

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

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Organised Crime in India: Sentencing Inconsistencies and Evidentiary Complexities in Contemporary Criminal Jurisprudence

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ABSTRACT

Organised crime in India has evolved beyond traditional offences such as smuggling, extortion, illicit trade, and bootlegging into complex, criminal enterprises operating across cyber, financial, and violent crime domains. Organised criminal groups are progressively leveraging artificial intelligence for fraud, impersonation, and concealment, an emerging threat not yet adequately addressed by existing statutory frameworks. Despite the presence of specialised legislations such as the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), the Unlawful Activities (Prevention) Act, 1967 (UAPA), the Prevention of Money Laundering Act, 2002 (PMLA), and the Bharatiya Nyaya Sanhita, 2023, Indian criminal jurisprudence continues to face challenges relating to evidentiary thresholds and sentencing consistency.

The continued lack of a uniform definition of organised crime across statutes, along with substantial reliance on circumstantial evidence, has led to divergent sentencing outcomes. These inconsistencies raise constitutional concerns under Articles 14 and 21 of the Indian Constitution. This paper undertakes a doctrinal analysis of statutory frameworks and judicial precedents to demonstrate that sentencing disparity in organised crime cases is structural rather than incidental. It further proposes a reform-oriented framework emphasising proportionality, evidentiary clarity, and structured sentencing guidelines.

Keywords: *Organised Crime, Sentencing Inconsistencies, Evidentiary Complexities, Criminal Jurisprudence, Artificial Intelligence, MCOCA, Bharatiya Nyaya Sanhita*

I. INTRODUCTION

Organised crime represents a sophisticated and evolving challenge to modern criminal jurisprudence. It is not limited to isolated criminal acts but involves a structured, continuing,

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and coordinated enterprise aimed at sustained illicit gain.²

The Indian legal framework addresses organised crime through multiple special statutes, including MCOCA and provisions under the Bharatiya Nyaya Sanhita, 2023, that recognises organised crime under Section 111.³ However, despite this statutory framework, judicial interpretation remains inconsistent. Courts must balance enforcement objectives with constitutional guarantees of due process and fair trial.⁴

As a result, significant variations in evidentiary interpretation and sentencing outcomes are observed across jurisdictions. This study suggests that Indian organised crime jurisprudence suffers from two core structural deficiencies: evidentiary ambiguity in establishing criminal enterprise membership, and sentencing inconsistency arising from overlapping statutory regimes and the lack of structured sentencing guidelines.⁵

II. EVOLUTION AND STATUTORY FRAMEWORK OF ORGANISED CRIME IN INDIA

A. MCOCA and Continuing Unlawful Activity

The Maharashtra Control of Organised Crime Act, 1999 stands one of the most significant legislative responses to organised crime at the state level. Section 2(1)(e) defines “organised crime” in relation to “continuing unlawful activity”, defined under Section 2(1)(d), when such activity is undertaken by an organised crime syndicate.⁶

In *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294, the Supreme Court upheld the validity of MCOCA while emphasising that its stringent provisions must be applied in strict compliance with procedural and evidentiary safeguards. The Court further held that mere filing of charge-sheets is insufficient unless supported by substantive material indicating a continuing and coordinated criminal enterprise.⁷

B. Bharatiya Nyaya Sanhita, 2023 (Section 111)

Section 111 of the Bharatiya Nyaya Sanhita, 2023 introduces a consolidated definition of organised crime at the national level, extending its scope to cybercrime, economic offences, and transnational criminal activity.⁸ While this expansion strengthens enforcement capacity, it raises

² K.D. Gaur, *Textbook on Indian Penal Law* (latest ed.) (concept of organised criminal enterprise under criminal jurisprudence).

³ Bharatiya Nyaya Sanhita, 2023, Section 111 (India); Maharashtra Control of Organised Crime Act, 1999 (India).

⁴ Kartar Singh v. State of Punjab, (1994) 3 SCC 569 (India) (balancing strict legislation with constitutional safeguards).

⁵ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 (India); *State of Maharashtra v. Bharat Chaganlal Raghani*, (2001) 9 SCC 1 (India).

⁶ Maharashtra Control of Organised Crime Act, 1999, Sections 2(1)(d) and 2(1)(e) (India).

⁷ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 (India).

⁸ Bharatiya Nyaya Sanhita, 2023, Section 111 (India).

concerns regarding overbreadth, particularly in distinguishing organised crime from repeated individual criminal conduct lacking organisational nexus.

C. Overlapping Statutory Regimes

Organised crime prosecutions frequently involve overlapping statutes such as MCOCA, UAPA, PMLA, and general criminal law provisions.⁹ This overlap creates jurisdictional ambiguity and contributes to inconsistent charging and sentencing practices for similar factual situations.

III. EVIDENTIARY CHALLENGES IN ORGANISED CRIME PROSECUTIONS

A. Proof of Criminal Enterprise

A key challenge arises in establishing the existence of a structured syndicate and proving membership. Courts require evidence of hierarchy, coordination, and continuity of unlawful activity. However, prosecutions often rely on fragmented evidence such as antecedents, intercepted communications, or co-accused statements.

In *State of Maharashtra v. Bharat Chaganlal Raghani*, (2001) 9 SCC 1, the Court held that isolated criminal acts cannot automatically establish membership in an organised crime syndicate.¹⁰

B. Circumstantial Evidence

Due to the covert nature of organised crime, prosecutions rely heavily on circumstantial evidence. In *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, the Supreme Court laid down stringent conditions for conviction based on circumstantial evidence, requiring a complete chain excluding reasonable doubt.¹¹

However, in organised crime cases, reliance on weak inferential links may dilute evidentiary standards, particularly where association is mistaken for participation.

C. Digital and Transnational Complexity

Modern organised crime operates through encrypted communication, cryptocurrency transactions, and cross-border financial networks. This significantly complicates traditional evidentiary frameworks, particularly in establishing intent and coordinated participation.

D. Artificial Intelligence and Emerging Organised Crime Risks

The emergence of artificial intelligence has expanded the scope of organised criminal activity,

⁹ Prevention of Money Laundering Act, 2002 (India); Unlawful Activities (Prevention) Act, 1967 (India); Maharashtra Control of Organised Crime Act, 1999 (India).

¹⁰ *State of Maharashtra v. Bharat Chaganlal Raghani*, (2001) 9 SCC 1 (India).

¹¹ *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 (India).

facilitating sophisticated fraud, identity theft, automated phishing campaigns, deepfake extortion, and large-scale financial deception. Organised criminal networks may utilise AI tools to automate communication, evade detection, and generate realistic false identities or fabricated evidence.

At the same time, AI also creates opportunities for law enforcement through predictive analytics, financial pattern detection, and anomaly-based surveillance systems. However, the deployment of AI in criminal investigation raises concerns relating to privacy, algorithmic bias, evidentiary reliability, and procedural fairness. Indian criminal jurisprudence must therefore evolve to regulate both the misuse of AI by organised syndicates and the responsible deployment of AI by enforcement agencies.

IV. SENTENCING INCONSISTENCIES

A. Lack of Structured Sentencing Framework

India lacks codified sentencing guidelines for organised crime, resulting in wide judicial discretion and inconsistent sentencing outcomes.

B. Statutory Overlap

Different statutes prescribe varying sentencing frameworks for similar criminal conduct, resulting in forum-dependent disparities in punishment outcomes depending on the statute invoked and the prosecuting agency.¹² For instance, identical patterns of organised criminal activity may attract stringent minimum sentencing under the Maharashtra Control of Organised Crime Act, 1999, while similar conduct prosecuted under general provisions of the Indian Penal Code (now Bharatiya Nyaya Sanhita, 2023) may allow greater judicial discretion, thereby leading to inconsistent sentencing outcomes.¹³

C. Pre-trial Detention

Special statutes impose stringent bail provisions that often result in prolonged incarceration. In *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1, the Supreme Court highlighted restrictive bail standards under UAPA.¹⁴ However, prolonged detention without conviction raises concerns under Article 21.¹⁵

¹² *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India) (discussing wide judicial discretion under special statutes).

¹³ Maharashtra Control of Organised Crime Act, 1999 (India); Bharatiya Nyaya Sanhita, 2023 (India).

¹⁴ Unlawful Activities (Prevention) Act, 1967 (India).

¹⁵ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 (India).

V. JUDICIAL BALANCING

The judiciary has consistently attempted to balance state interests with constitutional rights. In *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, the Court upheld strict provisions while emphasising procedural safeguards.¹⁶

Similarly, in *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, the Court reiterated that bail jurisprudence must balance liberty with investigative needs.¹⁷

VI. STRUCTURAL DEFICIENCIES

A. Lack of Uniform Statutory Definition

India does not presently maintain a single uniform definition of organised crime across all criminal enactments. Different statutes adopt varying terminology, thresholds, and enforcement objectives. This creates interpretative inconsistency and uneven prosecutorial standards in similar factual situations.¹⁸

B. Absence of Structured Sentencing Guidelines

The inadequacy of codified sentencing guidelines grants broad discretion to courts in determining punishment. While judicial discretion remains important, the deficiency of structured benchmarks frequently leads to disparities for comparable offences. This weakens consistency and proportionality in sentencing decisions.¹⁹

C. Overuse of Preventive Detention Logic

Several special criminal statutes employ restrictive bail provisions and prolonged detention mechanisms. While intended to address serious threats, excessive dependence on pre-trial incarceration may undermine the presumption of innocence and constitutional liberty protections under Article 21.²⁰

D. Fragmented Enforcement Coordination

Organised crime investigations frequently involve multiple agencies dealing with financial offences, cybercrime, narcotics, or terrorism-related conduct. In the absence of effective coordination, duplication of effort, delay, and evidentiary gaps may arise. This weakens prosecutorial efficiency.

¹⁶ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India).

¹⁷ *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 (India).

¹⁸ Bharatiya Nyaya Sanhita, 2023, Section 111 (India); Maharashtra Control of Organised Crime Act, 1999 (India).

¹⁹ Bharatiya Nyaya Sanhita, 2023, Section 111 (India); Maharashtra Control of Organised Crime Act, 1999 (India).

²⁰ Unlawful Activities (Prevention) Act, 1967 (India); *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India) (Article 21 interpretation).

E. Inadequate Adaptation to Digital and AI-Enabled Crime Structures

Modern organised crime increasingly utilises encrypted communication platforms, cryptocurrency transfers, artificial intelligence tools, and transnational digital networks. Technologies such as deepfake impersonation, automated phishing systems, synthetic identity generation, and algorithm-assisted fraud have significantly expanded the operational capacity of criminal syndicates.

Traditional evidentiary and investigative frameworks are often inadequate to address these evolving methods. Legal reform is therefore necessary to ensure that criminal procedure and evidentiary standards remain responsive to emerging technological threats.

VII. COMPARATIVE JURISPRUDENCE

The United States' RICO framework adopts an enterprise-based liability model with structured sentencing based on role and participation.²¹ Several European jurisdictions similarly employ sentencing guidelines to ensure consistency and proportionality.²²

India's absence of such frameworks contributes to unpredictability in sentencing outcomes.

VIII. POLICY RECOMMENDATIONS

A. Introduction of Structured Sentencing Guidelines

India should consider the formulation of statutory or judicially recognised sentencing guidelines for organised crime offences. Such guidelines would reduce excessive disparity in punishment outcomes and ensure that offenders in similar situations receive proportionate treatment. Sentencing factors such as leadership role, degree of participation, financial benefit, use of violence, and prior criminal history may be expressly considered.²³

B. Harmonisation of Definitions Across Statutes

At present, organised crime is addressed through multiple legislations employing varying terminology and thresholds. A harmonised statutory definition applicable across major criminal enactments would reduce interpretative inconsistency, jurisdictional conflict, and selective charging practices. Greater legislative coherence would also enhance predictability in prosecution.²⁴

²¹ Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Sections 1961–1968 (United States).

²² Council of Europe, *European Criminal Justice Guidelines on Sentencing Consistency* (comparative sentencing frameworks).

²³ Law Commission of India, *Reports on Sentencing Reforms in Criminal Justice System*.

²⁴ Bharatiya Nyaya Sanhita, 2023, Section 111 (India); Maharashtra Control of Organised Crime Act, 1999 (India).

C. Distinction Between Association and Participation

Courts and investigating agencies must maintain a clear distinction between passive association with offenders and active participation in organised criminal enterprises. Mere acquaintance, familial links, or incidental communication should not automatically attract liability under special statutes without evidence of conscious involvement or facilitation.²⁵

D. Digital and Artificial Intelligence Evidence Reform

India should modernise its evidentiary and procedural frameworks to address organised crime conducted through digital and artificial intelligence-enabled systems. Clear standards should be developed regarding admissibility, authenticity, chain of custody, and forensic verification of encrypted communications, cryptocurrency records, deepfake media, automated fraud tools, and other technologically generated evidence.²⁶

Simultaneously, safeguards must regulate the use of AI by enforcement agencies to ensure transparency, accountability, and protection against algorithmic bias. Such reform is necessary to preserve both investigative effectiveness and constitutional due process.²⁷

E. Bail and Pre-Trial Detention Reform

Special statutes impose stringent bail provisions, with constitutional guarantees of liberty and fair trial. Prolonged incarceration before conviction should remain an exception rather than a substitute for punishment. Courts may adopt periodic review mechanisms in cases involving extended detention.

IX. CONCLUSION

Organised crime in India requires an evolved doctrinal response that aligns legislative intent with constitutional principles. While statutes such as MCOCA and the Bharatiya Nyaya Sanhita represent significant progress, evidentiary ambiguity and sentencing inconsistency continue to undermine legal certainty. A structured, proportionate, and constitutionally grounded reform framework is necessary to ensure coherence in organised crime jurisprudence.

²⁵ Kartar Singh v. State of Punjab, (1994) 3 SCC 569 (India).

²⁶ Information Technology Act, 2000 (India); Indian Evidence Act principles on electronic evidence (now Bharatiya Sakshya Adhinyam, 2023).

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