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ORGANISED CRIME UNDER BNS, 2023: LEGAL FRAMEWORK AND ENFORCEMENT CHALLENGES

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ABSTRACT

The BNS introduction of organised crime as a separate offence in India (Section 111) is considered a major step in Indian criminal law, as it broadened criminal liability from the individual who carries out the offence to organised criminal syndicates as well. The article aims to examine the provisions included in Sections 111 and 112, taking into account their origins in the Indian Penal Code of 1860 as well as their relationship to the MCOCA and the United Nations Convention against Transnational Organised Crime. Furthermore, this paper will also explore the basic elements of organised crime, including continuation of criminal acts, syndicate members, use of illegal methods and gain of tangible advantages, as well as the extent of derivative liability. This paper examines the judicial decisions in the MCOCA and their persuasive value to Section 111 of the Act, with regard to criminal association, participation and the constitutional protection under Article 14, 20(2) and 21. This paper argues that there are issues involved in implementing the uniform substantive criminal law without specialised procedure, for example, overcharging, overlap of laws, collaboration among federal governments and investigation of cyber and financial crimes.

Keywords: Organised crime, MCOCA, Criminal Syndicate, Section 111 of BNS, 2023, Enforcement challenges.

I. INTRODUCTION

Organised crime has been a problem for criminal justice systems since the beginning of time, and the outward manifestation of a protracted operations may take the form of an extortion ransom, kidnapping or, as in the case of the Internet, cyber-fraud. Continuity, group organisation, use of force or intimidation, and profit-making have been identified as the features of organised crime in the literature.¹ Conditions of liability which only penalise the

¹ Tasneem Fatima & Jyotsna Singh, *From Special Laws to Penal Code: A Critical Evaluation of Organised Crime Under Bharatiya Nyaya Sanhita 2024*, 7 Int'l J. Rsch. Publ'n & Revs. 1687, 1687 (2026); Aishwarya Pandey, *An*

direct perpetrator may be against the final act and not against the planning, repetition and profit of the organisation.

This issue is addressed by Section 111 of the Bharatiya Nyaya Sanhita, 2023, which was introduced for organised crime in the Indian general penal code.² It adopts some of the concepts from Maharashtra Control of Organised Crime Act, 1999 (MCOCA) such as notion of an organised crime syndicate and continuous unlawful conduct and extends liability from the person committing the underlying offence to conspirators, knowing facilitators, members, harbourers and possessors of the property derived from the crime.³ However, the BNS is a substantive code. It does not automatically replicate the institutional framework used by MCOCA to regulate the invocation and investigation of organised crime offences, the sanctioning of charges, the evidence, bail and the trial of organised crime cases.⁴

Although this reform is significant, research on the implications of the introduction of organised crime in the BNS is still sparse.⁵ This article aims to fill that void. It contends that Section 111 is an enterprise crime, and not merely an aggravated form of the crimes stated, such that the prosecution has to provide the entire statutory scheme. Secondly, it argues that the comprehension of MCOCA must be considered more than an attractive interpretative attempt, it must also be taken as something more substantial. Third, it recommends that the inconsistencies in procedure can only be addressed by uniform charging and investigation of offences, and maybe even by legislation, if not by reducing the crime itself.

II. LEGAL FRAMEWORK

A. General Penal Law Provisions Prior to BNS

In the absence of the BNS, the majority of the acts related to organised crimes was regulated by the general provisions of the Indian Penal Code, 1860 (IPC). According to Sections 120A and 120B, criminal conspiracy would enable liability for an agreement to commit an unlawful act or a lawful act by unlawful means.⁶ Dacoity offences, that is, involving at least five persons,

Analysis of the Legislative Framework of Organized Crime in India, 6 Int'l J. Legal Sci. & Innovation 107, 107–08 (2024).

² Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, INDIA CODE (2023), § 111; Chlikamukku Manjula & S Nagender Reddy, *Section 111 of the Bharatiya Nyaya Sanhita: Substantive Centralization and Procedural Fragmentation in India's Organized-Crime Framework*, 9 Int'l J.L. Mgmt. & Human. 271, 272 (2026); see also Fatima & Singh, *supra* note 1, at 1687.

³ The Maharashtra Control of Organised Crime Act, 1999, Maharashtra Act No. 30 of 1999, §§ 2(1)(d)–(f), 3 (India); Manjula & Reddy, *supra* note 2, at 272.

⁴ Manjula & Reddy, *supra* note 2, at 272, 278–79.

⁵ Fatima & Singh, *supra* note 1, at 1689.

⁶ Indian Penal Code, No. 45 of 1860, INDIA CODE (1860), §§ 120A–120B (repealed 2024); Pandey, *supra* note 1, at 110; Manjula & Reddy, *supra* note 2, at 273 & n.4.

as well as abduction for ransom offences under Section 364A, involved specific kinds of criminal activities.⁷ Additionally, organised crime was tried for the specific crimes they committed, such as trafficking offences in the case of traffickers or murder in the case of contract murders.⁸

Alongside the IPC, preventative and subject-specific acts targeted certain forms of organised crime, notably the National Security Act, 1980, the Prevention of Money Laundering Act, 2002, and the Narcotic Drugs and Psychotropic Substances Act, 1985.⁹ These laws were their own form of offence. They didn't make the strength and wealth of the syndicate the core of responsibility, nor did they have a general national conception of a continuing crime.¹⁰

B. The MCOCA Model and State Laws

Some State laws made up for this deficiency. MCOCA came into existence due to organised crime and underworld activities in Mumbai.¹¹ It included special provisions on interception of communication, special courts, and admissibility of certain evidence, tough bail conditions, and a longer period of investigation.¹² Other States have passed their own legislation; secondary literature also mentions such States as Karnataka, Gujarat, Uttar Pradesh, Haryana, and Rajasthan, the latter two in 2023.¹³

Opinions both for and against this law have been voiced. As per the secondary literature, the Law Commission of India favoured central law against organised crime, as the activity based on syndicates was considered a threat to the state and its authorities. Nevertheless, some believe that exceptional laws may lead to normalisation of long-term imprisonment and preventive detention.¹⁴ The BNS was supposed to take the place of a current situation where there was an absence of uniform substantive law with different definitions, procedures, and penalties provided by different state legislations.¹⁵

⁷ Indian Penal Code §§ 364A, 391; Pandey, *supra* note 1, at 110.

⁸ Pandey, *supra* note 1, at 110.

⁹ National Security Act, 1980, No. 65 of 1980, INDIA CODE (1980); Prevention of Money Laundering Act, 2002, No. 15 of 2003, INDIA CODE (2003); Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61 of 1985, INDIA CODE (1985); Pandey, *supra* note 1, at 110–11.

¹⁰ Manjula & Reddy, *supra* note 2, at 273.

¹¹ Pandey, *supra* note 1, at 111; Fatima & Singh, *supra* note 1, at 1690.

¹² Shahina B, Sahnaaj J S & Varshini A, *Navigating Organised Crime: Insights from Section 111 of the Bhartiya Nyaya Sanhita, 2023*, 9 Int'l J. Novel Rsch. & Dev. b585, b586 (2024); Fatima & Singh, *supra* note 1, at 1690–91; Maharashtra Control of Organised Crime Act, 1999, § 18.

¹³ Fatima & Singh, *supra* note 1, at 1690; Pandey, *supra* note 1, at 111.

¹⁴ Fatima & Singh, *supra* note 1, at 1688–90 (citing Law Commission of India, *One Hundred Eighty-First Report on Need for Central Legislation to Combat Organised Crime* (2002), and Usha Ramanathan, *Extraordinary Laws and Ordinary Lives*, 39 Econ. & Pol. Wkly. 4193 (2004)).

¹⁵ Shahina B et al., *supra* note 13, at b586; Fatima & Singh, *supra* note 1, at 1687.

C. The International Framework

The United Nations Convention Against Transnational Organised Crime (UNTOC), adopted in the year 2000, provides the international point of reference. An organised criminal group is defined in the UNTOC as three or more persons acting collectively in committing serious offences for financial gain or any other form of benefit. It also includes the criminalisation of participation, asset confiscation, mutual legal assistance and law enforcement cooperation.¹⁶ The supplementing protocols relate to some “primary” activities, thus helping to create a consensus regarding the main Convention.¹⁷ Section 111 is one of the exceptions. According to the BNS, an organised criminal syndicate refers to the association of two or more persons, which is a lower number of persons compared to the UNTOC.¹⁸

III. THE STATUTORY FRAMEWORK OF SECTIONS 111 AND 112

A. The Base Offence

An integrated approach is used to describe the base offence in section 111(1). Four elements need to be proven: (i) an ongoing illegal activity; (ii) carried out by an individual or group of individuals acting in concert, singly or jointly, as a member of an organised crime syndicate or on behalf of such a syndicate; (iii) through the use of violence, threats of violence, intimidation, coercion, or any other illegal means; and (iv) to obtain a direct or indirect material benefit, including a financial benefit.¹⁹ Examples of the prohibited acts include kidnapping, robbery, theft of motor vehicle, extortion, land-grabbing, contract killing, economic crime, serious cybercrime, and trafficking of persons, drugs, illegal goods/services and weapons.²⁰

Each element is a unique question. The syndicate element defines the organisational unit; the “member of or on behalf of” element connects the activities of the defendant to the organisational unit; the means element incorporates coercion or other criminal conduct; the benefit element determines the purpose of the enterprise; and continuity distinguishes enterprise from incident.²¹

¹⁶ U.N. Convention Against Transnational Organized Crime arts. 2(a), 5, 12, 13, 18, 27, Nov. 15, 2000, 2225 U.N.T.S. 209; Manjula & Reddy, *supra* note 2, at 273–74, 280–81.

¹⁷ Pandey, *supra* note 1, at 112.

¹⁸ Manjula & Reddy, *supra* note 2, at 274.

¹⁹ Bharatiya Nyaya Sanhita, 2023, § 111(1).

²⁰ Bharatiya Nyaya Sanhita, 2023, § 111(1); Gagan Gill & Rishav Dogra, *Organized Crimes in India: An Insight from Bhartiya Nyaya Sanhita, 2023*, 4 ILE Multidisciplinary J. 716, 721 (2025).

²¹ Manjula & Reddy, *supra* note 2, at 274.

B. Statutory Definitions

There are three definitions found in the Explanation to Section 111(1). "Organised crime syndicate" means an association of two or more persons who act either individually or collectively as a syndicate or gang indulging in any continuing unlawful activity. "Continuing unlawful activity" is defined as an activity which is banned by law, constitutes a cognizable offence for which the minimum punishment prescribed is three years or more, done by a person as a member or on behalf of an organised crime syndicate, where more than one charge-sheet has been filed against the same before a competent court within the last ten years, and the same has taken cognizance or an economic offence. Economic offence shall be considered to include the following offences: criminal breach of trust, forgery, counterfeiting of currency notes, bank notes and Government stamps, hawala, mass marketing scheme, and schemes to defraud several persons or any bank or financial institution.²²

The continuity test focuses on objective procedural facts (charge-sheets and orders of cognizance) in relation to the criminal acts rather than the reputation or police information. Interestingly, the legislature selected charge-sheets and cognizance instead of conviction as a prerequisite for the criminal conduct. It was selected because of the time taken in completing complicated procedures, but at the same time, the predicate offences are just a statutory history which can trigger the application of the provision.²³

C. Liability and Punishments

The provisions under Section 111 give levels of liability which have been illustrated in the following table:

Provision	Conduct	Punishment
s. 111(2)	Committing organised crime which leads to the death of any person	Death or life imprisonment; minimum fine of ₹10 lakh
s. 111(2)	Committing organised crime under any other circumstances	Imprisonment not less than five years or can extend to life imprisonment; minimum fine of ₹5 lakh.
s. 111(3)	Abetting, attempting, conspiring, knowing facilitation or any activity that is preparation for committing organised crime	Imprisonment not less than five years or can extend to life

²² Bharatiya Nyaya Sanhita, 2023, § 111(1) expl. (i)–(iii); Manjula & Reddy, *supra* note 2, at 273–75.

²³ Manjula & Reddy, *supra* note 2, at 274–75.

		imprisonment; minimum fine of ₹5 lakh.
s. 111(4)	Member of an organised crime syndicate	Imprisonment not less than five years or can extend to life imprisonment; minimum fine of ₹5 lakh.
s. 111(5)	Harbouring or concealing a person who commits organised crime (except the spouse of the offender)	Imprisonment not less than three years or up to life imprisonment; minimum fine of ₹5 lakh.
s. 111(6)	Owning property received or obtained from the organised crime	Imprisonment not less than three years or up to life imprisonment; minimum fine of ₹2 lakh.
s. 111(7)	Having possession of movable or immovable property on behalf of any member of the syndicate which cannot be accounted for satisfactorily	Imprisonment not less than three years, extending up to ten years; minimum fine of ₹1 lakh.

D. Petty Organised Crime under Section 112

Petty organised crimes that are carried out by a member of a gang come under Section 112 of the Act. This includes crimes like theft, robbery, snatching, cheating, sale of tickets without permission, betting/gambling without permission, selling of public examination question papers, etc. It is punishable with imprisonment of at least one year but not more than seven years, along with a fine.²⁴ The inclusion of section 112 justifies the necessity of maintaining the high standard set by Section 111: Repetition and membership alone cannot prove the enterprise organisation envisaged by Section 111.

E. Mental Element

The legislature has used different terms to refer to the mental element under the sub-sections: "knowingly" in the facilitation of the offence under sub-section (3), and "intentionally" in the sub-section on harbouring. However, sub-section (4), which imposes a minimum penalty of

²⁴ Bharatiya Nyaya Sanhita, 2023, § 112; Gill & Dogra, *supra* note 21, at 722–23; Manjula & Reddy, *supra* note 2, at 280.

five years of imprisonment, has neither word. Considering the seriousness of the minimum sentence, it is constitutionally safe to interpret that the act of membership must be proved through voluntary participation in acts or circumstances.²⁵

IV. JUDICIAL INTERPRETATION

Since Section 111 is relatively recent legislation, there is hardly any judicial opinion on the interpretation of this provision. However, some insight can be gained from the decisions of the courts on MCOCA where cognate principles apply. The opinions of the Court on MCOCA cannot be considered as binding because MCOCA and BNS differ both from the point of view of their wording and procedure.

In *State of Maharashtra v. Bharat Shanti Lal Shah*²⁶, the Supreme Court upheld the constitutionality of MCOCA but at the same time warned against the mechanical application of this law. This decision is evidence of the legal doctrine of treating organised crime as a special class of crime, and the special class cannot be applied without proving all of its necessary elements. In the case of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*²⁷, the Court ruled that mere membership in a criminal outfit was not sufficient and active participation in the criminal activities should be established. The Court thus prevented guilt from arising from association and is relevant to the “member of or on behalf of” test enshrined in Section 111.

Other judgments in MCOCA cases like *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*, *State of Maharashtra v. Vishwanath Maranna Shetty*, *State of Maharashtra v. Shiva alias Shivaji Ramaji Sonawane*, and *Prasad Shrikant Purohit v. State of Maharashtra* are also deemed as laying down that mere intersection with other laws does not erase the special characteristics of each law, and continuity and the connection between prior actions, the syndicate, and the actus reus should be taken into account.

This approach gains further backing from constitutional values. Harsh penal provisions cannot be said to be unconstitutional just because they are strict. Instead, due to their harsh nature, a need is created for a more exact construction, which has been laid down by the Supreme Court in *Kartar Singh v. State of Punjab*,²⁸ dealing with anti-terrorism legislation. Any process which adversely affects the liberty of a person must be a fair and reasonable procedure as per Article

²⁵ Manjula & Reddy, *supra* note 2, at 276.

²⁶ *State of Maharashtra v. Bharat Shanti Lal Shah*, (2008) 13 SCC 5 (India)

²⁷ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 (India)

²⁸ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India)

21, as per *Maneka Gandhi v. Union of India*.²⁹ Section 111 creates a principled distinction under Article 14; it distinguishes organised crimes from other offences because continuity, structure, illegal methods, and purpose create a social evil which is different from other offences.

Finally, investigations into organized crime could also involve the use of communication analysis, location analysis, financial analysis, and device analysis. In the case of *Justice K.S. Puttaswamy (Retd) vs. Union of India*,³⁰ any interference by the State has to be lawfully justified, have a legitimate aim, be necessary, and proportional. Section 111 does not give any surveillance privileges to the investigators.

V. ISSUES OF ENFORCEMENT

A. The Gap between Procedure and Evidence

The most prominent characteristic of the BNS method is that the substantive law is centralized while the procedural law is largely unaffected. The MCOCA is not just a law that defines and punishes an act, but it is one that is marked by special procedures in interception, police confession, presumption, bail and approvals.³¹ Section 111 makes no provision on any of the above. The investigations, gathering of evidence and trials are generally carried out in accordance with Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023.³²

There are two corollaries to the above. First of all, that's not a procedure that can be analogously extended based on the similarity of the acts in MCOCA. Secondly, without legal passageways of authorisation, it's even more important regarding charging discipline. This is because of the fact that the addition of Section 111 would have significant impacts on punishment, bail policy, stigmatisation, the extent of investigations, and the complexities of trial.³³

There is divided opinion in the literature concerning the strength or weakness of this design. One opinion is that the traditional standards of evidence and procedure will be strengthened through the use of this design by not unnecessarily relaxing evidentiary standards or rigorous bail requirements. The other opinion is that the absence of any special procedures or evidentiary techniques may be problematic when prosecuting organised syndicate-type offences since the criminal code approach lacks a corresponding special investigation process.

²⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India)

³⁰ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India)

³¹ Maharashtra Control of Organised Crime Act, 1999, §§ 14, 18, 21–23; Manjula & Reddy, *supra* note 2, at 278.

³² Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, INDIA CODE (2023); Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, INDIA CODE (2023); Manjula & Reddy, *supra* note 2, at 278; Fatima & Singh, *supra* note 1, at 1690.

³³ Manjula & Reddy, *supra* note 2, at 279.

B. The Extent of Definition and Risk of Over-Charging

The definition in Section 111(1), having an enumeration of activities, is so wide that some of those activities can be easily detected within the usual criminal law, and the minimum threshold of the formation of the syndicate by two persons is comparatively low. It is therefore not sufficient for the statutory threshold to be triggered by the offence being committed in the presence of several persons. It is achieved by the connection elements (continuity, membership of the syndicate or action as a part of the syndicate, use of unlawful means, material benefit). The provision will be an uncontrolled sentence enhancer if considered to be a descriptive factor; it is directed at the specific damage to the organisation. It is also possible to refer to the vagueness of the definition and weakening of safeguards in literature.

A number of implications for practice may be drawn. Firstly, it should be noted that the charge-sheet rule and the rule of cognizance are recognized as jurisdictional facts which are discoverable from the records of the prosecution; and offences, the accused, date, court, and cognizance order in respect of each predicate make up the jurisdictional facts. Unconnected charge-sheets of those whose relationship is tangential cannot be added up unless it is proven that the activity was carried out by the same legally recognizable syndicate. Second, the term "syndicate" must have some practical content to it like continuity of association, cooperation, distribution of roles, common assets or benefits without hierarchy, because the present-day syndicates can be decentralised.

C. Federalism and Overlapping Laws

"Criminal law" and "criminal procedure" fall under the Concurrent List, while "police" and "public order" are subjects of the States.³⁴ In view of the fact that the BNS centralises criminal law, its enforcement will largely be dependent on the State police, thus making cooperative federalism necessary. It is also observed in the literature that organised crime laws of the State still remain operative even under the BNS, which can create confusion with regard to definitions, jurisdiction, and punishment, and will make it difficult to know which particular law governs a particular case. There is a difference between State laws and the BNS and the relationship will need to be explored separately in relation to legislative competence – repugnancy under Article 254 of the Constitution is possible.³⁵

There are overlaps with other special statutes, too. The same set of facts can trigger both Section 111 and the legislation regarding money laundering, criminal activities, or narcotic drugs.

³⁴ INDIA CONST. sched. VII, List II, entries 1–2, List III, entries 1–2.

³⁵ INDIA CONST. art. 254.

However, although duplication will not make the law null and void due to the fact that each offence has its own peculiarities, it might result in the filing of overlapping charges against an individual which are out of proportion with his/her conduct. The protection of Article 20(2) is one that cannot be enjoyed after multiple proceedings over the same criminal act.

D. Cyber Crimes and Financial Crimes

It is important to highlight that there is an explicit reference to cybercrimes with serious consequences and a generalisation of economic offences, so crimes committed using a digital platform or market place are included within the scope of corporate law. The problem is complicated because the amount of cybercrime, from phishing to ransom ware and blackmailing to threatening loan applications, identity theft and money laundering using technology (drug trafficking among other things) is increasing.³⁶ The proof of a syndicate in such cases is quite problematic since shared chat rooms, contacts, funds passing via intermediaries, or common technical infrastructure may provide relevant information, but none can be conclusive evidence in itself regarding syndicate membership.³⁷

Financial investigation is of equal importance. This establishes the aim for which the law is being enforced, recognises both the controllers and beneficiaries and enables asset restraint under applicable laws such as the Prevention of Money Laundering Act, 2002, but the financial process should not take precedence over the basic elements which need to be established under each law.³⁸

E. Institutional Capabilities, Corruption, and Coordination

According to some researchers, the structural obstacles in the enforcement process comprise the following issues: lack of institutional capacity and coordination, lack of resources and manpower, shortage of competent manpower, and conflicts between the centre and states that create problems in decision-making.³⁹ In addition, some studies reveal the interconnections between organized crime and politics that result in institutional corruption and may lead to the biased implementation of laws and manipulation of evidence. The Global Organised Crime Index 2023 places India on the 61st place among 193 countries according to the level of criminality.⁴⁰

³⁶ Shahina B et al., *supra* note 13, at 589.

³⁷ Manjula & Reddy, *supra* note 2, at 278.

³⁸ Manjula & Reddy, *supra* note 2, at 279; Prevention of Money Laundering Act, 2002, No. 15 of 2003, INDIA CODE (2003).

³⁹ Pandey, *supra* note 1, at 107–08, 114–15.

⁴⁰ Gill & Dogra, *supra* note 21, at 716; Shahina B et al., *supra* note 13, at 586.

VI. CONCLUSION

Section 111 of the BNS represents a new development in Indian criminal law by extending the concept of criminal law to include organised crime by considering the harm resulting from such durable organisations and not just individual offenders, while taking into account the provisions of derivative liability and proceeds. The language of Section 111 is also able to cover traditional organised crime syndicates as well as decentralised crime syndicates in cyberspace.

The major challenge faced in the interpretation of Section 111 is the imbalance in substantive and procedural aspects. While Section 111 uses the language of the MCOCA, it works within the normal procedural system and the powers thereunder cannot be analogously invoked. Thus the successful prosecution of a serious offence under Section 111 cannot be achieved by a number of individuals alone, but requires the prosecution to prove that there has been "continuing criminal conduct" and that a "syndicate" exists, that the accused was involved in the syndicate, that illegal methods were used and that there was material gain.

In spite of all the arguments made above, the statute is a piece of law, and the success of legislation will be measured far less on the breadth of the law's definition than on institution building, prosecution accountability, judicial vigilance, witness protection and cooperative federalism.

