

## CHAPTER 26

### Organized Crimes and Police

**543-1-** “Organized crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. “Organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime;

- B. Organized crime is committed against property, persons or human welfare, engineered by a leader with members professing fierce loyalty. Organized crime in a large measure affects law and order and public order. The terms mafia crime or mafia gangs are used in common parlance to mean organized crime and criminal gangs.
- C. There are crimes like causing injuries or killing for gain. Groups of people are also hired to injure or kill somebody due to political, business or group rivalry or some other reason. The actual perpetrators receive remuneration and the person who engages them remains aloof or away.
- D. Boot legging, prostitution, gambling, manipulation of bids or tenders in auctions and contracts, land grabbing, illegal possession or dispossession of property, protection money,

rigging elections, loan sharking (usury), extortion, kidnapping for ransom, drug trafficking, illicit trade in fire arms, explosives, smuggling, thefts of antiquities and cultural properties, trading in animal skins and human organs are some of the activities of criminal groups, which are sometimes small outfits and sometimes large. The area of operation of these groups may extend to districts or states or even countries. There are groups bound to an individual or to each other. Generally there is always a leader or head of such groups.

E. Some of the groups are so well organized that they are able to perpetrate crimes without being caught or punished. It means they must have certain code of conduct, abilities, equipment, arms, and intelligence within the group and power to have their way. Sometimes, they resort to elimination or threatening to the persons who come in their way including witnesses, informers, police officials, lawyers or judges or politicians or alternately try to buy their support by bribery and collusion. They infiltrate into political parties and use muscle power to manipulate elections and even occupy positions of political power. Therefore at the one end of spectrum there are small criminal organizations operating in a limited sphere quietly and at the other end, more sophisticated outfits with all attributes of a mafia gang. The vast network of modern communications and transport facility provides opportunities for organized crime to thrive.

B. The purpose of organized crime is mainly to make illegal money. These organized groups have a complex network with well-defined structure and command and control and use force or violence in perpetration of crimes. Investigation into organized

crime therefore calls for a highly professional approach, intelligence and investigative skills and well knit coordination at inter-district, inter-state and international levels.

### **Legal provisions**

B. The legal provisions relating to confiscation of proceeds of crime are contained in sections 102, 452 of CrPC, 111 to 121 of Customs Act and section 68 of NDPS Act. The Criminal Law (Amendment Order 1944), Foreign exchange Management Act 1999 (FEMA) and the Smugglers and Foreign Exchange Manipulation (Forfeiture of Property) Act 1976 also relate to forfeiture of proceeds of crime.

D. State CID shall have an Investigating Unit devoted to identification and investigation of organized criminal activity. The criminal records from PS level to state should contain the information in respect of all such criminal syndicates, members, leaders, M.O. and connected details. The Police have the responsibility of identifying, exposing and taking all such preventive action in respect of all manifestations of organized criminal activity.

2. The points to be borne in mind by IOs Investigating into offences by organized gangs are as stated below:

A. The persons have associated themselves to form a criminal gang.

B. The object of the association was habitual commission of murders, kidnapping for ransom, contract killing, loan sharking, trafficking in

women and children, smuggling of cultural properties, dealing in prohibited liquor, land grabbing and deals collection of protection money i.e extortion, illegal dealing in fire arms, explosives, smuggling, etc. (dacoities, burglaries, robberies including highway and train robberies, thefts in cases of gangs / groups of property offenders).

B. Evidence of joint conviction in previous cases.

C. Evidence that certain members of the gang were jointly prosecuted or bound over under the preventive provisions of law.

D. Evidence of the frequent meeting or contact amongst the members.

E. The recovery of property or other incriminating materials or documents stolen in a single case from several members of the gang.

F. Evidence of simultaneous absence of members from their homes coincident with the occurrence of offences.

G. Evidence of the cessation of the crime, of that nature committed by the gang, in the affected area after the arrest of the gang.

4. Identify whether the offence has one of the attributes of an organized crime.

A. Collect details of all such or similar offences reported.

B. Identify the members of the gang and the leader and initiate measures to trace them.

- C. Examine victims or their friends or relatives minutely with regard to identity, background and all details about the members of the gang.
- D. Collect all clues, even minor or seemingly unimportant pieces that are likely to help connecting the accused to the crime.
- E. Take charge of all relevant papers, documents, letters or bank cheques, drafts or any paper or material that comes to notice and scrutinize the same.
- F. Question the suspect minutely and record his statement in detail.
- G. If the evidence collected after exhaustive investigation is inadequate, efforts should be made to make one of the minor participants in the offence as an approver to prosecute main offenders successfully.
- H. Identify the country in which the proceeds of crime are stashed away or hidden or kept. Efforts should be made to seize and forfeit the same. This is the most effective way of neutralizing organized gangs.
- I. Make foolproof arrangements to maintain secrecy and protection to informers and witnesses.
- J. The evidence should be gathered as to conspiracy, abetment, common intention, membership of a criminal organization, activities of the criminal organization, etc., apart from the illegality of the act or acts committed by them for effective

prosecution.

- K. Make use of all information available in criminal records.
- L. Initiate proceedings under section 110 CrPC against the members of the gang. Insist on a bond u/s 106 CrPC, in the event of conviction wherever applicable.
- M. Consult and take assistance of concerned experts for appraisal of any aspect that relates to Tax Laws, Accounts, Banking, Science, Engineering, Technology including Information Technology, Art pieces and Archeology, flora and fauna etc.
- N. Use lie detector tests whenever possible.
- O. Take hold of all information relating to telephone calls either by landlines or satellite channels or cell phones and analyze.
- P. Contact pay phone booths used by the gang members.
- Q. Seek help of Interpol when assistance from abroad is required. Be familiar with section 166 A & B CrPC.
- R. Every detail of the statement by the accused must be verified before acting.
- S. Scrupulously follow all procedure in respect of preservation, packing and forwarding material evidence for expert opinion or to the Court.
- T. Since the organized criminal syndicate members keep their

activities secret, it is essential that every bit and piece of information and evidence is promptly brought on record and capable of being proved in the court. Telephone print outs, cell phones and computer information would be extremely useful in providing the missing links.

### **Property Offences by a Gang**

- 544-1.** Persons associated for the purpose of habitually committing theft or robbery or dacoity are said to be members of a gang as per section 400 and 401 of IPC. The successful handling of offences by a gang usually involves painstaking and sustained investigation. All such cases should be investigated by Criminal Investigation Department directly or on the request of District due to the extensive operation by the gang in more than one district and to have a coordinated approach in investigation of these cases. If it is a purely local gang confined only to District, District Investigation team should handle the investigation.
2. These offences are heinous in nature punishable with imprisonment up to life. These cases must be investigated scrupulously bringing out the complicity of all accused on record. In cases where evidence is inadequate to fully prove the case, a minor participant may be taken as an approver. However, an approver being an accomplice, corroborative circumstantial evidence is necessary. Hence IO should endeavour towards this goal.
  3. When a gang case is to be charged, the memorandum of evidence must be carefully prepared showing the available evidence to show the number of instances in which each accused is involved, the nature of evidence against each of them

and the names of witnesses who depose against each of them.

- A. Organized crime gangs are a serious threat and it is sometimes difficult to detect and get evidence of their association and activity as the members of organized crime are bound together by fierce loyalty, gain, protection, ruthless elimination of all those who come their way. It is their activity, which poses a threat and challenge to the Police and calls for all investigative skills of the highest order.
  
- B. Officers investigating into organized crime and offences by a gang shall take adequate but unobtrusive security cover.

### **Gang cases against robbers/dacoits**

2. Gang cases can be put up against the persons who belong to a gang of persons associated for the purpose of habitually committing Dacoity (U/s 400 IPC) and Theft or Robbery (U/s 401 IPC). The essential ingredients required are
  - That there was a gang of dacoits/thieves or robbers.
  - That the accused belonged to that gang.
  - That the said gang was associated for the purpose of habitually committing Dacoity/Theft or Robbery.
  
5. A person may belong to a gang of dacoits/thieves or robbers without having actually participated in the commission of even one Dacoity/Theft or Robbery. A clever member may always remain in the background while organizing the operations of the gang, giving active assistance for the purpose of meeting together, providing them with weapons, screening them after

the commission of offence, helping them in the disposal of looted property.

2. If a gang was formed for the purpose of habitually committing dacoities/thefts or robberies, all persons, who thereafter join the gang in one or more cases become ipso facto, the members of such gang. A person who joins a gang of habitual dacoits, thieves or robbers is member of the gang irrespective of his actual participation in any dacoity/theft or robbery. It is to be proved that his associates are habitual dacoits/thieves or robbers.
3. A receiver of stolen property or a person harbouring a gang may not be held to belong to a gang. Persons who associate with the gang for the purpose of friendship sake or join them in drinks at liquor shops or meet them in fairs, weddings or other social functions are not members of the gang. Servants and dependants of gangs are not members of gang.
4. Proof of participation in more than two dacoits/thefts or robberies, within a comparatively short space of time is necessary to prove existence of gang. It is sufficient to establish that a person belongs to a gang whose business is habitual commission of dacoity or theft or robbery. In a gang case direct evidence of association of a particular accused with the gang may ordinarily be given only by an approver and other witnesses will speak of association on occasion's immediately preceding commission of the offence. The association and purpose of association may be proved by direct evidence or by proof of facts from which they can reasonably be inferred. Evidence that the accused persons or groups of them had been

concerned in a large number of dacoities or thefts or robberies within a comparatively short space of time, may be sufficient evidence of such association. Evidence which though not believed for the purpose of conviction under section 395 IPC may yet be relied upon for the purpose of proving the charge U/s 400 IPC. The purpose of habitually committing dacoity or theft or robbery may be proved by their declaration or by their conduct. The only relevant evidence here consists of their conduct in having participated in different dacoities or thefts or robberies. The principal evidence adduced by the prosecution falls under the following heads.

- A. The evidence of approver narrating how the members of gang conspired and assembled for each dacoity/theft or robbery and committed it and divided the booty.
  - B. That of the victims of each dacoity/theft or robbery and of direct witnesses, identifying in Court and at earlier test parades, individual accused as the participants.
  - C. That of recovery of properties lost at the dacoity/theft or robbery from the possession of the various accused and
  - D. That of previous convictions of some of the accused.
5. The consent of State Government U/s 300(2) of Cr.P.C. is required to prosecute the accused in a gang case if he is acquitted or convicted in any dacoity/theft or robbery.

### ***Conspiracy***

**545.** Criminal conspiracy is an agreement entered into by two or

more persons with a purpose to do an illegal act or to do an act, though not illegal, by illegal means. Criminal conspiracy is itself an offence whether the act conspired is committed or not. It is not necessary that each conspirator should know or be aware of every act of the others. It is often difficult to prove conspiracy by direct evidence. But it is mostly by circumstantial evidence relating to the sequence of events, the offences committed, conduct, meetings and contacts of the accused that agreement among them is sought to be proved. Abetment by conspiracy is punishable under section 107 (2) IPC. However a person who abets the cause of conspiracy is an offender only when the offence is committed.

### **Investigation of Terrorist Crime**

**546-1-A.** Terrorist Act is defined in The Unlawful Activities (Prevention) Act 1967. According to this Act whoever (a) with intent to threaten the unity, integrity, security of sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to , or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their

agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act; (b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, **commits a terrorist act.**

*Explanation:* - For the purposes of this sub-section “a terrorist act” shall include the act of raising funds intended for the purpose of terrorism.

- A. Offences committed by terrorists are not only covered under the Indian Penal Code but also under other laws such as Arms Act, Explosives Act, Explosives Substances Act, Telegraphs, etc. The most common offences committed by them are murder, extortion, kidnapping, and damage to private and public property, criminal assault and intimidation, offences under Chapter VI apart from causing explosions. The targets of attack are those whom they perceive as opposed to their cause, e.g. police and security personnel, witnesses and informers. Extortions from merchants, businessmen, contractors, professionals like doctors etc. are resorted to finance their activities. All offences are pre-planned. An elaborate clandestine network provides shelter and support and communication and other logistics. Terrorist acts are intended to terrorize the targets, witnesses and overawe the

instruments of the State and are linked to a cause or grievance whether real or imagined. The terrorist movements all over the world have a variety of objectives such as separatist, left wing, and religion based, ethnic or downright criminal. In India all the forms of terrorism have become serious problem for public order and for internal security.

2. Investigation of offences committed by terrorists and bringing them to justice presents many problems such as non-availability of witnesses etc. The aim of all terrorists is to utilize the liberal provisions of law to their advantage and subvert the criminal justice system by persistent attacks both physical and psychological. Some of the more serious problems the police come across in investigating offences by terrorists are ;-

- A. Identity of participants of crime is carefully concealed by false names, while identity of the organization is publicized.
- B. Unwillingness of witnesses to identify the accused even if they have seen or known them due to fear of being harmed/eliminated at the hands of accused or their organization. Sometimes there will be no eyewitness at all.
- C. Movement in groups fully armed with firearms and explosives and attack on police personnel to terrorize the state machinery and to create panic among the general public besides avoiding being caught.
- D. Recovery of properties or incriminating materials is difficult owing to their movements in forests and other inaccessible

areas fully armed. Similarly recovery of money is not always possible as it is used for purchase of provisions, medicines and weapons etc.

E. Most cases need investigation spreading over different parts of the State and remote and inaccessible areas.

F. Use of land mines restricts free movements of police.

G. Absence of public cooperation and quite often hostility to investigations due to fear, except in a few cases and support of certain sections of the people to the cause being espoused by the terrorists.

H. The application of normal provisions of law in matters of arrest, bail, remand and evidence based on presumption of innocence give enormous advantage to the terrorists.

### **Steps for Arrest of Accused**

3-A. A complete description, photograph or computer aided picture should be prepared and circulated extensively in the local area police station, villages, and published in papers and televised. The picture should be prepared if a photograph is not readily available. The special intelligence groups should be associated with investigation.

B. The trained groups along with Area Police should be provided a complete brochure and steps to be taken, the area to be covered for a well directed search operation and capture of the wanted group or persons.

- C. When any arrest is made the materials recovered from such persons, and search of places at his instance should be well documented, and the materials seized should be promptly sent for expert opinion.
  - D. The resistance to arrest is likely in such cases. In effecting arrest no force than what is permissible under the law should be used. All guidelines regarding arrest should be complied with.
  - E. Police remand for 15 days should be obtained u/s 167 CrPC from the court for thorough interrogation.
  - F. Plan and act fast on any information the accused furnishes during interrogation.
  - G. Keep reporting to the Magistrate all recoveries as and when made.
  - I. During examination of witnesses or suspects follow the questionnaire circulated by the CID as applicable to each case.
  - J. Keep all forms and papers ready so as to send them duly filled to the concerned.
  - K. Keep in constant touch with SsP concerned.
  - L. Arrange for proper briefing of Public Prosecutor (PP).
4. Protection of witnesses and informants is vital in the investigation and prosecution of the accused in such cases.

5. The important steps to be taken during the trial -
  - A. Make arrangements in consultation with PP and SP to impress upon the competent court to try offences expeditiously.
  - B. Follow all steps indicated in the Chapter on Prosecution.
  - C. Depositions of witnesses should not be released to the press as it may pose a threat to the security of witnesses.
  - D. Strong protection to the trial judge, IO and court premises should be ensured, if necessary.
  - E. Escorting from jail to court and back should be by vehicle along with proper guard.
  - F. No more documents or material should be furnished to the accused than are required under the law.
  - G. Anticipatory bail or regular bail in these cases should be opposed effectively by furnishing relevant material/facts to the concerned court
  - H. There should be constant interaction between PP/Addl. PP and IO during the investigation and trial of these offences.

National Human Rights Commission's guidelines for investigating deaths in Police encounters.

6. The National Human Rights Commission has recommended the

following procedure to be followed in cases of deaths in police encounters.

- A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.
  
- B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.
  
- C. As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID. Alternatively such cases may be investigated by an officer of the rank of Dy.Supt. of Police/SDPO of some other district.
  
- D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation.