



## New Challenges in Criminal Investigation of Organized Crime

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DOI: <https://doi.org/10.5281/zenodo.17967588>

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### Abstract

The increasing cases of the organized crime such as money laundering, smuggling, drug trafficking, human trafficking and contract killings and kidnapping, etc., it has become very difficult for the investigating officer to investigate the organized crime.

In today's scenario, the investigating officer is facing a New challenges such as budgetary constraints, lack of public cooperation, forensic science, political interference, transfer of police officer during investigation, role of media during investigation, duty of the police officers is overburdened with maintaining order & investigation, and witness turns hostile, etc. Even though, there are a lot of challenges in criminal investigation of organized crime.

As per the global organized crime index 2023, the organized crime is increasing continuously with 83% of the world's population living in conditions of high criminality.

In this article, we have tried to explain about the organized crime and told about the procedure of the investigation and also tried explain the challenges faced during investigation by investigating officer.

**Keywords:** New Challenges, Criminal, Organized Crime, global organized, human trafficking

### Introduction

#### Organized Crime: It's meaning

When we talk about the organized crime, many people think of the Mafia. The term organized crime can be refer to any group which exercises the control over the large illegal enterprises such as drug trade, illegal gambling, prostitution, weapons smuggling or money laundering, etc.

It is the alarming situation for the country of increasing of the crimes in any legal system. A certain number of crimes are performed by a certain number of criminals to gain profit but not to take revenge. Such type of instances falls under the organized crimes.

#### Types of organized crime

The various type of organized crime is there in India, but we are discussing here some 5 type of organized crime in India:

- Money Laundering
- Smuggling
- Drug trafficking
- Human trafficking
- Contract Killings and Kidnapping

#### Money Laundering

Money laundering is one of the serious crimes which can directly affect the economy. This type of crime is governed by the Prevention of Money Laundering Act, 2002. In this the money is earned by the drug trafficking, human trafficking, etc. Many of the criminals are involved in such type of crimes, and convert their illegal income into a legitimate income.

In Chidambaram v. Directorate of enforcement <sup>[1]</sup>, this case, commonly referred to as the INX Media case, refers to one of the most notorious high-profile money laundering cases. The case revolves around the economic irregularities in the foreign exchange clearance granted to INX Media group for receiving overseas investment in 2007.

This issue came to light when the income tax department asked for justification in 2008 from INX media, after which they approached Karti Chidambaram to leverage his family name to avoid any penalty, thus entering into a criminal conspiracy. Karti Chidambaram was said to have an economic interest worth around Rs 3.5 crore. A case known as the ECIR case, under section 3 of the PMLA, which is

<sup>1</sup> Criminal Appeal No. 1831 of 2019

punishable under section 4 of the PMLA, was lodged by the ED. P. Chidambaram was arrested, and a bail application for the case was filed. After overturning the Delhi High Court's order, the Supreme Court granted Chidambaram bail and ordered him to pay a surety bond of Rs 2 lakh along with two other securities.

### Smuggling

The smuggling is governed by the Customs Act, 1962. To maintain profits or to continue their trade, the goods which are heavily taxed or those goods which are illegal in the territory of India are smuggled. The goods are smuggled such as contraband substances, valuable jewels, electronics, certain fabrics, etc.

### Drug Trafficking

It directly poses a threat to the younger population of India and effect on physical and mental health. Such types of organized crimes have become more prevalent and significant in the country.

### Human Trafficking

Article 23 of the Constitution of India, 1950, states that "Prohibition of traffic in human beings and forced labour". This type of organized crimes involves women trafficking, child trafficking, trading in sex workers, etc.

As per the US department of state in its "2022 trafficking in Persons" report 2019, it said, 5145 trafficking victims and 2505 potential victims were identified. In 2020, the government identified 5156 victims in labour trafficking, including 2837 in bonded labour and 1466 in sex trafficking [2].

In 2020 Karnataka, Tamil Nadu and UP accounted for the majority of bonded labour victims with 1291 from Karnataka, 289 from Tamil Nadu, and 1026 from Uttar Pradesh, respectively.

As per the global organized crime index 2023 reveals the continuing rise of organized crime globally, with 83% of the world's population living in conditions of high criminality. Conversely, the number of people living in conditions of low resilience to organized crime globally has declined significantly: now, 62% of the world's population, compared to 79.4% in 2021 [3].

### Laws governing organized crimes in India

**Criminal Conspiracy:** The definition of criminal conspiracy under Section 120A of the Indian Penal Code, 1860. The meaning of criminal conspiracy meant that where two or more persons agreed to do or cause to be done, an illegal act or an act that is not illegal by illegal means, then they can be punished under section 120B of Indian Penal Code, 1860. The punishment can be extending up to death punishment and even heavy fines.

The Supreme Court in *Parveen v. State of Haryana* [4], held that it is not safe to hold a person guilty for offences under section 120B IPC in absence of any evidence to show a meeting of minds between the conspirators for the intended object of committing an illegal act. The court ordered the acquittal of the appellant and held that it is not safe to maintain the conviction of the accused on the alleged confessional statements of the co-accused in absence of any other corroborative evidence.

In *Kehar Singh and others v. State (Delhi Administration)* [5], the Honorable Supreme Court, in this case, has held that the most important ingredient of the offence of conspiracy is an agreement between two or more persons to do an illegal act. Such an illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence and is punishable.

**Specific crime under the IPC:** Criminals engaged in contract killings falls under section 300 and section 302 of the IPC which deals with murder. An organized criminal engaged in kidnapping shall be dealt with under Section 360, Section 363 and Section 364A of the IPC. The person engaged in human trafficking shall be charged under Section 370 and Section 370A of the IPC.

It is to noted that criminal conspiracy comes under Section 61 of "The Bharatiya Nyaya Sanhita, 2023" and contract killing falls under Section 99 and Section 101 of "The Bharatiya Nyaya Sanhita, 2023" and kidnapping comes under Section 135, Section 137 and Section 138 of "The Bharatiya Nyaya Sanhita, 2023" and the trafficking of person comes under Section 141 of "The Bharatiya Nyaya Sanhita, 2023".

### Procedure of Investigation

The procedure of investigation of organized crimes by investigating officer in India by some following steps:

**First Information Report:** It is a first step of investigation or we can say that investigation starts with FIR. According to the section 154 of the Cr.P.C, if any oral information about commission of a cognizable offence [6] is given to the officer in charge of the police station. The FIR must be recorded in writing. After writing, it is to be read over to the complainant and his signature has been taken on the recorded information.

After that it entered into the diary which is called case diary, which is to be kept with police officer who is conducting the investigation.

**Proceeding to crime scene:** Whenever any officer in charge of the police station suspects any cognizable offence has been committed, then in that condition the officer in charge sends the report to the magistrate. Then the officer in charge moves to the spot where the crime has been conducted. The main reason to move to the spot of the crime is to investigate the facts and circumstances of the case. Under Section 157 of Cr.P.C the officer in charge can arrest the suspected. The officer in charge also records the

<sup>2</sup> The New Indian Express, Human Trafficking too high in India, says US, March 1, 2023, Website: <https://www.newindianexpress.com/nation/2023/mar/01/human-trafficking-too-high-in-india-says-us-2551967.html>

<sup>3</sup> Reliefweb, The Global Organized Crime Index 2023, September 29, 2023, Website: <https://reliefweb.int/report/world/global-organized-crime-index-2023#:~:text=The%20Global%20Organized%20Crime%20Index%202023%20reveals%20the%20continuing%20rise,in%20conditions%20of%20high%20criminality.>

<sup>4</sup> SLP (Cr.) No. 5438 of 2020

<sup>5</sup> AIR 1988, 1988 SCR Supply. (2) 24

<sup>6</sup> Cognizable offence are those offence in which police may arrest without any warrant. Section 2 of CrPC

particular and secures the presence of potential witnesses and collect information relating to the crime. The officer in charge reached first at the crime spot have to take all the steps to preserve the crime scene very carefully. It is to be noticed by the officer in charge should preserve the crime spot very carefully so that the crime scene should not disturbed.

**Spot Map:** The spot map includes all the information of the crime scene. The spot map has to be prepared by the investigating officer or by any other qualified officer or person. The investigating officer has to make two copies, one copy should be submitted with the charge sheet and another copy should be kept for the departmental uses.

**Lifting of forensic evidence:** The investigating officer will lift the forensic exhibits with the help of the technical experts.

**Examination of witnesses:** Those persons, who are acquainted with the facts and circumstances of the case, can be call any time at police station during the investigation by the investigating officer. The investigating officer can examine orally with these persons <sup>[7]</sup>. The people are bound to give all the answers asked from them by investigating officer truly. If the witness could not compelled by the investigating officer to give answers of the questions, then it would expose him to a criminal charge, penalty or forfeiture of property <sup>[8]</sup>. The statement made by the witnesses must be recorded in writing <sup>[9]</sup>.

**Search:** The investigating officer, if found that anything which necessary for the purposes of investigation, may found in any place and also needs to record reasons in writing the grounds of his belief and also have to specify the reason for which search is to be made. It is to be noted that the search can be made within the limits of the police station, which is in charge of it <sup>[10]</sup>. It is the duty of the investing officer to send the copies of the record prepared of the search to the magistrate, who is empowered to take cognizance of offence. The owner of the place can furnished a copy of the report of the search, free of cost if he applies for it <sup>[11]</sup>.

**Letter of request to conduct investigation abroad:** If the investigating officer finds that the evidence may be available in foreign country, then he may put application to the competent court. After receiving application from the investigating officer, the criminal court may issue letter to the authority of the foreign country and request them to conduct oral examination of witnesses and also to collect the documentary evidence related to the case.

#### Release of accused when evidence is deficient

If the investigation officer does not found any evidence to justify the involvement of the accused in crime, then the investigating officer release the accused with or without

securities. The investigating officer may direct the accused to appear, if required before the magistrate <sup>[12]</sup>.

**Forwarding accused to magistrate:** But if the investigating officer found all the evidence against the accused, then the accused would be kept under custody to the magistrate.

**Case Diary:** It is the duty of the investigating officer to maintain the case diary, under which the investigating officer will write the proceeding of the investigation as day-to-day basis. The content of case diary should include following information <sup>[13]</sup>:

- The time at which the information reached to the investigating officer.
- The time at which he began and closed his investigation.
- The place or places visited by him.
- A statement of the circumstances ascertained through his investigation <sup>[14]</sup>.

**Submission of report on completion of investigation to the magistrate:** After collecting all the details of the investigation, the investigating officer will submit to the magistrate empowered to take cognizance of the offence <sup>[15]</sup>.

#### Challenges faced by the investigating officer

- Budgetary Constraints:** The constraints of budget affect many areas of the police organizations. It harm the police effectiveness such as lack of skills, caused by insufficient training, lack of appropriate or insufficiency of equipment and lack of logistic support which effect the motivation of the investigating officer or police officer. The low pay also effects the motivation of the investigating officer or police officer. Because of the low budget, the officer has to bear the cost of the investigation from the public in the form of the 'Bhatta', which increase the case of corruption.
- Lack of public cooperation:** Due to the low confidence over the police officer, the public hesitate to give information or to become eye-witness in any case.
- Forensic science:** Though in many cases the police is delay to reach at the crime spot, due to it the finger prints, foot prints etc. get destroyed. Even though the police dogs are unable to find any evidence at the crime spot.
- Political interference:** When the political party involve in any case, then in that condition that case cannot be succeeded. In Prakash Singh & Ors. V. U.O.I & Ors <sup>[16]</sup>, the Supreme Court given direction to state governments that, "Constitute a state security commission (SSC) to (i) Ensure that the state government does not exercise unwarranted influence or pressure on the police (ii) Lay down broad policy guideline and (iii) Evaluate the

<sup>12</sup> Section 169 Cr.P.C

<sup>13</sup> Minakshi Sinha, Organized crime and emerging challenges to criminal justice functionaries: Measures for prevention and control: A Socio-Legal Study, June 2015, p. 116, Website: <https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/184830/1/minakshisinhauslls2007.pdf>

<sup>14</sup> Section 172(1) Cr.P.C

<sup>15</sup> Section 173(2) (1) Cr.P.C

<sup>16</sup> (2006) 8 SCC 1

<sup>7</sup> Section 161(1) Cr.P.C

<sup>8</sup> Section 161(2) Cr.P.C

<sup>9</sup> Section 161(3) Cr.P.C

<sup>10</sup> Section 165(1) Cr.P.C

<sup>11</sup> Section 165(5) Cr.P.C

performance of the state police <sup>[17]</sup>.”

5. **Transfer of Police officer during investigation:** When the investigating officer related to the case is transferred, then it cause delay to understand the facts of the case by the new investigating officer.
6. **Role of media during investigation:** The duty of media is to keep update to the public, but the media should take precautions to what to disclose to public and when. For example, during the 26/11 Mumbai terrorist attack, the media was showing it live on television, which result in that the task of the terrorist become so easy.
7. **Duty of the police officers is overburdened with maintaining order & investigation:** Maintaining the order and preventing the crime are two different responsibilities of the police officer, and both the responsibilities have to perform by one officer.
8. **Witness turns hostile:** Due to passage of time, the witnesses may turn hostile to police. They may be influenced, coerced, unduly remunerated by culprit or his party. Even the victim may feel sympathy and also try to reach a compromise with the culprit.

## Conclusion

As we see that the organized crimes are increasing and which let to challenge the criminal investigation. The investigating officer faced many problems such as budgetary constraints, lack of public cooperation, forensic science, political interference, transfer of police officer during investigation, role of media during investigation, duty of the police officers is overburdened with maintaining order & investigation, and witness turns hostile, etc. To decrease such type of issues faced by the investigating officer, there is a need that the government should take responsibility to provide sufficient funds, should provide exclusive cadre for investigation, the investigating officer should build the trust among the witnesses so that they will not turn hostile, there should be no political interference, the media should be aware about the dignity of the nation, etc. Though there are a lot of challenges faced during investigation of organized crimes, but the government is taking a serious note to provide all the facilities to the investigating officer, and as result the crime rate has also got decreased.

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<sup>17</sup> Dr. Yuvraj Dilip Patil, Challenges of Indian Police in Investigation of Crime, 2014, Website: <http://docs.manupatra.in/newslines/articles/Upload/D3233B26-CBD0-4ACB-BFE7-205443A06DE8.pdf>