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Prasanna S,

Chairman of Institute of Legal Education

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Maudhanda Kurichi, Srirangam,

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Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

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ORGANISED CRIME: ANALYSING INDIA'S UNIFORM APPROACH UNDER SECTION 111 OF THE BNS — A COMPARISON WITH THE U.S. "RICO" MODEL

AUTHOR - SAMARTH R, STUDENT AT SCHOOL OF LAW, CHRIST (DEEMED TO BE UNIVERSITY)

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ABSTRACT

The recent addition of Section 111 of the Bhartiya Nyaya Sanhita, 2023 (hereinafter 'BNS'), constitutes India's first parliament-enacted provision against 'Organised Crime' at the national level.[843] The deliberate structural similarities between Section 111 and the multi-statutory framework of state legislations — including the Maharashtra Control of Organised Crime Act, 1999 (hereinafter 'MCOCA'),[844] the Karnataka Control of Organised Crime Act, 2000 (hereinafter 'KCOCA'),[845] and the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter 'GUJCTOC')[846] — reflect a conscious legislative policy favouring a uniform national approach to dismantling organised crime syndicates. On the other side of the globe, the United States of America has its federal counterpart, the Racketeer Influenced and Corrupt Organisations Act (hereinafter 'RICO') under Title IX of the Organised Crime Control Act of 1970,[847][848] which is widely recognised for its landmark prosecutions against the American Mafia and for its subsequently expansive scope in restraining diverse forms of organised crime. The present comparative study aims to analyse the legislative intent, constitutionality, and evolved definitional scope of Section 111 of the BNS through a socio-legal lens — drawing on doctrinal scholarship, constitutional provisions, and judicial precedents — while benchmarking its substantive intricacies against the principles of RICO jurisprudence. By engaging with the Global Organised Crime Index and contextualising its statistical methodology within the American and distinctively Indian milieus, this paper seeks to answer the supervening question: 'Has India, in its control of organised crime, transitioned from a fragmented legal framework to a uniform one comparable to the core principles of American RICO jurisprudence, and is such a transition the correct step toward curbing organised crime?'

Keywords: Jurisprudential Analysis, Organised Crime, Prosecutorial Efficacy, RICO Act, Section 111 — Bhartiya Nyaya Sanhita, Constitutional Validity.

[843]Bhartiya Nyaya Sanhita, No. 45 of 2023, § 111 (India).
[844]Maharashtra Control of Organised Crime Act, No. XII of 1999 (Maharashtra, India) [hereinafter MCOCA].
[845]Karnataka Control of Organised Crime Act, No. 10 of 2000 (Karnataka, India) [hereinafter KCOCA].
[846]Gujarat Control of Terrorism and Organised Crime Act, No. 35 of 2019 (Gujarat, India) [hereinafter GUJCTOC].
[847]Racketeer Influenced and Corrupt Organisations Act, 18 U.S.C. §§ 1961–1968 (1970) [hereinafter RICO].
[848]Organised Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970).

INTRODUCTION

Organised crime, as a distinct category of criminality, has historically challenged the adequacy of conventional penal law. Unlike isolated offences committed by individuals, it is defined by continuity, structural hierarchy, and purpose-driven coordination. Its hallmarks include collective participation, the systematic pursuit of unlawful objectives, and the deployment of violence, threats, economic manipulation, or political corruption to maintain influence and suppress accountability. The difficulty encountered by the state lies not merely in suppressing individual criminal acts but in dismantling the networks that perpetrate, finance, and perpetuate them. This structural complexity has compelled legislatures across the world to create special legal frameworks that transcend the limitations of ordinary penal provisions.

India's legal history with organised crime stretches beyond the formal codification of criminal law. Colonial-era statutes such as the Criminal Tribes Act of 1871 and various regional thugee suppression ordinances represented early, if heavy-handed, attempts to control collective criminality. The Indian Penal Code, 1860 (hereinafter 'IPC'),[849] which inherited and consolidated these traditions, contained no distinct legal category for 'organised crime.' The Code addressed related phenomena through scattered provisions — criminal conspiracy under Section 120-B, unlawful assembly under Sections 141–149, and extortion under Sections 383–389 — but could not, by design, capture the systemic and continuing nature of syndicate operations. Prosecutors were therefore compelled to charge individual predicate offences without any statutory acknowledgement of the underlying criminal enterprise, which severely restricted the deterrent effect of prosecution and obscured the structural nature of the criminal behaviour.

The inadequacy of the IPC became especially apparent in the 1980s and 1990s, as organised crime syndicates in cities such as Mumbai, Ahmedabad, and Bengaluru proliferated with increasing sophistication. Groups involved in extortion, land-grabbing, contract killing, and drug trafficking operated with a degree of internal discipline and legal impunity that ordinary criminal law was ill-equipped to disrupt. State legislatures therefore sought to fill the legislative vacuum through special enactments. MCOCA, enacted in 1999, was the most significant of these instruments, introducing definitions of 'organised crime' and 'organised crime syndicate,' authorising enhanced punishments, and introducing procedural departures from ordinary criminal law — including special courts, modified bail conditions, and admissibility of confessions before a police officer.[850] Karnataka and Gujarat followed with analogous statutes in 2000 and 2015 respectively.[851][852] These enactments represented critical legal innovations; however, their territorial operation was confined to the enacting states, producing a fragmented patchwork that permitted syndicates exploiting inter-state mobility to evade prosecution.

Scholarly critiques of this fragmented landscape were extensive and well-documented.[853] Interstate criminal networks, including major syndicates engaged in drug trafficking and financial fraud, routinely exploited jurisdictional boundaries by relocating operations, laundering proceeds across states, or registering entities in non-covered territories. Parliamentary and executive acknowledgement of these systemic gaps culminated in the proposal of a national legislative framework, ultimately embodied in Section 111 of the BNS.[854] The Parliamentary Standing Committee on Home Affairs, in evaluating the BNS Bill, specifically underscored the necessity of a uniform national provision that would close

[849]Indian Penal Code, No. 45 of 1860 (India) [hereinafter IPC].

[850]MCOCA, supra note 2.
[851]KCOCA, supra note 3.
[852]GUJCTOC, supra note 4.
[853]Statement of Objects and Reasons, Maharashtra Control of Organised Crime Act, 1999 (Mah. Act No. 30 of 1999), noting that the existing legal framework under the IPC was found to be 'rather inadequate to curb or control the menace of organised crime.'
[854]Statement of Objects and Reasons, Bhartiya Nyaya Sanhita Bill, 2023, Bill No. 121-C of 2023, as introduced in Lok Sabha.

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jurisdictional lacunae while preserving procedural safeguards,[855] signalling a deliberate and considered legislative choice rather than a mere statutory consolidation.

The United States' RICO Act offers a historically significant and structurally instructive comparative counterpart. Enacted as Title IX of the Organised Crime Control Act of 1970,[856] RICO was primarily designed to dismantle the American Mafia — a deeply entrenched network of crime families that had penetrated legitimate business, labour unions, and political institutions. Its central innovation lay in the concept of a 'pattern of racketeering activity' connected to an 'enterprise,' permitting prosecution not for isolated unlawful acts but for a continuing course of criminal conduct. RICO thus legislatively recognised what sociologists and criminologists had long observed: that organised crime derives its durability from its organisational structure, not merely from individual offences. By targeting the enterprise, itself and providing both criminal penalties and civil remedies — including treble damages, forfeiture, and injunctive relief — RICO equipped prosecutors with tools commensurate with the scale of the problem.[857] Over the decades, its judicial elaboration has expanded its application to white-collar crime, political corruption, and even corporate fraud, demonstrating the extraordinary versatility of enterprise-based liability.

The comparison between Section 111 of the BNS and RICO illuminates both meaningful convergences and significant divergences. Both statutes acknowledge that organised crime cannot be adequately addressed through conventional penal provisions alone, and that effective legislation must target structures and patterns of criminal conduct rather than isolated acts. However, their respective constitutional contexts, procedural architectures, and jurisprudential traditions differ substantially. In India, legislative codification has historically dominated, with judicial interpretation confined largely to questions of validity, interpretation, and constitutional compliance. In the United States, judicial elaboration has played a constitutive role in shaping RICO's operational scope, frequently beyond its original legislative intent.[858] This divergence raises the central evaluative question of whether India's uniform framework will develop with comparable flexibility, or whether it will remain bounded by statutory text.

METHODOLOGY

This paper primarily adopts a doctrinal methodology complemented by a comparative dimension to examine the legal treatment of organised crime in India and the United States. Doctrinal research — sometimes characterised as 'black-letter law' analysis — focuses on the systematic study of statutes, constitutional provisions, and judicial precedents as authoritative legal sources. It involves exposition of the law, evaluation of its internal coherence, and assessment of its alignment with constitutional and jurisprudential principles. This methodology is appropriate to a study of this nature, given that the comparative evaluation of two distinct statutory regimes necessarily requires a foundational understanding of each regime's textual provisions and interpretive evolution.

The primary analytical focus of the Indian component is Section 111 of the Bhartiya Nyaya Sanhita, 2023.[859] Its definitional clauses, penal provisions, and abetment rules are examined in light of their legislative intent — as evidenced by the Statement of Objects and Reasons and the Standing Committee Report — and their relationship to pre-existing state legislations, particularly MCOCA.[860][861] The comparative

[855] Parliamentary Standing Committee on Home Affairs, *One Hundred Forty-Eighth Report on the Bhartiya Nyaya Sanhita, 2023* (2023).
[856] Organised Crime Control Act of 1970, supra note 6.
[857] G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organisations (RICO): Basic Concepts — Criminal and Civil Remedies*, 53 Temp. L.Q. 1009 (1980).
[858] Susan W. Brenner, *RICO, CCE, and Other Complex Crimes: The Transformation of American Criminal Law*, 2 Wm. & Mary Bill Rts. J. 239 (1993).
[859] Bhartiya Nyaya Sanhita § 111, supra note 1.
[860] Statement of Objects and Reasons, Bhartiya Nyaya Sanhita Bill, supra note 12.
[861] Parliamentary Standing Committee on Home Affairs, supra note 13.

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component introduces an analysis of RICO,[862] engaging not only with the statutory text but also with extensive judicial interpretations that have shaped its operational scope. Significant American decisions — including *Sedima, S.P.R.L. v. Imrex Co.*,[863] *H.J. Inc. v. Northwestern Bell Telephone Co.*,[864] and *United States v. Turkette*[865] — are examined to understand how enterprise liability has evolved through judicial construction. The Law Commission of India's review of the IPC[866] also informs the historical analysis of the legislative gap that Section 111 was enacted to fill. Where relevant, the paper draws on the Global Organised Crime Index and National Crime Records Bureau reports to contextualise doctrinal findings within empirical realities.

LITERATURE REVIEW

Organised crime has been the subject of extensive legal and socio-legal scholarship precisely because it resists the categories of conventional criminal theory. Traditional criminal law scholarship, predicated on the individual act and the individual offender, is ill-suited to a phenomenon characterised by structural continuity, collective agency, and the deliberate exploitation of institutional weakness. Indian scholarship has historically engaged with this problem primarily through the lens of state-level legislation, with limited doctrinal attention to the pre-BNS national framework.

Early Indian scholarship on organised crime emphasised the inadequacy of the IPC's provisions in addressing syndicate-level criminality.[867] Commentators writing shortly after the enactment of MCOCA observed that the Act's definition of 'organised crime syndicate' represented a qualitative departure from the IPC's episodic approach — one that acknowledged the institutional character of criminal enterprises for the first time in Indian statute law.[868] A more critical appraisal warned that MCOCA's procedural departures — particularly its provisions allowing confessions before senior police officers — risked compromising due process guarantees, a concern equally applicable to Section 111 of the BNS.[869] More recent commentary on Section 111 identifies the uniformity objective as central to the BNS's legislative architecture, while cautioning that definitional breadth may import the risks of prosecutorial overreach that have intermittently afflicted both MCOCA and RICO.[870]

In the American context, the foundational scholarly commentary on RICO was authored by G. Robert Blakey, one of the statute's principal drafters, who articulated its conceptual underpinnings in terms of enterprise liability and the systemic nature of organised crime.[871][872] Blakey has emphasised that RICO's civil provisions — particularly treble damages — were designed to harness private enforcement as a supplement to public prosecution, creating a self-reinforcing deterrence mechanism with no parallel in India's current framework. Brenner's historical analysis of RICO's transformative effect on American criminal law traces its evolution from a Mafia-specific instrument to a broadly applicable enterprise statute, documenting both its prosecutorial successes and the academic concern that its expanding scope raised constitutional problems of vagueness and over-breadth.[873]

International scholarship, particularly in light of UNTOC,[874] has emphasised the centrality of harmonised definitional frameworks and cross-border cooperative mechanisms in the effective

[862] 18 U.S.C. §§ 1961–1968, supra note 5.
[863] Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).
[864] H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989).
[865] United States v. Turkette, 452 U.S. 576 (1981).
[866] Law Commission of India, *Report No. 185: Review of the Indian Penal Code* (2003).
[867] N.V. Paranjape, *Criminology, Penology and Victimology* 318–322 (Central Law Publications, 19th ed. 2023).
[868] Statement of Objects and Reasons, MCOCA, supra note 11.
[869] People's Union for Civil Liberties & Ors. v. Union of India, W.P. (Civil) No. 196 of 2001 (Supreme Court of India); see also People's Union for Democratic Rights, *Report on the Misuse of MCOCA in Maharashtra* (PUDR, 2003).
[870] Parliamentary Standing Committee on Home Affairs, *One Hundred Forty-Eighth Report on the Bhartiya Nyaya Sanhita Bill, 2023*, §§ 5.1–5.12 (2023).
[871] Blakey & Gettings, supra note 15.
[872] G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 Notre Dame L. Rev. 237 (1982).
[873] Brenner, supra note 16.
[874] United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) [hereinafter UNTOC].

control of transnational organised crime.[875] Europol's 2021 Serious and Organised Crime Threat Assessment has similarly underscored that organised crime increasingly operates across jurisdictional boundaries, using corporate structures, digital infrastructure, and financial intermediaries to obscure the connections between criminal acts and criminal enterprises. These findings reinforce the legislative rationale for Section 111's national uniformity — a uniformity that positions India to engage more effectively with international law enforcement mechanisms — while simultaneously underscoring the importance of effective implementation mechanisms that go beyond statutory text.

DEFINITIONAL SCOPE OF ORGANISED CRIME

MULTIDISCIPLINARY

Organised crime is a multifaceted phenomenon that cannot be fully comprehended through a purely legal lens. A comprehensive definition requires a multidisciplinary approach, drawing on criminology, sociology, penology, victimology, and international law to capture the structural, behavioural, social, and normative dimensions of criminal syndicates. Such an approach is not merely academically desirable; it is practically essential, because statutory definitions that fail to account for the social contexts within which criminal networks operate are liable to be over-inclusive in some respects and under-inclusive in others.

From a criminological perspective, organised crime is distinguished by its structured networks, continuity over time, and the purposive pursuit of profit, power, or influence through illegal means. Criminological research identifies internal hierarchy, role specialisation, and adaptive responses to law enforcement pressure as defining features of criminal enterprises. By understanding these patterns — including how networks recruit peripheral actors, insulate leadership from prosecution, and launder proceeds — policymakers can design legal frameworks that anticipate the evolution of criminal strategies. The definition of 'organised crime syndicate' in Section 111 as 'a group of two or more persons who, acting either singly or jointly, as a syndicate or gang, indulge in any continuing unlawful activity'[876] reflects a deliberately low numerical threshold informed by criminological recognition that small cells often operate as constituent units of larger networks.

The sociological perspective situates organised crime within broader social contexts. Syndicates do not operate in isolation; they are frequently a product of societal conditions such as poverty, inequality, endemic corruption, and weak local governance. In regions where state institutions have limited reach, criminal groups may fill administrative vacuums — providing protection, dispute resolution, or economic opportunities in exchange for loyalty — thereby embedding themselves into social structures with a degree of apparent legitimacy. Understanding these dynamics enables legislators to appreciate that punitive frameworks alone are insufficient; they must be complemented by governance reforms and social investment. Section 111's broad definition of 'economic offence'[877] implicitly acknowledges the financial embeddedness of organised crime within legitimate economic structures, recognising that syndicates increasingly operate through ostensibly lawful business vehicles.

From a penological standpoint, organised crime poses unique challenges to conventional criminal justice systems. Offenders operate within complex hierarchical networks, which necessitates differentiated sentencing frameworks that account for the role of each participant. Section 111 addresses this in part through its graded penalty scheme — distinguishing between the commission of organised crime resulting in death, commission in other cases, abetment and facilitation,

[875] European Union Agency for Law Enforcement Cooperation (Europol), *SOCTA 2021: EU Serious and Organised Crime Threat Assessment* (2021).

[876] Bhartiya Nyaya Sanhita § 111, supra note 1.

[877] Bhartiya Nyaya Sanhita, No. 45 of 2023, § 111(2)(a) (defining 'economic offence' to include criminal breach of trust, forgery, counterfeiting, hawala transactions, mass-marketing fraud, and schemes to defraud banks or financial institutions).

syndicate membership, harbouring, and possession of proceeds.[878] Penological research on deterrence suggests that certainty of detection and prosecution matters more than severity of punishment in deterring rational criminal actors; accordingly, Section 111's effectiveness will ultimately depend as much on investigative infrastructure and prosecutorial competence as on the severity of its penal provisions.

Victimology contributes a critically underappreciated dimension by examining the social, economic, and psychological impacts of organised crime on individuals and communities. Victims of organised criminal activity include not only direct targets — those subjected to extortion, trafficking, or violence — but also wider communities affected by corruption, economic exploitation, and systemic insecurity. The NCRB's data on organised crime-related offences reveals significant underreporting, particularly in rural areas where syndicate influence may deter complaint-filing.[879] Integrating victimological insights into the legislative framework would counsel for provisions prioritising victim restitution and compensation, a dimension currently underdeveloped in Section 111 compared to RICO's civil remedy provisions.

International law and comparative perspectives provide additional clarity on definitional scope. Organised crime increasingly transcends national borders, involving transnational trafficking networks, financial fraud across multiple jurisdictions, and cyber-enabled crime with diffuse geography. UNTOC defines an 'organised criminal group' as a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or material benefit.[880] The BNS's lower threshold of two persons and the inclusion of economic offences within 'continuing unlawful activity' goes beyond the UNTOC minimum standard, reflecting an appropriately expansive approach to the transnational dimensions of the problem.

Finally, India's philosophical and cultural heritage offers a normative lens for evaluating organised crime. Concepts such as *Dharma* and *Adharma* provide frameworks within which conduct and societal harm can be evaluated beyond the purely technical. *Dharma*, representing moral duty and social order, stands in contrast to *Adharma*, encompassing wrongful or harmful acts that destabilise communities. Framing organised crime as a manifestation of *Adharma* situates the legal framework within a broader ethical tradition that views the law not merely as a technical instrument of social control, but as an expression of collective moral commitments — a framing that reinforces the necessity of proportionality, fairness, and attention to the rights of all affected parties in the design of enforcement provisions.

STATUTORY

Section 111 of the Bhartiya Nyaya Sanhita, 2023 provides the most comprehensive statutory definition of organised crime yet enacted at the national level in India.[881] The provision defines 'organised crime' as any continuing unlawful activity — including kidnapping, robbery, vehicle theft, extortion, land-grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, and human trafficking for prostitution or ransom — undertaken by any person or group of persons acting in concert, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or any other unlawful means, with the aim of obtaining direct or indirect material benefit including financial benefit.

[878]Bhartiya Nyaya Sanhita § 111, supra note 1.
[879]National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, Govt. of India, 2023).
[880]UNTOC, supra note 32.
[881]Bhartiya Nyaya Sanhita § 111, supra note 1.

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The definition of 'organised crime syndicate' as 'a group of two or more persons who, acting either singly or jointly, as a syndicate or gang, indulge in any continuing unlawful activity'[882] merits particular attention. The two-person threshold is lower than the three-person threshold prescribed by UNTOC[883] but is consistent with MCOCA's formulation.[884] This choice reflects the legislative recognition that Indian criminal syndicates frequently operate through cellular structures, with each cell comprising a small number of actors who may be unaware of the full scope of the larger enterprise. Requiring a higher numeric threshold could immunise the leadership of such networks from prosecution at the enterprise level.

The definition of 'continuing unlawful activity' as an activity prohibited by law that is a cognizable offence punishable with imprisonment of three years or more, undertaken as a member of or on behalf of an organised crime syndicate, in respect of which more than one charge-sheet has been filed before a competent court within the preceding ten years and that court has taken cognizance of such offence, introduces a structured requirement of prosecutorial history.[885] This two-chargesheet prerequisite — directly inherited from MCOCA[886] — serves as an important safeguard against the criminalisation of ordinary offenders through the organised crime lens, ensuring that the provision is reserved for repeat actors with a demonstrated pattern of syndicate participation. However, it also creates a potential enforcement bottleneck: courts congested with pending cases may be slow to take cognizance, affecting the timely availability of the Section 111 machinery.

The definition of 'economic offence' — encompassing criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and government stamps, hawala transactions, mass-marketing fraud, and any scheme to defraud banks or financial institutions[887][888] — is notable for its breadth. The inclusion of *hawala* transactions and mass-marketing fraud reflects legislative awareness of the financial infrastructure that sustains contemporary organised crime, including the use of informal money transfer networks and digital platforms for fraud. Compared with RICO's predicate acts, which include mail and wire fraud, securities fraud, and money laundering,[889] the BNS definition of economic offence is somewhat narrower in its enumeration but is supplemented by the Information Technology Act, 2000,[890] the Prevention of Money-Laundering Act, 2003,[891] and the National Investigation Agency Act, 2008,[892] creating a composite statutory ecosystem that partially compensates for the BNS's lacunae.

The punishment structure under Section 111 is graduated: where organised crime results in death, the offender faces death or life imprisonment and a fine of not less than ten lakh rupees; in other cases, the term is not less than five years extending to life imprisonment with a fine of not less than five lakh rupees.[893] Abetment, conspiracy, facilitation, and preparation attract imprisonment of five years to life with a minimum fine of five lakh rupees; syndicate membership carries the same range; harbouring an offender attracts three years to life with a minimum fine of five lakh rupees (with a statutory exception for spouses); and possession of proceeds from organised crime attracts three years to life imprisonment and a fine of not less than two lakh rupees. The spouse exemption for harbouring merits careful analysis: while it reflects a degree of compassion toward individuals in situations of domestic coercion, it may simultaneously create an exploitable safe harbour for

[882] Bhartiya Nyaya Sanhita § 111, supra note 1.
[883] UNTOC, supra note 32.
[884] MCOCA, supra note 2.
[885] Bhartiya Nyaya Sanhita § 111, supra note 1.
[886] MCOCA, supra note 2.
[887] Bhartiya Nyaya Sanhita § 111, supra note 1.
[888] Prevention of Money-Laundering Act, No. 15 of 2003, § 3 (India) [hereinafter PMLA].
[889] 18 U.S.C. §§ 1961–1968, supra note 5.
[890] Information Technology Act, No. 21 of 2000, §§ 66–66F (India).
[891] PMLA, supra note 46.
[892] National Investigation Agency Act, No. 34 of 2008 (India).
[893] Bhartiya Nyaya Sanhita § 111, supra note 1.

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syndicates that channel information or assets through spouses.

JURISPRUDENTIAL

The jurisprudential definition of organised crime illuminates how courts interpret, construe, and apply statutory provisions in the complex factual settings that prosecutions present. While Section 111 provides a detailed statutory framework, judicial interpretation plays a constitutive role in clarifying ambiguities, filling gaps, and ensuring proportionality in enforcement. Indian courts have historically approached organised crime through discrete offences under the IPC, but the absence of a cohesive national definition created persistent challenges in prosecuting syndicates that operated across jurisdictional boundaries. With the advent of Section 111, courts are now tasked with interpreting concepts such as 'continuing unlawful activity,' 'organised crime syndicate,' and 'economic offence,' each of which requires a nuanced engagement with both statutory text and legislative intent.

Judicial decisions under MCOCA have provided the most directly relevant guidance for the interpretation of Section 111's provisions. In *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*,[894] the Supreme Court of India emphasised that the offence under Section 3(2) of MCOCA must have a direct nexus with an organised crime syndicate's activities; mere communication or association with a syndicate member does not establish abetment without proof of actual knowledge of the syndicate's criminal purpose. The Court stressed that the commission of a cognizable offence on more than one occasion does not, by itself, attract MCOCA — there must be affirmative evidence of syndicate structure and continuing criminal activity. This ruling is of direct applicability to Section 111, reinforcing the principle that the provision is not a sentencing enhancer but a substantive offence requiring proof of syndicate organisation and purpose. In *State of Maharashtra v. Bharat Shanti Lal Shah*,[895] the Supreme Court upheld the constitutional validity of MCOCA, finding that its procedures — including the modified approach to confessional admissibility — did not violate Articles 14, 20, or 21 of the Constitution, provided that procedural safeguards were maintained. These findings have prospective significance for the constitutional assessment of Section 111, which incorporates similar structural features.

The interpretation of 'economic offences' within the organised crime framework has drawn on principles established in financial fraud and money laundering jurisprudence. In *R. Venkatakrishnan v. Central Bureau of Investigation*,[896] the Supreme Court held that where dishonest intention exists at the inception of a financial transaction — particularly by bank officials entrusted with managing public funds — the offence of criminal breach of trust under IPC § 405 is established, and such patterns of fraudulent conduct, when coordinated among multiple actors with systematic concealment of proceeds, constitute the kind of purposive economic criminality that organised crime statutes are designed to target. The emphasis on systemic planning and coordination distinguishes ordinary financial misconduct from organised economic crime, introducing a qualitative threshold that courts must assess on the totality of evidence.

American RICO jurisprudence offers a rich comparative vocabulary for understanding how enterprise-based liability evolves through judicial construction. In *United States v. Turkette*,[897] the Supreme Court of the United States held that RICO's definition of 'enterprise' encompasses wholly illegal organisations, not merely legitimate businesses infiltrated by criminal elements — a holding that significantly expanded the statute's operational scope. The

[894] Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 (India).

[895] State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 SCC 5 (India) (upholding MCOCA's validity under Articles 14, 20, and 21 of the Constitution of India, 1950).

[896] R. Venkatakrishnan v. Central Bureau of Investigation, (2009) 11 SCC 737 (India) (holding that dishonest intention at the inception of a financial transaction, combined with breach of entrustment, establishes criminal breach of trust under IPC § 405).

[897] United States v. Turkette, supra note 23.

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Court further elaborated the 'enterprise' concept in *Boyle v. United States*,[898] holding that even an *ad hoc* group assembled solely for criminal purposes qualifies as a RICO enterprise without formal hierarchy, titles, or role designations, provided it has an ascertainable structure beyond that inherent in the pattern of racketeering itself. In *H.J. Inc. v. Northwestern Bell Telephone Co.*,[899] the Court elaborated the 'pattern' requirement, holding that predicate acts must be related and must amount to or pose a threat of continued criminal activity — the so-called 'continuity plus relationship' test. The Court's formulation of 'open-ended continuity' — where the predicate acts are part of the defendant's regular way of conducting affairs — has particular resonance with Section 111's requirement of 'continuing unlawful activity,' suggesting that Indian courts may find this American conceptual apparatus useful with appropriate contextual adaptation.

In *Sedima, S.P.R.L. v. Imrex Co.*,[900] the Court ruled that RICO's civil remedy provision was available even where the defendant had not been convicted of a predicate offence, and that no special 'racketeering injury' beyond injury from the predicate acts was required. This expansive interpretation transformed RICO into a potent civil litigation tool, particularly in commercial disputes — a development that has attracted scholarly criticism as a departure from the statute's original Mafia-fighting purpose.[901] The absence of a civil remedy mechanism in Section 111 of the BNS is therefore a material structural difference: Indian plaintiffs harmed by organised crime are left to pursue remedies under general tort law or the PMLA's civil forfeiture regime,[902] without the structural advantages of a treble-damages or enterprise liability framework.

In *Reves v. Ernst & Young*,[903] the Court further clarified that liability under RICO requires that the defendant participate in the 'operation or management' of the enterprise, not merely provide services to it. This limitation on the outer perimeter of RICO liability has direct analogues in the Indian context: Section 111's harbouring and facilitation provisions implicitly draw a line between active participation in syndicate operations and more peripheral involvement. Indian courts will be required to develop a similarly calibrated jurisprudence for Section 111, determining the degree of knowledge, intent, and operational involvement required to establish facilitation liability — a task that will demand careful attention to both due process and deterrence objectives.

Indian jurisprudence has also increasingly emphasised the role of proportionality, mens rea, and due process in the context of special penal statutes. The Supreme Court's decision in *Maneka Gandhi v. Union of India*[904] established that restrictions on personal liberty must satisfy tests of reasonableness, fairness, and justice — a principle that courts will inevitably apply to the broad reach of Section 111. Courts must therefore play an active role in developing interpretive doctrines that give full effect to the statute's deterrence objectives while protecting the constitutional rights of individuals at the margins of criminal enterprises.

AUTHORIAL

Please note that the following constitutes the Author's personal views and should not be taken as binding or authoritative in any form. From a reasoned perspective, Section 111 of the Bhartiya Nyaya Sanhita represents a significant and long-overdue step forward in addressing organised crime in India. Its comprehensive definitions of continuing unlawful activity, syndicate membership, and economic offences capture both traditional violent crime and modern economic criminality — a breadth that is necessary because criminal networks are

[898]Boyle v. United States, 556 U.S. 938 (2009) (holding that an *ad hoc* group assembled solely for criminal purposes qualifies as a RICO 'enterprise' even without formal hierarchy or role designations, provided it has an ascertainable structure beyond that inherent in the pattern of racketeering itself).
[899]H.J. Inc. v. Northwestern Bell Telephone Co., supra note 22.
[900]Sedima, S.P.R.L. v. Imrex Co., supra note 21.
[901]Brenner, supra note 16.
[902]PMLA, supra note 46.

[903]Reves v. Ernst & Young, 507 U.S. 170 (1993).
[904]Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).

increasingly adaptive, exploiting legal, technological, and jurisdictional gaps to avoid prosecution.

However, the law raises legitimate questions about proportionality and enforcement. While the statutory language is comprehensive, its effective application will depend on investigative capacity, interstate coordination, institutional integrity, and judicial interpretation. Overly broad definitions risk implicating peripheral actors who are not central to syndicate operations, potentially leading to constitutional challenges under Articles 14, 19, and 21.[905] The absence of civil remedy provisions comparable to those under RICO — particularly the ability to seek forfeiture and injunctive relief in civil proceedings — is a structural lacuna that limits the law's ability to disrupt the financial infrastructure of organised crime. Compared with RICO, Section 111 provides commendable legislative clarity, but it currently lacks the same degree of judicial flexibility that has allowed RICO to evolve through six decades of interpretive elaboration. It is anticipated that Indian courts will play an increasingly important role in shaping the statute's practical scope, and that this judicial engagement will be the true measure of Section 111's long-term efficacy.

PROSECUTORIAL EFFICACY AND ENFORCEMENT

UNIFIED FRAMEWORK VERSUS FRAGMENTED APPROACH

The transition from fragmented state-level legislation to a uniform national framework under Section 111 of the BNS represents both a structural achievement and a prosecutorial imperative.[906] Prior to the BNS, the multi-jurisdictional limitations of MCOCA, KCOCA, and GUJCTOC created exploitable gaps for criminal syndicates that operated across state lines. A gang conducting extortion operations in Maharashtra while laundering proceeds through shell companies in Gujarat faced prosecution only under whichever state statute applied to its registered activities — a limitation that sophisticated syndicates systematically exploited. Section 111's nationwide application eliminates this structural handicap, enabling the National Investigation Agency and central investigative bodies to lead coordinated prosecutions without the jurisdictional frictions that previously impeded enforcement.[907]

A uniform framework also facilitates the development of a consistent body of judicial interpretation at the national level. The divergent judicial constructions of 'organised crime syndicate' under MCOCA and KCOCA produced doctrinal uncertainty that complicated prosecutions in cases involving syndicates operating across state boundaries. By centralising definitional authority within a single national provision, Section 111 creates the conditions for a coherent national jurisprudence — one in which Supreme Court pronouncements on key definitional questions will be binding across all high courts and trial courts without the jurisdictional fragmentation that previously diluted their effect.

OTHER APPROACHES AND COMPARATIVE TOOLS

Internationally, laws such as RICO and the instruments developed under UNTOC emphasise the systemic prosecution of criminal networks rather than isolated predicate offences.[908][909] RICO's most distinctive prosecutorial advantage lies in its provision of both criminal and civil remedies, including asset forfeiture, injunctions, and treble damages in civil proceedings. The civil RICO action — available to private parties injured by a RICO enterprise — has proven to be one of the statute's most powerful enforcement mechanisms, effectively deputising private plaintiffs as supplementary enforcers of the organised crime framework.[910][911] Section 111 of the BNS, by contrast, operates exclusively within the

[905] Article 19(1)(c) and Article 20(1), Constitution of India, 1950.
[906] Statement of Objects and Reasons, Bhartiya Nyaya Sanhita Bill, supra note 12.
[907] National Investigation Agency Act, supra note 50.
[908] 18 U.S.C. §§ 1961–1968, supra note 5.
[909] UNTOC, supra note 32.
[910] Sedima, supra note 21.
[911] Blakey, supra note 30.

criminal law framework, with forfeiture of proceeds addressed separately under the PMLA.[912] This bifurcation may result in coordination inefficiencies between criminal investigation and civil asset recovery, potentially allowing syndicate assets to be dissipated or transferred before civil proceedings can be initiated.

Europol's SOCTA framework in the European Union offers a further comparative model, emphasising threat assessment, inter-agency information sharing, and targeted disruption strategies that combine law enforcement, regulatory intervention, and civil forfeiture.[913] The EU's experience suggests that effective organised crime control requires not merely a sound legal framework but an institutional architecture capable of translating statutory powers into operational enforcement action. India's enforcement institutions — including the NIA, the Enforcement Directorate, and state police special cells — possess some of these capabilities, but coordination mechanisms between them remain underdeveloped relative to the ambitions of Section 111.

PENAL SANCTIONS

Section 111 prescribes graded penalties calibrated to the nature and gravity of the offending conduct.[914] The death penalty or life imprisonment for organised crime resulting in death, and mandatory minimum imprisonment of five years for other offences, reflect the legislative judgment that the systemic and continuing nature of organised crime warrants penal responses disproportionately severe compared with ordinary offences of the same actus reus. The mandatory minimum provisions — a feature also present in MCOCA[915] — are designed to forestall lenient sentencing that might otherwise diminish deterrence.

The constitutional status of mandatory minimum sentences in India has been addressed by the Supreme Court in a series of decisions emphasising that while mandatory minimums are permissible, they must not produce results so disproportionate as to violate Article 21's guarantee of a fair sentencing procedure.[916] The death penalty provision for organised crime resulting in death is particularly susceptible to challenge in light of the Supreme Court's evolving jurisprudence on the 'rarest of rare' doctrine, which requires that the death sentence be reserved for cases exhibiting extraordinary culpability. Whether syndicate-orchestrated killings will uniformly satisfy this standard — or whether courts will apply the doctrine to differentiate between principal offenders and more distal participants — remains an open question that will shape the practical operation of Section 111's most severe penal consequences.

The fine structure — ranging from one lakh rupees for unexplained possession of assets to ten lakh rupees for offences resulting in death — reflects an acknowledgement that financial penalties serve both punitive and disruptive functions in the organised crime context. However, the absolute amounts are modest relative to the scale of proceeds generated by major criminal syndicates, and there is a strong argument that a mandatory percentage-of-proceeds forfeiture mechanism — analogous to the forfeiture provisions under RICO[917] and the PMLA[918] — would be a more effective financial deterrent than fixed minimum fines.

EVOLVING SCOPE

Organised crime is in continuous structural evolution, responding to changes in technology, financial systems, and law enforcement capability. The inclusion of cyber-crimes and economic offences within Section 111's definition represents a legislative recognition that contemporary syndicates increasingly operate through digital platforms, using cryptocurrency for value transfer, social media for recruitment,

912 PMLA, supra note 46.
913 Europol, SOCTA 2021, supra note 33.
914 Bhartiya Nyaya Sanhita § 111, supra note 1.
915 MCOCA, supra note 2.
916 Maneka Gandhi v. Union of India, supra note 62.
917 18 U.S.C. §§ 1961–1968, supra note 5.
918 PMLA, supra note 46.

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and encrypted communications to coordinate operations.[919] The interface between Section 111 and the Information Technology Act, 2000 will require careful judicial delineation: cyber-enabled organised crime that involves systematic defrauding of financial institutions will engage both statutory frameworks, and courts will need to develop principles for their concurrent application.

Judicial interpretation under RICO demonstrates how a well-drafted enterprise liability statute can adapt to novel criminal methodologies without requiring constant legislative amendment. The American experience with white-collar RICO prosecutions,[920] securities fraud cases,[921] and political corruption matters,[922] illustrates how courts can extend enterprise liability principles to new factual contexts through interpretive elaboration. Section 111 provides a sufficiently flexible statutory foundation for analogous judicial development in India, but this will require the development of a body of organised crime jurisprudence at the Supreme Court level that does not yet exist, given the statute's novelty.

CONSTITUTIONAL ANALYSIS

Any special penal legislation targeting organised crime must be evaluated not only for its operational effectiveness but also for its conformity with the constitutional framework that constrains legislative and executive power. Section 111 of the BNS raises several constitutional questions of substance, which the courts will inevitably be called upon to address as prosecutions under the provision multiply.

The most immediate constitutional concern relates to the breadth of Section 111's definitional provisions and their potential for over-inclusion. The definition of 'continuing unlawful activity' requires proof that more than one charge-sheet has been filed and that a court has taken cognizance — a procedural prerequisite that serves as an important limiting principle.[923] However, the definition of 'organised crime syndicate' — requiring only two persons acting in concert — is sufficiently capacious to encompass associations that lack the structural features of a criminal enterprise in the sociological or criminological sense. Courts must therefore develop interpretive doctrines that require affirmative evidence of syndicate structure, hierarchy, and continuing purpose, consistent with the Supreme Court's guidance in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*.[924]

The constitutionality of MCOCA was upheld by the Supreme Court in *State of Maharashtra v. Bharat Shanti Lal Shah*[925] on the ground that the procedural departures from ordinary criminal law — including confessional admissibility and modified bail conditions — were rationally connected to the legislative objective of dismantling organised crime, and did not violate the constitutional guarantees of equality under Article 14, protection against self-incrimination under Article 20(3), or the right to life and personal liberty under Article 21. Section 111 does not itself modify procedural rules in the manner of MCOCA — its procedural dimensions are governed by the Bhartiya Nagarik Suraksha Sanhita, 2023 — but the constitutional logic of *Bharat Shanti Lal Shah* remains applicable to the substantive provisions.

The parliamentary basis for Section 111 rests on List I, Entry 1 of the Seventh Schedule, which vests in the Union Parliament the power to legislate in respect of public order as it affects the nation, and on the residuary entry conferring legislative power on Parliament over matters not enumerated in either the State List or the Concurrent List.[926] The national and inter-

[919] Information Technology Act, supra note 48.
[920] Reves v. Ernst & Young, supra note 61.
[921] United States v. Salinas, 522 U.S. 52 (1997) (holding that a RICO conspiracy defendant need not personally commit two predicate acts, provided he knew that his co-conspirators would do so as part of the overall pattern of racketeering activity).
[922] Federal Bureau of Investigation, *Organised Crime: An Overview* (U.S. Dep't of Justice, 2022).
[923] Bhartiya Nyaya Sanhita § 111, supra note 1.
[924] Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, supra note 52.
[925] State of Maharashtra v. Bharat Shanti Lal Shah, supra note 53.
[926] Article 246 read with Seventh Schedule, List I, Entry 1, Constitution of India, 1950; see also S.R. Bommai v. Union of India, (1994) 3 SCC 1 (India)

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state character of organised crime syndicates, well-documented in NCRB data and parliamentary debate, provides a constitutionally sound foundation for central legislation — a point that distinguishes Section 111's legislative competence from the state statutes, whose territorial scope was constrained by the federal distribution of powers.

The right to freedom of association guaranteed by Article 19(1)(c)[927] has also been invoked — in the MCOCA context — as a potential ground of challenge to provisions criminalising mere syndicate membership. The Supreme Court has consistently held, however, that the freedom of association does not extend to protection for criminal associations, and that the state may penalise membership in organisations that exist for unlawful purposes, provided that the statutory definition of such membership is sufficiently precise. The constitutional dimension of vagueness in penal provisions was examined in *Shreya Singhal v. Union of India*,[928] where the Court reaffirmed that broad penal language which criminalises innocent conduct will not survive scrutiny under Article 19(2). By analogy, the absence of an explicit knowledge requirement for peripheral syndicate members in Section 111 remains a potential constitutional vulnerability that judicial interpretation must address. The Supreme Court's broader constitutional framework on special detention legislation in *A.K. Roy v. Union of India*[929] further reinforces that even under special criminal statutes, the requirements of Articles 14 and 21 impose substantive limits on legislative overreach.

GLOBAL CRIME INDEX

METHODOLOGY

The Global Organised Crime Index, published by the Global Initiative Against Transnational Organised Crime and its ENACT Africa programme, provides a quantitative framework for assessing the prevalence of organised crime and the resilience of states in responding to it.[930] Its methodology relies on multiple indicators, assessed through expert surveys supplemented by objective data from official crime reports, international agency statistics, and independent research. The Index produces two composite scores for each country: a 'criminality' score — measuring the prevalence and severity of criminal markets and criminal actors — and a 'resilience' score — measuring the strength of state and societal responses, including the quality of legal frameworks, prosecutorial capacity, and civil society engagement. The weighting of these indicators accounts for population differences, reporting variation, and divergences in national legal definitions, producing standardised scores that permit meaningful cross-country comparison.

METRIC

The Index evaluates organised crime across thirteen criminal market dimensions, including human trafficking, arms trafficking, flora crime, fauna crime, non-renewable resource crime, heroin, cocaine, cannabis, synthetic drug markets, and criminal actor sub-categories encompassing mafia-style groups, criminal networks, and state-embedded actors.[931] Each dimension is assessed for both market prevalence and the degree of control by criminal actors. The resilience score encompasses sub-dimensions including government effectiveness, rule of law, anti-money laundering capacity, economic regulatory capacity, and the role of civil society in crime prevention. This dual-score architecture enables analysts to disaggregate overall organised crime ratings, identifying whether high criminality scores reflect

(discussing the scope of Union legislative power in matters affecting national security and public order).
[927]Article 19(1)(c), Constitution of India, 1950, supra note 63.
[928]Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India) (reaffirming that penal provisions employing broad or vague language must satisfy the test of reasonable restrictions under Article 19(2); provisions that criminalise innocent conduct will not survive constitutional scrutiny).
[929]A.K. Roy v. Union of India, (1982) 1 SCC 271 (India) (examining constitutional safeguards applicable to special detention legislation and affirming that Articles 14 and 21 impose substantive limits on legislative overreach even under special criminal statutes).
[930]ENACT Africa & Global Initiative Against Transnational Organised Crime, *Global Organised Crime Index 2023* (2023) [hereinafter Global Crime Index].
[931]Global Crime Index, supra note 88.

inadequate legal frameworks, weak enforcement capacity, high criminal market demand, or some combination of these factors.

LIMITATIONS

While this paper provides a comprehensive doctrinal and comparative analysis of Section 111 of the Bhartiya Nyaya Sanhita and its alignment with the U.S. RICO framework, certain limitations must be acknowledged transparently. First, the study primarily relies on doctrinal research, focusing on statutory provisions, judicial interpretations, and scholarly commentary. This approach limits the incorporation of empirical data — such as prosecution rates, conviction statistics, bail grant rates, or enforcement outcomes under Section 111 — which would provide additional insight into the law's practical efficacy. As the BNS is a recent enactment, empirical evaluation of Section 111 specifically will necessarily remain incomplete until a sufficient body of prosecution and adjudication data has accumulated.

Second, the comparative analysis with RICO is necessarily constrained by substantial differences in the legal, constitutional, and socio-political contexts of India and the United States. These differences — including the Indian constitutional tradition of judicial deference to Parliament on criminal law matters, the structural differences between the common law adversarial systems of the two countries, and the divergence in investigative resources available to central law enforcement agencies — limit the direct applicability of American jurisprudential lessons. Analogies must therefore be drawn with care, as formulations developed in one legal system may not translate coherently into the other without significant adaptation.

Third, the paper does not incorporate first-hand empirical data from interviews or field studies with law enforcement officers, prosecutors, defence counsel, or members of the judiciary, which might have offered granular perspectives on the operational challenges of enforcing Section 111 in practice. Fourth, the study's primary focus on textual and jurisprudential dimensions of the law means that broader socio-economic and political factors influencing organised crime — including the role of political patronage networks, weak urban governance structures, and regional disparities in law enforcement capacity — are considered only indirectly. These are acknowledged limitations that point to productive avenues for future empirical and interdisciplinary research to complement and test the doctrinal findings of the present study.

CONCLUSION

Section 111 of the Bhartiya Nyaya Sanhita, 2023 represents the most significant legislative development in India's legal response to organised crime since the enactment of MCOCA in 1999.[932] By consolidating definitional frameworks, penal provisions, and the full range of participatory offences within a single nationally applicable statute, Section 111 achieves the legislative objective of uniformity that fragmented state legislation could not — eliminating jurisdictional gaps, enabling national prosecutorial coordination, and creating the conditions for a coherent national jurisprudence of organised crime law. Its broad definitional scope, encompassing both violent and economic dimensions of organised criminality, reflects an accurate understanding of the multifaceted character of contemporary criminal syndicates and positions India to prosecute organised crime in forms that existing statutes were ill-equipped to address.

[932] MCOCA, supra note 2.