CHAPTER 1

INTRODUCTION

There is no society that is not confronted with the problem of criminality. Crime is eternal- as society itself. As far as we know, human fallibility has manifested itself in different forms of human organization. Everywhere, some human beings always fall outside the pattern of permitted conduct. It is best to face the fact that crime cannot be totally abolished expect in an 'Utopia'. Weakness, anger, greed, jealousy and other forms of human aberrations surface everywhere, and even human sanctions have not been successful against the irrational, the misguided, the impulsive, and the ill conditioned. For reasons, too subtle and too complex to understand, the ordinary pressures and expectations that pattern an individual’s conduct into conformity break down under certain circumstances. They have always done so; they always will. No satisfactory policies have yet been discovered to ensure satisfaction of all needs, of all human beings, at all times.¹

The fact remains that crime is a universal phenomenon, and of primary concern to every member of human society. The concept of crime has undergone radical changes; it has, today, become multi faceted, both qualitatively and quantitatively. Today, the norms of society have been revolutionised and sociocultural patterns of society have created many a complex situation with society failing to keep up with the changing patterns of behavior of individuals or groups.

Crime has become a common phenomenon in the day-to-day life of the individuals and sadly, a majority of these wrongful acts have been accepted without being condemned eg, ‘White Collar Crimes’ (corruption) have become very common and perhaps the order of the day in our society. Today crime has become a profession and even an art! It is a global phenomenon, very professional and has earned the perpetrators titles such as “Mafia”, “Don”, “Bhai” (in Hindi terminology it means, Big Brother) “La Cosa Nostra” (USA), Sicilian Mafia (Italy) etc; in one word they can be termed “Organised Criminals”, and their acts as, “ORGANISED CRIMES”.

1.1 The Problem and Its Setting

Books and films about organised crime are plentiful and have worldwide popularity. It has always been a subject of fascination in popular culture and a major global concern in the sphere of criminal justice. Organised crime is a professional illegal business; it seems to survive changing definitions of illegality, deriving its power and profit from the variety of publics that it serves or victimizes. As ‘bootlegging’ gives way to ‘drug pushing’ and as ‘prostitution’ expands to ‘pornography’, organised crime continues to resist definition. The ordinary criminal typically works alone or with a partner or two, or as part of a large group temporarily assembled for a specific job. The professional often works alone but is frequently a member of a more or less cohesive team or ‘TROUPE’;

many confidence men, and most pickpockets work in highly-organised, quasi-permanent gangs. Most of these groups, however, represent the association of independent criminals on equal terms, on a share and share-alike basis. The organised criminal, by contrast, is usually the temporary hireling, the steady employee, or the administrator of a criminal bureaucracy. This explanation of Korn and McCorkle are simplifications of the concept of organised crime and perhaps was true in the early fifties. Today, the object of organised crime is to wrest exorbitant profits from the society by any possible means and is sought to be achieved by making available illegal goods and services to consumers, who need them or even crave for them and thus willing to turn a blind eye to all acceptable norms. Organised crime is the product of self-perpetuating criminal conspiracy involving the ruthless exploitation of the social, political and economic institutions of society. The phenomenon thrives on 'muscle power' and 'corruption' and the terror caused there by and also by the illegal money generated by such organised crime itself. Very appropriately, organised criminality has been described as a 'cancer' and is as insidious. Just as each segment of the parasite is an independent viable entity and capable of breeding independently of the parent, a similar process is discernible in the working of any criminal organization at various hierarchical levels.

Howard Abadinsky describes organised crime - "A non-ideological enterprise that involves a number of persons in close social interaction organised on a hierarchical basis for the purpose of securing profit and power by engaging in illegal and legal activities which yield high profits while offering relatively low risks. Positions may be assigned on the basis of kinship or rationally assigned to skill. The positions are continuous and not dependent on the individual occupying them at any particular time. Permanency is assumed by the members, who strive to keep the enterprise integral and active in pursuit of its goals. It eschews competition and strives for monopoly over particular activities on an industry or territorial basis. There is a willingness to use violence and/ or bribery to achieve ends or to maintain discipline. Membership is restricted, although non-members are involved on a contingency basis.\\n
It is a topic, which, at present, is listed fairly high on the agenda of many national governments. The media also inundates its readers, listeners and viewers almost unremittingly with news and reports about all the different forms of organised crime and what the police and the judiciary are doing to control it. Scientific researches into the backgrounds and forms taken by organised crime and methods applied to control it have not, however, kept pace with the dramatic growth of the problem. Exhaustive, comparable analyses of the recent evolution of organised crime in various countries, the development which the policy system has
gone through in this connection, the reform of criminal law which is in progress here and there on this subject, are all very scarce.6

The study of organised crime has assumed more importance in this era of globalisation; the world today is a global village; technological growth in the last two decades has changed the concept of national boundaries; markets have opened up and have lost their traditional concepts; communication to any part of world is now just a matter of seconds! Mobility of people from one part of the world to the other is a matter of 20hrs at the most. Perhaps, on one side "a perfect revolution" for the betterment of mankind but has it done justice to the society we live in? Much of the answer is in the negative. Markets are now flooded with ill-gotten gains and technology is being misused for all the wrong reasons- the more scientific the methods of detection the more sophisticated the perpetration of organised crime. Improved communications networks have given the criminals better linkages and mobility, and seem to have enabled criminal elements evade the law enforcing machinery. The organised syndicates today run parallel governments in most of the major urban centers through out the world. Organised crime does more than impersonally extract indirect economic tribute, debases the quality of life, and undercuts the integrity of business and government.7

The major illegal activities of organised criminals comprise of drug trafficking, prostitution (pornography), illegal arms supply, Money Laundering and other reprehensible

activities. The money involved in these illegal activities is huge and runs parallel to the world economy. The incidence of drug trafficking is only one such instance.

Drug addiction is a major global problem with which all nation states have been grappling for decades. The problem has assumed menacing proportions due to easy access to narcotic drugs. The United Nations Office on Drugs and Crimes (UNODC) claims that the global illicit drug industry is worth about 8% of the total international trade. Drug production and drug dealing have today become a substantial source of revenue, whether for making up budget deficits or for the enrichment of certain individuals, population groups, firms or even whole countries. These issues now concern all parts of the world and differ from one region and location to another. Considerable variation exists with respect to both production and distribution of drugs. According to the United Nations World Drug Report 2004, approximately 3% of the world's population (185 million people) have abused drugs during the previous twelve months, 13 million people abuse cocaine or opiates, and 15 million people have abused Heroin, Morphine and Opium; by far, the most widely abused substance is cannabis (used at least once a year by over 150 million people) followed by Amphetamine-Type Stimulants (ATS). The report further reveals that the conversions of the quantities of drug seized into unit equivalents (a typical dose taken by drug users to experience a "high") reflects a strong increase in overall seizures from 14 billion doses in 1990 to 26 billion in 2000. Seizures in unit terms are the highest on the American continent (10.4 billion doses), Europe (7.4 billion), Asia (5.5 billion), Africa (2.4
billion) and Oceania (0.08 billion). On a per capita basis, however, the ranking changes to: the Americans (12.1 units or doses seized per capita), Europe (10.2), Africa (2.9) Oceania (2.6) and Asia (1.5).* These statistics are those that have been reported; figures, unreported, may be much higher. 8% of total international trade can run the economy of many African or Asian nations.

Human trafficking is a great global concern as it involves gender injustice and exploitation of people living below poverty line especially in the developing and underdeveloped nations, where the organised criminals exploit these people either by deception or coercion and sell (purchase) them as commodities in the local and international markets which earn them trillions of dollars every year; this not only impacts the society but also individuals as this is seen as one of the major factor for spreading the dreadful disease AIDS and other related ailments. The worst part organised crimes is that the illegal money generated is pumped into legal business like hotel industry, stock market, banking sector, transport industry, entertainment world which spins the illegal money into legal source with the people behind it even acquiring high social status and recognition in society. The present trend is much more dangerous as the money generated through legal and illegal sources is used to sponsor terrorist activities, which has become a global concern.

* www.unodc.org
Studies have shown that organised crime has existed for centuries.\textsuperscript{8} It is obvious that organised crime has always existed, but the form in which it presented itself and the level at which it occurred often differed substantially. An organised secret system of murderers and plunderers called "Thuggees" was widely prevalent in India; taking advantage of the insecure state of roads and the lack of policing. The Thuggees travelled in gangs, large or small, usually unarmed and disguised as pilgrims, ascetics, and merchants or other harmless wayfarers. By means of ingenious tricks and false pretences, they secured the confidence of their intended victims who were then looted and murdered. Some tribal communities were involved in criminal activities, which even today persist in many parts of the country. The tribal gangs were specialized in theft, burglary, robbery, highway robbery and dacoity and travelled miles to commit crimes; dogs were used to guard their camps and it was not uncommon for them to obtain the protection of local police or local landlords through the charms of their women.\textsuperscript{9} After breaking down the thuggees by British empire the thugs separated into different groups and spread across the country and may of them joined zamindars and other wealthy men who used them as bodyguards called 'paiks' and 'lathials'. These men were used for collecting rents, grabbing others lands unlawfully, forcibly carrying away women and girls. Bengal was infested with gangs of robbers; robberies were

\textsuperscript{8} Even before Urbanisation offences were sometimes committed in an organised manner, in rural areas.

committed in large towns and centers of trade; people often paid ransom to the chiefs of these gangs.

Organised crime, in its current form emerged in Bombay after Independence with the introduction of prohibition, which gave rise to a thriving and lucrative clandestine trade in illicit liquor. Bootlegging not only attracted the covetous attention of hitherto loosely organised street level gangs but also gave rise to a syndicate type of illicit activity. It was only a matter of time before the gangs, which took to bootlegging, became larger, more powerful and affluent, as well as influential. The first noteworthy gang to emerge in Bombay was that of Vardharaj Mudaliar, popularly known as Vardha Bhai; almost contemporaneously the gangs of Haji Mastan, Yusuf Patel and Karim Lala emerged. While Mastan and Patel made their millions in gold smuggling, Lala, a Pathan don, dealt in drugs. At this time Dawood Ibrahim and his elder brother Shabir, sons of a Bombay police constable, worked as musclemen for smugglers. Then, during the Emergency there was a crackdown on Mastan et al., Dawood filled the vacuum by emerging as a gang leader himself.

The Bombay underworld dons, over a period of time, have become role models for other mafia leaders in the country. We now have similar mafias in most Indian states and what is most worrying is their ability to network with each other. However, what jolted the nation and brought the underworld into sharp focus were the serial blasts in Bombay in March '93, which left 257 dead, 713 maimed and property worth hundreds of crores damaged. Investigation showed that the ISI had
used three mafia dons of Bombay, namely Dawood Ibrahim, Tiger Memon and Mohd. Dossa and their resources, to execute their dastardly plan to cripple the economy, create communal divide and spread terror in India’s commercial capital. It was for the first time that the country realised the immense potential of organised criminal groups to jeopardise the internal security of the country.\textsuperscript{10} All over the world, organised crime has cast more than a shadow over day-to-day life. It is not mere greed or lust that any longer drives men to commit such crimes; it is also despicable religious fanaticism or political fascism that now provides the dynamite. The might of such negative power has diminished police prowess to such an extent that the common man wonders whether he has any defence at all.

The enactments to control organised crime can be traced back to 1871, to \textquoteleft The Criminal Tribes Act\textquoteright, enacted to deal with organised criminal tribe gangs;\textsuperscript{11} Earlier Sir William Sleeman played the most prominent part in disbanding the \textquoteleft Thuggee\textquoteright organisation between 1830 and 1840. During the two World Wars the organised criminal organisations strengthened their illegal business through out the globe, taking advantage of the war situation; the British government in India was too busy in uprooting the freedom struggle on the one side, and on the other, involving itself in the World Wars. During this period the enactments, which were made, were mainly concentrated with political equality and the formation of the Indian government. In the post independence era the country’s emphasis was

\textsuperscript{10} \url{http://www.india-seminar.com/1999/483.htm}
\textsuperscript{11} The Act came into force in 1925.
mainly on the socio-economic development of the people. Only in the late sixties, the government realised the threat posed by criminal gangs, and their involvement in unlawful activities, like smuggling, illegal liquor business, gambling, prostitution etc. To prevent such unlawful activities it enacted *The Unlawful Activities (Prevention) Act, 1967* (Amended in 2004 and 2008). The assassination of Smt. Indira Gandhi, the then prime minister in 1984, and the demand for a separate nation by Punjab organisations, paved the way for *Terrorism and Disruptive Activities Act, 1987* (lapsed in 1995); December 13th 2001 attack, on the Indian Parliament led to the *Prevention of Terrorism Act, 2002* (repealed in 2004). At present *The Unlawful Prevention Act, is in force to prevent unlawful activities. Unfortunately, political considerations seem to have taken precedence over all other factors, including national security.

Most of the organised criminals have their base in the economically concentrated urban belts, and Mumbai is not an exception being the economic capital of India and more renowned as its crime capital. The Mumbai mafia is said to be one of the biggest in South East Asia; in 1993 the government of India appointed a committee under the chairmanship of N.N.Vohra, to take stock of all available information about the crime syndicate and mafia organisation which had developed links with and were being protected by the government functionaries and politicians. The Committee submitted its Report in 1995, till date the government has not implemented any of the recommendations of the committee.

The experience of the 1993 Mumbai serial blast and unabated organised criminal
activities, were a danger to the residents of Maharastra and especially to Mumbai. Sensing the gravity of the situation the Maharastra government enacted the Maharastra Control of Organised Crime Act, 1999, an act that makes special provisions for prevention and control of and for coping with, criminal activity by organised crime syndicates or gangs, and for matters connected therewith or incidental thereto.

The National Crime Record Bureau (NCRB) has declared 30 offences as organised criminal activities; out of these only a handful offences have special legislation and the remaining offences are being tried under traditional penal code. Justice Malimath committee on Reforms of Criminal Justice System made 158 recommendations for the betterment of the criminal justice system in the country; recommendations number 124 to 141 emphasizes the need and the ways to combat organised crime\textsuperscript{12}. The committee has submitted its Report in 2003 but till date we have not seen any measures taken by the government to implement the same.

Global figures indicate that India is fast emerging as a global economic power, and it is also predicted that it would be a super power by 2050; this is really 'music to the ears' but is it going to solve the miseries of and intimidations to the law abiding citizens of the nation, threatened largely by unwanted elements, which run parallel governments? It is high time for the government and the people to make stringent provisions to tackle the parallel powers, which are, not only a threat to

\textsuperscript{12} Justice Malimath Committee Report, on Reforms of Criminal Justice 2003.
the socio, economic, and political systems but also the entire nation and its well-being.

1.2 Objectives of the Study

The primary object of the study is concerned with an in-depth analysis of basic principles governing crime control in general and organised crime control in particular.

(i) The study concentrates on socio-economic and political factors contributing to the ever-increasing organised crime in a more sophisticated way.

(ii) It analyses the impact of organised crime on individuals, society and the nation.

(iii) It makes an in-depth analysis into the basic aspects of criminal policy and ascertains the role of stakeholders in making the criminal justice system a successful setup in combating crime especially organised crime.

(iv) It concentrates on analysis of the basic principles of legal procedures established at International and National level. An attempt is made to compare the underlining principles governing normative and institutional framework of organised crime control at International and National level.

(v) It discusses the institutional framework established at international and national level for organised crime control and analyse the lacunae in the enforcement machinery.

(vi) It examines the data collected through empirical study, on normative and institutional framework for organised crime control.
(vii) The research hopes to come up with an alternative policy, which restores the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the criminal.

1.3 Hypothesis

The study is primarily concerned with testing the hypothesis namely, the existing normative and institutional framework governing organised crime control is effective or not. This normally leads to the ascertainment of, firstly the reasons for ever increasing organised crimes in India as well as outside. Secondly the impact of organised crimes on individuals, socio-economic, political structure and security of the state. Thirdly the effectiveness of existing criminal policy and lastly ascertainment of various shortcomings in the existing legal and institutional setup.

1.4 Methodology

The study is both doctrinal and empirical. The doctrinal study involves in-depth analysis of primary sources such as statutes, judicial decisions, international conventions, reports of statutory and non-statutory commissions of national and international appointed by the government. Almost all available secondary sources such as writings of the authors, in the field and in other disciplines, such as criminology, sociology, economics and political science are analysed.

Empirical component of the study involves the eliciting opinions through administration of questionnaire, from different respondents who included General public, Law teachers, Police, Advocates and Judiciary. The data collected has been
analysed and evaluated systematically while testing the efficacy of normative and institutional framework of combating organised crime.

1.5 Importance of the Study

The importance of the study lies in the fact that it identifies the factors that are responsible for the growth of organised crime in India and outside; identifies the legal and institutional norms governing organised crime control and suggests suitable legal tools to combat organised crime more efficiently.

The study is useful for law makers, police, lawyers, as the study involves the critical examination of the laws and enforcing machineries involved in fighting organised crimes.

The study will be useful to academicians, students and social activities, as the study brings into focus many unexplored areas of concern relating organised criminal activities and the modus operandi; as research on organised crimes in India is very scarce this work will ignite large scale research activity in the field of organised crime. Lastly, the importance of the study lies in its purpose of making an original contribution to the discipline of law.

1.6 Scheme of the study and its presentation

The investigation in to the organised crimes control is presented in this report containing eight chapters. In the first chapter ‘Introduction’ an attempt as been made to elucidate the genesis of the problem and its scope, objectives of the study and its importance. The following folios are devoted in this chapter to introduce briefly the themes underlying the forthcoming chapters.
1.6.1 Nature of Organised Crime

Organised Crimes exist in every society at every point of time. The nature of OC has changed according to the changing circumstances and this makes it a difficult task to define OC. The organised crime knit together the worlds of crime, politics, labour, leadership, politically related business, sports figures, cinema industry and the nightlife of the city. These worlds are all tied together and men, in them, move easily from one to the other or hold positions in two or more simultaneously. The worlds are united not only by organised crime as a source of money and man-power but by interlocking careers and a common social life and shared values, relating to the importance of deals, friendships, and mutual favors and the belief that all institutions excluding family and religion, are basically rackets and their main business include drug trafficking, Human Trafficking, Money laundering which accumulates huge sums of money which in turn are used to finance terror.

This Chapter traces the origin of organised crime and its development; their structural and functional aspects. Apart from this, a comparative analysis of definitions of organised crime is discussed. The main activities of OC are discussed in detail, and an argument is presented to the effect that the OC is not restricted to a single nation and grown transnational which is impacting the globe through its activities and the threat has assumed into a greater level as the organised criminals are not only sponsoring terrorist activities but also participating in such activities.
1.6.2 Impact of Organised Crime.

For every action there is an equal and opposite reaction; all illegal acts have ill effects on all members of society directly or indirectly; the impact on the individual and the family are the most important. The impact on society, the economic and political system, state and its security is delineated in detail. The impact of drug addiction on the society is one of the best examples of what the organised elements can do to our society which impacts both individual and society at the same level; closely related to drugs is human trafficking as both can be sold and purchased as they always have customers for these commodities. The infiltration of legitimate industry by organised crime is one of the pernicious problems of law enforcement in the globalised world. The international political economy has become more complicated following the complex relationship between state and market. The multitude of states and non-state actors, particularly transnational corporations, engaging in world economy has made a state becoming less dominant in international system.

This Chapter is concerned with the impact of OC on society; the impact of drug trafficking, human trafficking, money laundering and terrorism has been disused in detail. Economic globalization is in favour of free movement of goods, capital and people; the advantage of free trade has become a boon to transnational criminal organizations, which are operating successfully outside the existing structures of authority and power in world politics. Therefore, from the economic point of view, Transnational Organised crime (TOC) poses serious threats to
national security. Money laundering can have devastating social consequences. Laundered funds provide financial support for drug traffickers, terrorists, arms dealers, and other criminals to operate and expand their operations. An attempt is made to examine the impact of criminal organizations with these resources which poses a threat to the political system (by corruption and intimidation) and democratic governance.

1.6.3 Crime Control and Criminal Policy.

The primary function of state is considered to be the protection of its citizens from criminal elements. This function demands the state to enact laws that protect the weak from the strong, the law abiding from the lawless, and the peaceful from the violent. "Whatever views one holds about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for the protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual."

This part will deal with the basic principles of criminal policy in society. Criminal policies of the past and present would be critically analyzed. Any society, to be intact needs a very strong criminal policy, which regulates the behavior of the individuals and prescribes sanctions for their misdemeanor. Many a time penal policies have failed to live up to the expectations of the people,
resulting in widespread revolts and mayhem in society. The reasons for a successful criminal justice system does not always depend on state, but, the entire machinery which includes, the general public, police, prosecution, judiciary and correction centers. An attempt is made to establish that state has a primary duty in protecting citizens, by enacting and enforcing laws; the criminal justice system of a country is a key factor in any analysis of how effective the State is, in responding to serious crimes, in particular organised crime.

1.6.4 Normative Frame Work of Organised Crime Control

The taboos and the norms of any society at any given time are very authoritative, as they command respect and also deter the people from any misadventure, by imposing penal sanctions. A satisfactory normative framework indicates the commitment of a government and its concern in protecting its citizens from unwanted elements. The ultimate aim of criminal law is protection of right to personal liberty against invasions by others. It is utter selfishness, greed and intolerance that lead to deprivation of life, liberty and property of other citizens requiring the state to step in for protection of the citizens’ rights. It is the primary function of the government to protect the basic rights to life and property. The state has to give protection to persons against lawlessness, disorderly behavior, violent acts and fraudulent deeds on others. Liberty cannot exist without protection of the basic rights of the citizens by the government. Therefore, in this chapter an attempt is made to critically appraise international and national polices, in combating OC. It has been asserted that it a tough task to enforce international
law (UN convention on OC) as nation states differ on enforcement aspects; national laws are inadequate as there is no federal law on organised crime and each illegal acts of organised criminals are to be tried under different law which virtually makes it impossible to combat OC on expected lines; only a few states have enacted OC control law and it appears that state of Maharashtra is successful in curbing OC since the enactment of *Maharashtra Control of Organised Crimes Act* (MCOCA) in 1999.

### 1.6.5 Institutional Frame Work for the control of Organised Crime

An anti-organized crime measure requires strong and committed machinery for strict and impartial implementations of the laws enacted by state. Policy making is conceptually and institutionally distinct from policy implementation; from strict formal perspective, once policy is determined it is up to the administrative agencies to implement it. Administrations are supposed to be concerned only with finding the most efficient and effective way of carrying out policy. But, in fact they actually formulate policy as they implement it. This is inevitable, and it is due to the great deal of discretion that exists at every point in the criminal justice system.

This Chapter primarily analyses the law enforcement machineries both at international and national level. At the international level the Interpol, Europol and ICC are discussed. At the national level Police, Prosecution, Judiciary are critically analysed; the role of media, which have become indispensable adjuncts to modern governments, is specially highlighted.
1.6.6 An Assessment of Normative and Institutional Framework

The need for empirical focus in legal research is now more expressed than was it ever before (because non-doctrinal legal research uses empirical data, it provides vital insights into the law in context, i.e. how the law works in the real world) as it is believed that the research lacking empirical focus has not been able to contribute significantly for policy purposes or programme devising. This chapter will examine the impact of the normative and institutional framework in controlling organised crime. To analyse its practical applicability, consultation (questionnaire) with the General Public, Law teachers, Police, Advocates and Judiciary is undertaken.

1.6.7 Conclusion and Suggestions

The last chapter attempts to highlight the findings of the study in the form of conclusions, which form the basis for the suggestions that follow. It is believed that the conclusions and suggestions provide some useful insights that are necessary for the effective organised crime control.