reciprocity. Portugal and India are both signatories to the abovementioned Convention. In 2004, a court in Portugal agreed to extradite Abu Salem on the condition that he should not be prosecuted for offences other than those for which his extradition was sought. He also should not be re-extradited to any their country, and he should not be given death penalty. Pending his extradition, the Portuguese court sentenced Saleem to four years imprisonment for illegally entering and staying in Portugal on the basis of a forged passport. The court also ordered that his extradition could be made only after he completed his prison term in Portugal. During this period, Abu Saleem tried to get his extradition delayed on various ground including seeking political asylum.

After lot of persuasion, he was finally handed over to the government of India on 10.11.2005. Abu Salem was convicted and sentenced to life imprisonment by an Indian court on 16 June, 2017 in connection with the 1993 Mumbai blasts case (WIKIPEDIA 2021) Delayed extradition is causing hindrance in the trial of the offender. Not only this, offenders take the advantage and they do manipulate witness which leads to acquittal of cases. Sovereign nations should join hands together to expedite extradition procedure. United Nations should issue guidelines fixing time frames for the extradition of the offender.

5.10 Non- Fulfilment of the Principal of ‘Dual Criminality’

Extradition of criminals from requested nation to the requesting nations sometimes becomes difficult due to non-fulfilment of the principal of ‘Dual Criminality’ (70 % of respondents informed) despite, there being a provision that fugitive criminal shall be extradited to the requesting nation upon request by the treaty state (Article 1 of the Extradition Treaty).

Generally, foreign nations refuse extradition on the basis of particular offences. They do not see the elements of the offence. For example, in India killing someone may be defined as murder while in France it may be defined as culpable homicide. Therefore, sovereign nations should see the ingredients of a particular offence before deciding whether the requirement of dual criminality is fulfilled or not.

5.11 Refusal of Extradition on the Ground of Violation of Human Rights of Fugitive Criminal in prison

Around 70.2% of respondents informed that extradition is refused on the pretext of torture and inhuman and degrading treatment of criminals in prisons of requested nations. For example, a key accused involved in a cricket match fixing case which was played between India and South Africa in the year 2000 could not be extradited at the first instance (Sinha, M. 2021). District judges in requesting country presumed that the condition in Indian prisons was not good. Therefore, the suspects human rights would be violated. Though the judge in South Africa found a prima facie case against the suspect over his role in the fixing of “cricket matches played between India and South Africa in

February – March 2000". Thereafter, an assurance was given by the government of India that the suspect shall be accommodated in an exclusive cell in Indian prison after extradition wherein he would be safe and secure. Then, on 27 February 2019, the suspect could be extradited to India (Sanjeev Kumar Chawla vs The State 2020). There is no such provision either under the Extradition Treaty or under the MLAT that extradition could be refused on the grounds of prison condition of requesting nation. These types of situation should be tackled in mutual discussions among the requesting and requested nations.

5.12 Refusal of Extradition on Optional Grounds

States can refuse extradition of fugitive criminals on optional grounds under Article 4 of the Extradition Treaty. It provides that extradition could be refused if 1) the requested state decides not to institute or to terminate proceedings against the offender; 2) the offence is punishable with death penalty; 3) the offender has been sentenced or would be liable to be sentenced or tried in the requesting state by an extra-ordinary ad-hoc court; 4) extradition would be incompatible with humanitarian considerations. But the reality is different. In many cases it is seen that extradition is refused on optional grounds without assigning any proper reasons or without prior discussion with the requesting nation (80% respondents opined). If prior discussion takes place, matter is sorted out and extradition may be granted because the grounds mentioned above are not compulsory but discretionary.

Prosecuting authorities and other bodies responsible for making extradition requests in foreign nations should be aware of the possibility (and where possible the likelihood) of refusal of a request on any of the optional grounds in a particular case (UNODC 1997). The authorities of a state seeking extradition might contact the central or competent authority of the requested State in advance to discuss the likelihood or potential ground for refusal which might be invoked and determined if it is possible to overcome it. Once such consultations had taken place, a decision could be made on whether to make an extradition request.

5.13 Lack of guidelines to surrender offender if concurrently demanded by two countries

If the same person is concurrently requested for extradition by two states, the requested state may decide at its discretion to which of the requesting states the person is to be extradited (Article 16 of the Treaty). Due to lack of guidelines extradition under this situation solely depends on the discretion of the requested state. Usually, states extradite the person on the basis of the relationship of the two countries. There should be proper guidelines on this issue in case of concurrent request by two nations.

5.14 Difficult to get offender extradited in emergency situations

Many times, arrest is delayed by foreign nations on non-supply of information. 70.5% respondents found it difficult to supply information in the required format of the foreign state leading to delayed arrests (Sinha, M. 2021). While under Article 9 of the Extradition Treaty in emergency, the requesting state may apply for provisional arrest of the fugitive criminal but in practice requested nations do not get convinced to extradite the offender without getting the required information from the requested nation in the prescribed format according to the guidelines prescribed under the domestic legislation of the requested nation. The United Nations should come forward to sensitize sovereign nations in this regard.

5.15 Non-cooperation due to lack of authenticated documents

65.4% of respondent disclosed that many times countries become rigid because certification or authentication is the requirement of the domestic law of the requested state (Sinha, M. 2021). Such authentication may not be the requirement in requesting states or even in many cases concerned officers in requesting nations are not aware about the standard of authentication required in requested nations. Documents supplied in support of extradition requests do not need certification or authentication under Article 7 of the Extradition Treaty. This is not followed under the pretext of domestic legislation by the requested nations. Article 7 of the Extradition Treaty should be strictly followed.

5.16 Difficulty in Extradition of Accused who absconds to different Nations

Six Romanian nationals having experience and advanced technical knowledge in hacking bank data conspired to commit organized crime, came to India and installed the electronic devices at State Bank of India (SBI) ATM counter, Thiruvananthapuram in 2016. They collected the decoded data which were hacked from the ATM machine and withdrew money from the ATM using forged magnetic strip cards. The first accused was arrested in Mumbai 10/8/2016 and others escaped abroad. Red Corner Notices were published against them. One accused, Ionut Alexandru Marinoiu, was detained in Nicaragua. He was formally extradited to India. The extradition request against another accused was pending in other nation (NAIR 2016).

6. Suggestion / Recommendations

1. A lack of institutional control is the most prominent reason for increasing trends of organized crime. The public should be sensitized about negative consequences of organized crime as well as about the importance of joint family systems to have better social control on youth. This may be done by way of mobilizing Non-Governmental Organisations, media and civil society.
2. Complicated and time-consuming legal procedures and a lack of appropriate administrative guidelines are the important factors for increasing rates of organized crime. It is suggested that appropriate administrative guidelines should be issued for bridging the gap between legislation and its implementation by the governmental agencies.
3. Emotionally imbalanced youth should be identified at school level. They should be provided proper counselling on the negative effects of organized crime to save them from indulging in criminal activity.
4. Organized crime offenders abscond to foreign country after committing crimes. Due to lengthy extradition procedures, it is very difficult to get those offenders extradited. As a result, trials get delayed and sometimes conviction becomes difficult. It is therefore suggested that extradition procedures should

be simplified. Deportation should be encouraged as an alternative means to return offenders to India by way of having a dialogue with appropriate agencies in foreign countries.

5. Due to non-cooperation from foreign nations special techniques of investigation like controlled delivery of undercover operations are not permitted in foreign nations. Sovereign nations should take special initiative and discuss the issue with the concerned authorities in foreign countries so that authorities in foreign countries may not only permit investigation through "controlled delivery" but would also cooperate in tracing the witnesses.
6. The United Nations should take the initiative to collect data from sovereign nations having evidentiary value, relating to transnational organized crime so that database containing such data may be established and shared with both treaty and non-treaty states. United Nations should take initiative of collecting research data under its aegis and makes it available on its website so that it may get wide circulation and become useful for everyone.
7. The United Nations Office on Drug Control Program should issue clarifications to the member states that while considering the requirement of principle of Dual Criminality, "crux of crime" committed should be considered "terminology" used for the offence should not be required to be fulfilled by requesting nation.
8. At the time of ratifying the treaty, it should be made compulsory that the treaty state shall not refuse assistance in criminal matters on the pretext of false grounds unless and until those grounds are actually found. Some mechanism should be provided to prove that the grounds for refusal actually exist in the requested nation.
9. Prior discussion with requesting nations should be done before refusing extradition on optional grounds. Such discussion should be made compulsory. Accordingly, optional protocols should be issued under Article 4 of the Extradition Treaty.
10. Proper guidelines should be issued by the United Nations to extradite offenders in case the request is concurrently made

by two countries so that the requested country cannot grant extradition arbitrarily.

11. Sovereign nations must enact the relevant legislation, negotiate the necessary instruments and establish some form of administrative framework for effective implementation of the provisions of Model Treaty on Mutual Assistance in Criminal Matters.

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