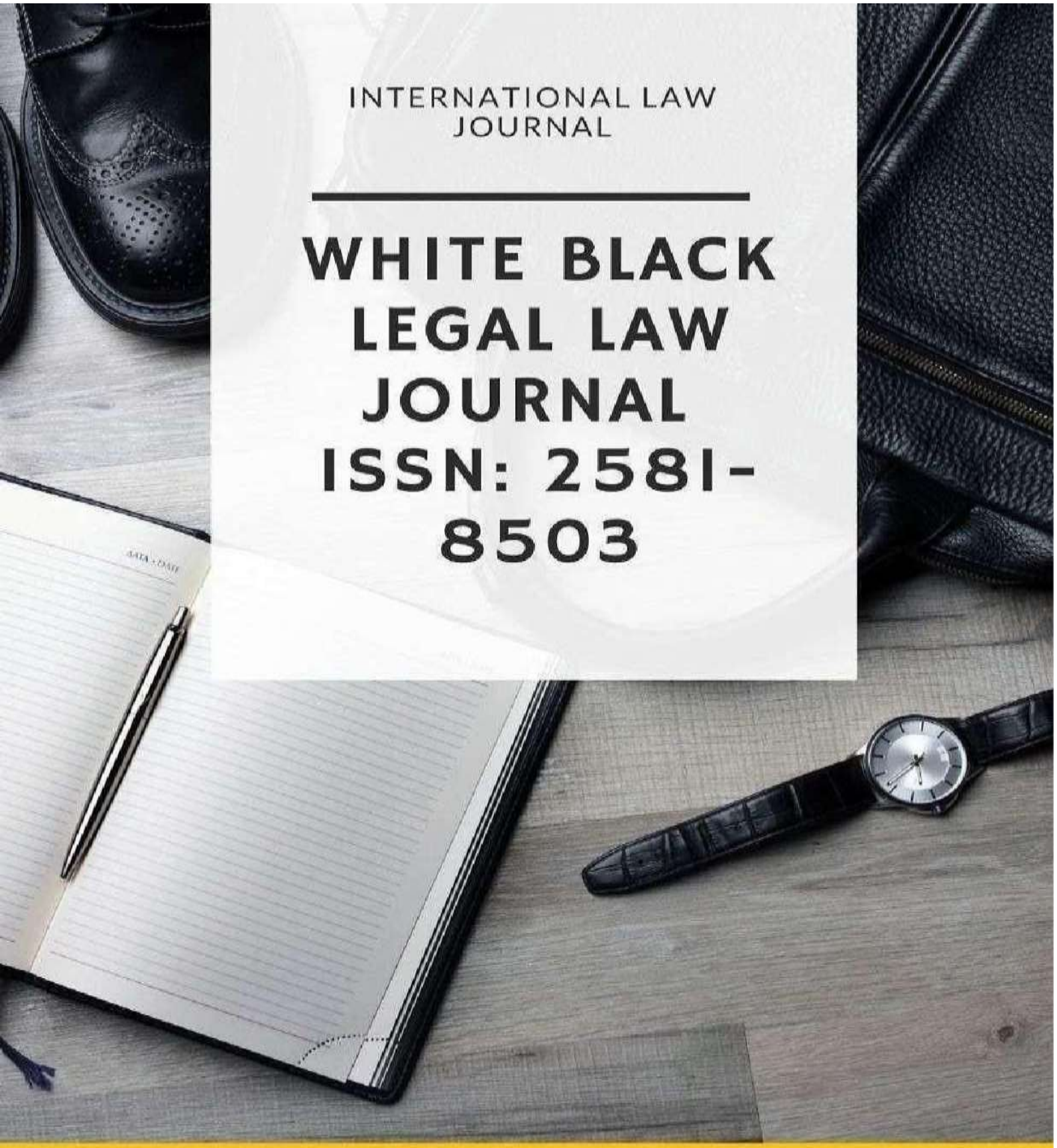

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A CRITICAL STUDY OF INDIA'S LEGISLATIVE RESPONSE TO ORGANIZED CRIME: NEED FOR A CENTRALIZED ANTI-ORGANIZED CRIME LAW

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Abstract

India's legislative response to organized crime has evolved through a combination of ordinary criminal law, special central laws directed at particular manifestations of criminality, and a patchwork of State-specific organized crime statutes. The introduction of organized crime provisions in the Bharatiya Nyaya Sanhita, 2023 (BNS) represents an important shift because it creates a nationwide substantive offence for the first time. However, the national framework remains incomplete because the BNS does not establish a dedicated institutional structure for investigation, inter-State coordination, intelligence integration, financial disruption, witness protection, or exclusive adjudicatory mechanisms comparable to a full special statute. This paper critically studies India's present legislative architecture, including the influence of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), parallel State enactments, and the constitutional concerns that arise when extraordinary anti-crime powers affect liberty and fair trial rights. The paper argues that despite recent codification under the BNS, India still requires a centralized anti-organized crime law that is narrowly tailored, federalism-sensitive, and rights-compliant. Such a law should define organized crime precisely, identify serious predicate offences, create coordinated institutional mechanisms, prioritize proceeds-based investigation, and include strong judicial and procedural safeguards against misuse.

Keywords: organized crime, Bharatiya Nyaya Sanhita, MCOCA, centralized criminal law, India

Introduction

Organized crime has become one of the most difficult criminal justice challenges in modern India because it is no longer confined to conventional gang activity such as extortion, contract killing, or illegal betting. Contemporary criminal syndicates often function through flexible and networked structures and may engage simultaneously in narcotics trafficking, cyber-enabled fraud, human trafficking, land grabbing, financial scams, illicit arms movement, hawala channels, shell businesses, and cross-border logistics. This structural shift has made organized crime not merely a local law-and-order issue but an inter-State and, at times, transnational challenge affecting economic regulation, internal security, and governance.

For many years, India lacked a uniform central penal provision directly criminalizing "organized crime" as a distinct offence. Instead, the legal response developed unevenly through a series of State laws, especially MCOCA and statutes modelled on it, alongside central statutes that address related areas such as terrorism, narcotics, and financial crime. This segmented framework allowed authorities to respond to specific harms, but it also created fragmentation in definitions, procedure, jurisdiction, and enforcement strategy.

The enactment of the BNS changed this position by introducing organized crime and petty organized crime into the national penal code. On its face, this appears to solve the problem of legal non-uniformity. Yet a deeper analysis shows that national criminalization is not the same as a centralized anti-organized crime regime. The BNS supplies a substantive offence, but it does not create a comprehensive institutional architecture for investigation, prosecution, inter-jurisdictional coordination, intelligence sharing, asset forfeiture design, and witness protection. The present study therefore examines whether India's legislative evolution has adequately responded to the realities of organized criminal enterprise. It asks whether the current framework, even after the BNS, remains too fragmented and whether a dedicated centralized law is necessary to ensure coherence, effectiveness, and constitutional discipline. The study is especially significant because anti-organized crime laws often involve exceptional procedural features that can deeply affect liberty, bail, evidence, and surveillance. Any legislative proposal must therefore balance national security and public order concerns with the constitutional guarantees of equality, fair procedure, and personal liberty.

Literature Review

The current literature on organized crime law in India falls broadly into four streams. The first stream examines the emergence and influence of MCOCA and related State statutes. PRS legislative analysis of the Rajasthan Control of Organised Crime Bill, 2023 notes that the Bill is substantially identical to MCOCA and highlights the core architecture of such laws: continuing unlawful activity, criminal organization, higher penalties, restrictions on bail, admissibility of police confessions, interception of communication, and special courts.[cite:12] This literature is important because it demonstrates how State-level organized crime control laws were developed as exceptional measures designed to combat entrenched criminal syndicates through departures from ordinary criminal procedure.

The second stream studies the constitutional and doctrinal limits of such exceptional laws. Judicial materials on *State of Maharashtra v. Bharat Shanti Lal Shah* show that while courts have upheld several special features of MCOCA, they have also invalidated overbroad provisions such as the clause that effectively denied bail for offences committed while an accused was already on bail in relation to any unrelated law.[cite:17][cite:19] This strand of literature emphasizes that anti-organized crime laws cannot exist in a constitutional vacuum. Their extraordinary powers must remain bounded by Articles 14 and 21, especially where the law reverses burdens, expands police power, or dilutes evidentiary safeguards.

The third stream focuses on the BNS as India's first nationwide codification of organized crime. Project 39A's analysis explains that the organized crime clause in the BNS borrows heavily from MCOCA and similar State laws but also broadens the category of "continuing unlawful activity" in significant ways.[cite:1] Unlike MCOCA, which relies on specified thresholds such as cognisable offences punishable with at least three years and the filing of more than one charge-sheet within the preceding ten years, the BNS formulation is seen as both unifying and potentially overbroad. Related commentary also notes tensions between the BNS and pre-existing special laws because special statutes continue to operate in some States and may prevail over general criminal law in case of conflict.

The fourth stream explores the policy need for national coordination in response to changing criminal markets. Government and institutional materials emphasize that organized criminal networks are increasingly technology-enabled, mobile, and financially sophisticated. The BNS

explanatory material refers to a broad set of crimes under organized crime, including kidnapping, robbery, vehicle theft, extortion, contract killing, cyber-crimes, and human trafficking.[cite:18] At the same time, comparative policy analyses suggest that national coherence is weakened when legal responses remain divided between general penal code provisions and State-specific special statutes.

Existing literature is therefore rich in doctrinal and comparative insight, but much of it is concentrated either on the constitutionality of specific State laws or on the textual novelty of the BNS. There is relatively less integrated analysis of the full legislative continuum: from State experimentation, to central codification, to the unresolved question of whether India still needs a dedicated centralized anti-organized crime statute. That is the main analytical space this paper seeks to address.

Research Gap

A review of the available literature reveals three major research gaps. First, much of the existing scholarship treats State-level laws such as MCOCA as the primary reference point for anti-organized crime legislation, while newer commentary focuses on the BNS mainly as a codificatory development. There is limited scholarship that critically compares both models in terms of institutional design, federal distribution of power, and long-term legal coherence.

Second, available discussions often assess legal validity and definitional scope but do not sufficiently examine whether a nationwide penal provision can substitute for a specialized central law. The distinction between substantive criminalization and coordinated enforcement architecture remains underdeveloped in existing legal commentary. As a result, the debate risks assuming that a national offence automatically creates national capacity.

Third, there is insufficient synthesis of constitutional critique with legislative design proposals. Judicial decisions caution against wrongful invocation, arbitrary bail restrictions, and excessive procedural departures. However, fewer studies systematically ask how a future centralized law can be drafted to preserve investigative effectiveness while still protecting liberty, fair trial, and federal balance. This paper addresses these gaps by combining doctrinal analysis, policy evaluation, and reform-oriented legislative design.

Research Objectives

This research is guided by the following objectives:

- To examine the historical and legal development of India's response to organized crime through State laws, central statutes, and the BNS.
- To critically analyze the strengths and weaknesses of the present fragmented legislative framework governing organized criminal activity in India.
- To assess whether the BNS adequately meets the need for a uniform national response to organized crime.
- To evaluate constitutional concerns arising from exceptional anti-organized crime provisions, particularly in relation to liberty, equality, bail, and evidentiary safeguards.
- To propose the key features of a centralized anti-organized crime law suitable for the Indian constitutional and federal structure.

Research Methodology

This paper adopts a doctrinal and analytical research methodology. It is based primarily on secondary legal materials, including statutory provisions, legislative briefs, policy notes, explanatory materials, and judicial decisions discussing organized crime legislation in India. The research does not rely on field interviews or empirical surveys; instead, it interprets legal texts and institutional materials to identify structural strengths, gaps, and policy consequences.

The methodology combines descriptive, comparative, and critical techniques. The descriptive component maps the current legislative framework, including State organized crime laws and the BNS. The comparative component examines the similarities and differences between MCOCA-type statutes and the BNS approach. The critical component evaluates whether these laws adequately address inter-State, financial, and technology-enabled forms of organized crime while remaining constitutionally valid.

The study also employs a normative reform perspective. That is, after analyzing existing law, it proposes legislative principles for a future centralized anti-organized crime statute. The purpose is not merely to describe what the law currently is, but to assess what it ought to become in order to respond effectively and fairly to organized criminal syndicates in India.

Analysis & Discussion

1. Evolution of India's legislative response

India's legislative response to organized crime did not begin with a centralized vision. Instead, it emerged incrementally. For a long period, general penal law addressed individual offences committed by multiple persons through doctrines of common intention, common object, conspiracy, abetment, and unlawful assembly, but it did not recognize organized crime as a distinct criminal phenomenon requiring enterprise-based regulation.[cite:12] This meant that law enforcement could prosecute specific acts, yet often lacked a legal framework for addressing the continuity, hierarchy, financing, and strategic coordination of criminal syndicates.

State legislatures responded first. MCOCA became the leading model and was later extended to Delhi, while similar legislative patterns were adopted in other jurisdictions such as Gujarat and Karnataka. These statutes represented a major shift because they were designed not only to punish offences but to incapacitate syndicates through special rules on bail, confessions, surveillance, forfeiture, and special courts. The underlying legislative assumption was that ordinary procedure was insufficient to address entrenched organized crime.

This State-led model, however, created a patchwork system. One State could invoke a special statute with broad anti-syndicate powers, while another had to rely on ordinary penal law or subject-specific central laws. Organized criminal groups, which typically operate across borders and through distributed networks, could thus encounter inconsistent legal frameworks depending on location. The challenge became more serious as criminal enterprises increasingly began to exploit national and digital spaces.

The BNS altered this landscape by introducing organized crime into the national penal code. This was an important symbolic and doctrinal step because it recognized organized crime as a nationwide legal category. Yet its legislative form is still that of a general code provision, not a full institutional statute. Therefore, the evolution is incomplete: India has moved from no national offence to national criminalization, but not from fragmentation to true systemic coordination.

2. Strengths of the current framework

The current framework has some undeniable strengths. First, State laws like MCOCA demonstrated that the Indian legal system was capable of recognizing organized crime as a structured and continuing enterprise rather than a set of isolated offences. This conceptual shift

has influenced later legal developments, including the BNS.

Second, the BNS has created a nationwide substantive basis for punishing organized crime. PRS notes that organized crime under the BNS includes offences such as kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime when carried out on behalf of a crime syndicate. This has clear value because it reduces the earlier problem whereby some parts of India had special anti-organized crime legislation and others did not.

Third, the present framework reflects a recognition that criminal syndicates must be addressed through more than incident-based prosecution. Materials explaining the BNS describe it as adding a dedicated section to combat organized crime and to cover threats posed by syndicates to internal security and public order. That legislative acknowledgment is itself important because it validates the need for a specialized approach within criminal law.

3. Weaknesses and structural fragmentation

Despite these advances, the weaknesses remain substantial. The most serious problem is fragmentation. State laws continue to coexist with the BNS, and commentary has pointed out the resulting tug of war between general codification and special legislation. Where special statutes apply, they may displace general law. This creates uncertainty for investigators, prosecutors, courts, and accused persons alike.

The second weakness is the lack of institutional integration. A proper anti-organized crime framework requires a mechanism for coordinated investigation, intelligence pooling, digital evidence management, financial tracking, interstate tasking, and witness protection. The BNS does not create such a structure. It establishes offences, but not an agency model or detailed intergovernmental process for syndicate-based investigation.

The third weakness is the possibility of overbreadth. Project 39A's analysis criticizes the BNS for borrowing from State organized crime laws while expanding certain thresholds in ways that may blur the distinction between ordinary serious crime and genuinely organized criminal enterprise. This matters because exceptional criminal law should apply only where there is clear and demonstrable continuity, structure, and syndicate linkage. Overexpansion risks abusive invocation and unnecessary curtailment of liberty.

4. Constitutional dimensions

Anti-organized crime laws often operate at the edge of constitutional tolerance because they alter fundamental assumptions of criminal justice. They may impose stricter bail rules, permit confessions made to senior police officers, authorize interception of communications, and

create presumptions against the accused. Such features are defended on the ground that organized crime is exceptionally difficult to prove and disrupt through ordinary methods.

Yet courts have repeatedly warned that necessity cannot erase constitutional guarantees. In *Bharat Shanti Lal Shah*, judicial scrutiny sustained significant parts of MCOCA while also identifying constitutional limits. In particular, an identical provision to the one discussed in recent PRS analysis was struck down because denying bail on the basis that the accused was already on bail in an unrelated matter treated dissimilar situations as though they were the same, thereby offending Articles 14 and 21.

This constitutional experience has two implications. First, any centralized law cannot merely replicate MCOCA verbatim on a national scale. Second, the design of anti-organized crime legislation must be principled, not reactionary. Extraordinary powers should be linked to precise definitions, strict thresholds, independent review, and proportional safeguards. Otherwise, the law may punish not only organized crime, but also due process itself.

5. Why the BNS is not enough

The BNS is a major development, but it is not a substitute for a centralized anti-organized crime law. A penal code provision can criminalize conduct, but it cannot by itself generate specialized capacity. Organized crime investigation is resource-intensive and intelligence-driven. It requires coordinated databases, forensic support, digital tracing, proceeds-of-crime analysis, surveillance governance, and dedicated prosecutorial planning. None of these capacities automatically follow from codifying an offence in the general penal statute.

Further, organized crime is not merely a matter of violence. It is also a matter of organizational persistence, illegal economies, territorial control, corruption, and financial reinvestment. A serious response therefore requires more than punishment after arrest; it requires disruption of the syndicate's enterprise model. BNS provisions, as currently understood, do not create a robust national confiscation and enterprise-disruption architecture tailored specifically to organized crime.

A further limitation concerns federal operational complexity. State police forces remain central actors in criminal law enforcement, and that will continue. But inter-State syndicates exploit the very gaps that arise from segmented policing. A centralized law could create criteria-based central coordination for high-impact or multi-State organized crime while preserving the ordinary primacy of State law enforcement in local cases. Without such coordination, national criminalization remains symbolically important but practically thin.

6. Need for a centralized anti-organized crime law

The case for a centralized law rests on legal uniformity, institutional capacity, and strategic necessity. First, a central law can create uniform definitions of organized crime, criminal syndicate, continuing unlawful activity, proceeds of organized crime, and organized criminal assistance. Uniformity matters because definitions shape arrest, charge framing, bail, evidence, and adjudication.

Second, a central law can establish rules for allocation and coordination. It can specify when local police act alone, when joint task forces are formed, and when central agencies or designated national cells may assume or assist investigation. It can also define how the law interacts with the BNS, the BNSS, State special laws, and sector-specific statutes addressing narcotics, cybercrime, human trafficking, or terror-linked offences.

Third, a central law can prioritize financial disruption. Organized crime survives through accumulated profit, asset conversion, front entities, coercive market control, and reinvestment into logistics and corruption. The BNS explanatory materials themselves recognize the broad and varied offences that can constitute organized crime, but a full statute would permit deeper focus on attachment, forfeiture, beneficial ownership, and digital asset tracing.

Fourth, a central law can improve national data architecture. One major weakness in the current system is that organized crime is often recorded through offence-specific categories rather than syndicate-specific structures. A centralized law could require annual reporting, risk classification, inter-agency dashboards, and parliamentary accountability. This would support both better law enforcement and better democratic oversight.

7. Features of a model centralized law

A well-designed centralized law should avoid two extremes: excessive harshness and institutional vagueness. It should be firm against serious syndicate crime, but careful in its triggers. Several key features are essential.

Precise definition: Organized crime should be defined as structured and continuing activity by a criminal syndicate or organization for material gain, territorial influence, illegal market control, coercive advantage, or other specified unlawful purposes. The law must require enterprise continuity and linkage rather than mere participation in a single group offence.

Serious predicate offences: Instead of sweeping in every cognizable offence, the law should identify serious predicates such as extortion, kidnapping for gain, contract killing, organized cyber-fraud above defined monetary thresholds, trafficking, arms running, illegal betting rackets, land grabbing, and high-value financial scams.[cite:16][cite:18] This would reduce

overbreadth and prevent routine criminality from being relabelled as organized crime.

Specialized investigation: The law should create either a dedicated national anti-organized crime directorate or a scheduled-offence coordination mechanism through existing institutions. State participation should be mandatory through nodal officers and joint tasking protocols. This model would preserve cooperative federalism rather than displace State policing.

Financial tools: The law should include attachment, tracing, forfeiture, management of seized assets, disclosure obligations, and tools for identifying beneficial ownership. Organized crime is often more vulnerable through its financial architecture than through isolated arrests.

Safeguards: Any departure from ordinary criminal procedure must be balanced by senior-level authorization, judicial review, time-bound sanction processes, transparent interception protocols, limits on police-confession use, and meaningful bail review. The lessons of *Bharat Shanti Lal Shah* make it clear that anti-crime severity cannot justify arbitrary law.

8. Federalism concerns and answer to objections

The strongest objection to a centralized anti-organized crime law is that police and public order are closely associated with State competence. State-specific statutes emerged precisely because local conditions differ and States needed tailored tools. This concern is constitutionally serious and cannot be ignored.

However, the argument for a central law is not an argument for abolishing State authority. It is an argument for structured national coordination where the criminal enterprise itself exceeds State boundaries or implicates national markets, digital systems, or organized proceeds networks. The BNS has already nationalized the substantive idea of organized crime. The next step would be to nationalize coordination, not to centralize every investigation indiscriminately.

A cooperative model is therefore both feasible and preferable. The law could retain State primacy for local syndicate matters while permitting central entry only under defined criteria such as inter-State operation, high-value proceeds, transnational linkages, or use of complex digital infrastructures. This would reconcile federalism with effectiveness.

Research Findings

The study yields the following findings:

- India’s response to organized crime has evolved from general penal provisions to a hybrid system of State special laws and recent national penal codification under the BNS.

- MCOCA-type legislation significantly influenced India's legal understanding of organized crime, especially through the concepts of continuing unlawful activity, syndicate participation, interception, special courts, and enhanced bail restrictions.
- The BNS is historically significant because it creates, for the first time, a nationwide substantive offence of organized crime and petty organized crime.
- Despite this development, the present legal framework remains fragmented because State laws and general national provisions coexist without a fully integrated institutional mechanism.
- The BNS addresses criminalization but does not itself create a specialized nationwide enforcement structure for intelligence-led and proceeds-based anti-organized crime operations.
- Judicial scrutiny of MCOCA demonstrates that any special anti-organized crime framework must remain consistent with constitutional guarantees under Articles 14 and 21.
- A centralized anti-organized crime law is desirable, but only if it uses precise definitions, serious offence thresholds, coordinated federal design, financial investigation tools, and strong procedural safeguards.

Conclusion

India's legislative response to organized crime has advanced substantially, yet it remains incomplete. State laws such as MCOCA pioneered an enterprise-based understanding of syndicate crime, while the BNS has now introduced organized crime into the national penal code. These are important developments, but they do not amount to a complete national framework capable of addressing the inter-State, technological, financial, and organizational complexity of modern criminal syndicates.

The central challenge is not whether India recognizes organized crime as a serious threat; it clearly does. The challenge is whether the country has constructed a coherent legal and institutional architecture to confront it. On close analysis, the answer remains no. The present framework still suffers from fragmentation, definitional tension, uneven procedural design, and limited national coordination.

Accordingly, the need for a centralized anti-organized crime law remains strong. Such a law

should not simply copy the harshest aspects of MCOCA-like statutes. Instead, it should build a carefully calibrated model that combines national coherence with federal respect, operational power with judicial oversight, and effective enforcement with constitutional restraint.

Recommendations

- Parliament should enact a dedicated centralized anti-organized crime statute distinct from the general penal code, while clarifying its relationship with the BNS and State special laws.
- The statute should define organized crime narrowly and require clear enterprise linkage, continuity, and involvement in serious scheduled predicate offences.
- It should create a coordinated investigation framework with mandatory State participation, joint task forces, and interoperable intelligence systems.
- It should prioritize attachment and forfeiture of criminal proceeds, including tracing of digital and layered assets.
- Bail, surveillance, confessional evidence, and presumptions should be regulated through constitutionally sound safeguards and regular judicial review.
- Annual parliamentary and public reporting mechanisms should be introduced to prevent misuse and improve accountability.

Scope for Future Research

Future research may examine organized crime through empirical and interdisciplinary methods. For example, studies may evaluate how syndicates use digital finance, encrypted communications, land markets, or political patronage across jurisdictions. Comparative work may also explore how other federal systems reconcile central coordination with local police powers in combating organized crime.

Further research may also study the post-implementation impact of BNS organized crime provisions in courts and policing practice. Since the BNS is relatively recent, its interpretation, invocation patterns, bail jurisprudence, and overlap with special laws require sustained observation.

Limitations

This paper is limited by its doctrinal nature and dependence on secondary materials. It does not include field-based interviews with investigators, prosecutors, judges, or defence lawyers, nor

does it present original quantitative data on organized crime prosecution patterns. Its findings therefore concern legal design and policy structure rather than direct empirical measurement.

A further limitation is that the organized crime jurisprudence under the BNS is still emerging. Because judicial interpretation is in an early stage, some conclusions about future implementation remain predictive rather than settled.

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