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### RESEARCH ARTICLE

## RETROSPECTIVE EFFECT OF BHARATIYA NYAYA SANHITA, 2023: A BOON OR BANE-WITH SPECIFIC REFERENCE TO ORGANISED CRIMES

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### Abstract

Principle of Legality is the foundation of any Criminal Justice System either national or international. Any legislature or instruments or guidelines shall take effect from the date of entry into force. The maxim of Nullum crimen sine lege and Nullum poena sine lege protects the rights of both victim and innocent accused who has been booked into a criminal case. The exception for this principle such as Principle of Lex Scripta (written or statutory law) and lex praevia (previous law) which has been discussed analyzed and applied in the Nuremberg Tribunal to punish the War Criminals of World War II. The International Criminal Law initiated the invoking process of this application way back in 1945 and still in practice by the International Criminal Court. To the contrary, the Indian Legal System, in rarest of rare cases only applies the non-positivist law which violates the Principle of Legality in Criminal Justice System. Even in the Criminal Law Amendment Act, 2013 the executive powers refused to give retrospective effects to the rape laws amended in 2013. Further, any such violations are considered to be a serious violation of fundamental rights protected under Art. 20(1) of the Constitution of India, "Ex post facto law". The new Penal Law, Bharatiya Nyaya Sanhita, 2023 expressly made the application of Retrospective Effect of an offence "Organised Crime" under section 111. This provision gives 10 years of retrospective effect and permits the investigating agency to alter the charge of such offence to sec.111 of BNS, 2023 even after cognizance stage. This paper will analyze about the legal implications of such application and possible use and abuses of sec.111 of BNS, 2023 on retrospective effect. Further, the author will compare the same with international criminal justice system.

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### Introduction:-

Principle of Legality is the rudimentary foundation of any legal system. A universal principle of natural justice system, which governs the application of legislature to defend the rights of victim. Victim includes wrongfully

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implicated accused person also. This principle monitors the application of criminal law and secures the innocent from abuses and injustice of criminal law. The Principle of legality is guaranteed under the International Covenant on Civil and Political Rights ("ICCPR"),<sup>1</sup> the Universal Declaration of Human Rights ("UDHR"),<sup>2</sup> European Convention on Human Rights ("ECHR")<sup>3</sup> and also by the Constitution of India. The criminal law should not interpret accused's weakness, but it should verify the law that prescribes definition, penalty and liability at the commission of offence.<sup>4</sup> In contrary to the above rule, the new penal law, Bharatiya Nyaya Sanhita, 2023 (BNS, 2023) has introduced the retroactive application of criminal law on Organised Crimes pattern. The limitation of retroactive application has been given preceding 10 years from 2024. This research work will focus on the application of retrospective effect of criminal law, analyses of principle of legality, interpretation of principle of legality by the international criminal law and conclude with the pros and cons of retroactive effect.

### Principle of Legality:-

Principle of Legality is known by the legal maxim *nullum crimen sine lege*— no crime without law and *nullum poena sine lege*— no punishment without law.<sup>5</sup> The maxim shall be interpreted that no individual shall be criminally liable for any act or omission which is not condemned by any criminal law at the time of such commission.<sup>6</sup> According to 7 principles of Criminal law per se (i) legality; (ii) mens rea; (iii) actus reus; (iv) causation; (v) harm incurred; (vi) concurrence and (vii) punishment, legality stays the primary principle.<sup>7</sup> Principles are the broadest and delineate the area of positive law ("lawyer's law") that can properly be labeled criminal law. They "stipulate what is common in all crimes."<sup>8</sup> These principles stress the prompt application of criminal justice system without corruption and to avoid malicious prosecutions. The concept of Principle of Legality warrants the transparency of legal system and also addresses the victim with appropriate remedial measures. It is noted that non-retroactive application of criminal law is a universal principle and expected to abide by without causing prejudice to natural justice principles. The ICCPR established the non-retroactive punishment on three aspect, (i) prohibition of imposing criminal liability if it shall not constitute as an offence by any national or international law at the time of commission; (ii) no severe punishment shall be sanctioned other than the prescribed penalty at the time of commission of offence and (iii) if the future amended law reduced the sentence for any offence, it shall not be a bar for the benefit of accused. The same was also followed in the UDHR except the third proposition. The interpretation of legality principle might be carried out with the aid of Arts. 31-33 of Vienna Convention on the Law of Treaty.<sup>9</sup>

### Principle of Legality and Indian Legal System:-

The Constitution of India contemplates the legality principle in Art. 20(1) which envisages that, "...[N]o person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence..."<sup>10</sup> Art.20 of the Constitution of India safeguard certain rights of accused person from abusive criminal proceedings. Art. 20(1) – Ex post facto law; Art.20(2) – Double jeopardy and Art.20(3) – right against self-incrimination. Art.20(1) strictly prohibits retrospective punishment for any act or omission.<sup>10</sup> The Supreme Court in many cases reiterates that there shall not be any charge or punishment if it was not declared as an offence with prescription of punishment by any criminal law. If any amendment

<sup>1</sup>Art. 15 of the ICCPR imposed restriction on retrospective application.

<sup>2</sup>Art. 11 of UDHR

<sup>3</sup>Art.7 of ECHR

<sup>4</sup>Daniel Grădinaru, The Principle of Legality (2018), <https://zenodo.org/record/1572191> (last visited Oct 10, 2024).

<sup>5</sup>The Principle of Legality, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule101> (last visited Oct 10, 2024).

<sup>6</sup>K I Vibhute et al., Fundamental of Crime, Criminal Law and Criminal Justice Principle of Legality. ePathshala, MHRD-Govt of India, Course Document on Principle of Legality. Full document is available in [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S001608/P001744/M022132/ET/152110316802-LegalityMHRD-KV.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001744/M022132/ET/152110316802-LegalityMHRD-KV.pdf)

<sup>7</sup>Understanding the 7 Principles of Criminal Law, (May 8, 2024), <https://dallascriminal.law/7-principles-of-criminal-law/> (last visited Oct 13, 2024).

<sup>8</sup>Fitzpatrick, James F. (1960) "General Principles of Criminal Law, by Jerome Hall," *Indiana Law Journal*: Vol. 36: Iss. 1, Article 7. Available at: <https://www.repository.law.indiana.edu/ilj/vol36/iss1/7>

<sup>9</sup>Talita Dias, Beyond Imperfect Justice Legality and Fair Labelling in International Criminal Law Series: International Humanitarian Law Series, Volume: 63 (2022), <https://brill.com/display/book/9789004510951/BP000004.xml> (last visited Oct 10, 2024).

<sup>10</sup>Article 20 in Constitution of India, <https://indiankanoon.org/doc/655638/> (last visited Oct 13, 2024).

happened on the same law, that should have prospective effect and if any accountability was made, it shall be considered as illegal.<sup>11</sup> The exceptions to this rule also discussed by the apex court in Mohan Lal v. State of Rajasthan<sup>12</sup> it was held that, Art.20(1) applies only to penalties and convictions and not on trial process. In the former case, it involved a Special law of The Narcotic and Psychotropic Substances Act. In Rattan Lal v. The State of Punjab<sup>13</sup>, the Supreme Court held that, if the sentence was decreased that may be permitted. In Maru Ram Etc. v. Union of India & Anr<sup>14</sup> it was observed that sentence shall not increase for the charge from the original legislature even amendment happened during course of trial.<sup>15</sup>

#### **Unambiguous definition & Legality:-**

Under the Substantive Criminal Law, every act or omission shall be defined without causing any vague or ambiguity in understanding and interpreting the offence. It shall also aid the proper administration of criminal justice system and to sanction sentence. The elements of every crime should justify the presence of mens rea and actus reus to establish the prima facie of any charge during the course of trial. The BNS, 2023 defines “offence” a thing made punishable by the BNS, 2023<sup>16</sup> Under Chapter II and from secs. 4 to 13 discuss about punishments that shall be imposed for any offence punishable under BNS, 2023. The punishments recognized by the BNS, 2023 are (i) death sentence; (ii) imprisonment for life; (iii) rigorous or simple imprisonment; (iv) forfeiture of property; (v) fine and (vi) community service. The proclamation of definition and punishment for every offence under the BNS, 2023 impliedly declare about the limitations and horizons of its application. This is satisfying and justifying the legality principle enshrined in Art. 20(1) of the Constitution. But the question arises about the application of non-retroactive application on special laws is vigorously argued. The next part of this article discuss about on the exception to ex post facto law.

#### **Retrospective Effect and Protection of Children from Sexual Offences Amendment Act, 2019:-**

The Protection of Children from Sexual Offences Act, 2012 amended in 2019 (“POCSO Act, 2019) by enhancing the sentence from 7 years to 10 years<sup>17</sup> and for another offence from 10 years to imprisonment for life and also announces death sentence.<sup>18</sup> The debate was initiated about the implementation of Sec.4 and sec.6 of the POCSO Act, 2019 retroactively or not. The non-retroactive application was not clearly mentioned in the amended version, which leads to some Sessions Judges imposed death sentence for offences punishable u/s. 6. The Ministry of Home Affairs, Govt of India annexed letter dated 20<sup>th</sup> November, 2019 by affirming that to make more effective of the POCSO Act, the amendment provides more stringent punishments inter alia increased the imprisonment period depending upon the gravity of the offence. The penalty includes death sentence also for the gravest offence of aggravated penetrative sexual abuse against children. The remarkable phenomenon of this legislature was its retrospective effect. This was ensured to protect the rights of victims of past horrors also.

Further, this effect also extended its scope in prosecuting the perpetrators of the heinous crime who eluded from criminal liability due to lack of effective legal mechanism. It also projected the deterrent effect to the public. This was in par with the international standards of Child rights instruments and guidelines. In contrast, the practical application this retrospective effect should be done cautiously without disturbing the rights guaranteed under Art. 20(1). The Supreme Court in Polepaka Praveen v. State of Telangana<sup>19</sup> discussed about the non-retroactive punishment. The appellant herein was charged with aggravated penetrative sexual abuse of nine month old girl child and caused death of the child. In the above case, the Session Court convicted the appellant for Section 302 IPC Death sentence, for Section 449 IPC to undergo imprisonment for life; Section 376-A IPC to undergo rigorous imprisonment for twenty years. Sanctions for section 376-AB IPC was to undergo rigorous imprisonment for twenty years, Section 363 IPC undergoes rigorous imprisonment for five years, and Section 379 IPC undergoes rigorous

<sup>11</sup>KedarNathBajoria v The State of West Bengal 1953 AIR 404

<sup>12</sup>AIR 2015 SC 2098

<sup>13</sup>1965 AIR 444

<sup>14</sup>1980 AIR 2147

<sup>15</sup>Commentary on Art.20 of the Constitution is available at <https://indiankanoon.org/doc/655638/> accessed on Oct 13, 2024)

<sup>16</sup>Sec. 2(24) of BNS, 2023

<sup>17</sup>Sec. 4 of POCSO Amendment Act, 2019 – Punishment for penetrative sexual assault

<sup>18</sup>Sec. 6 of ibid – Punishment for aggravated penetrative sexual assault

<sup>19</sup>Polepaka Praveen v. State of Telangana, Rep. By Its Public Prosecutor, Telangana High Court, casemine.com, <https://www.casemine.com/judgement/in/5e01d9978ef1524a1e205f6b> (last visited Oct 13, 2024).

imprisonment for two years. Section 5(i) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 Undergo imprisonment for life, Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 Undergo imprisonment for life and fine was also imposed.

During the Referred Trial hearing, the Telangana High Court modified the sentence of death penalty into imprisonment of life and life means the remaining natural life of the person without remission or commutation of sentence. The other sentences were upheld by the High Court.<sup>20</sup> The State of Telangana filled a Special Leave petition before the apex Court, the State argued for imposition of death sentence for the punishable u/s.6 of the POCSO Act, 2012, though the offence was committed on 18 & 19<sup>th</sup> June 2019. The counsel further argued that POCSO Amendment Act, 2019 included death penalty for offence u/s.6 and this shall be given retrospective effect to the present case. The Supreme Court observed that, the contention of the counsel for State was unable to be agreed with. The Court opined that death sentence shall not awarded when the earlier Act (POCSO Act, 2012) defined punishment. It is also noted that imprisonment for the remaining natural life of the person without remission or commutation itself a punitive approach and will act as a deterrent effect to the society.<sup>21</sup>

In Ravi v. The State of Maharashtra<sup>22</sup> the occurrence took place on 6.3.2-12, the appellant herein sexually assaulted two year old girl child and throttled her to death. He was charged with u/s. 302, 363, 376 & 377 of Indian Penal Code, 1860 and convicted to death sentence and other rigorous imprisonment. The High Court also confirmed the sentence passed by the Session Court. The Supreme Court while dealing with the appeal filled by the accused/appellant, deliberated on the amendment on POCSO Act, 2012 and compared the penalties before and after amendment for penetrative sexual abuse and aggravated penetrative sexual abuse against children. The Court opined that the enhanced punishment for such heinous crime has impliedly denoted that the law makers kept it open for the interpretation of “No Death Sentence” in “No circumstances”. The words of the Court are as follows for affirming the death sentence passed by the Session Court:

“If the Parliament, armed with adequate facts and figures, has decided to introduce capital punishment for the offence of sexual abuse of a child, the Court hitherto will bear in mind the latest Legislative Policy even though it has no applicability in a case where the offence was committed prior thereto. The judicial precedents rendered before the recent amendment came into force, therefore, ought to be viewed with a purposive approach so that the legislative and judicial approaches are well harmonized.”<sup>23</sup> In continuation of the above line, the Supreme Court not thought about the inclusion of POCSO Act, 2012 or POCSO (Amendment) Act, 2019 in Manoharan v. State rep by Ins. Of Police, Coimbatore, Tamil Nadu<sup>24</sup> kidnapping of two children, a girl aged 10 years old and her brother aged 7 years old, sexually assault the girl child and causes death of both the children by poisoning and throw them into the canal. One Mohanakrishnan was encountered by the Police during the course of investigation and another accused faced the trial and sentenced to death penalty and other sentences. In the appeal against the death sentence, the apex court by referring Bachan Singh v. State of Punjab<sup>25</sup> and Machhi Singh v. State of Punjab<sup>26</sup> Mukesh v. State (NCT of Delhi),<sup>27</sup> Dhananjay Chatterjee v. State of West Bengal<sup>28</sup> and Rajendra Pralhadrao Wasnik v. State of Maharashtra<sup>29</sup> and the amendment of POCSO Act, 2012, the first judge (Justice Rohinton Fali Nariman) confirmed the death sentence, but the second judge (Justice Sanjiv Khanna) commuted the sentence into imprisonment for life – remaining natural life of the person to be inside the prison. But there are no traces for denial of the application on POCSO Amendment Act, 2019 modification in sentence for sexual abuse against children. The dissenting opinion

<sup>20</sup>Criminal Appeal No. 685 of 2019 and Referred Trial No. 1 of 2019 dated November 12, 2019.

<sup>21</sup>Record of Proceedings Special Leave Petition (Criminal) Diary No(s). 9597/2020 (Arising out of impugned final judgment and order dated 12-11-2019 in CRLA No. 685/2019 and RTN No. 1/2019 passed by the High Court For The State of Telangana at Hyderabad) State of Telangana v. Polepaka Praveen @ Pawandated 15.6.2020. To view the document, visit [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-376594.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-376594.pdf) accessed on 14.10.2024

<sup>22</sup>CRIMINAL APPEAL NOS. 1488-1489 OF 2018, SC, dated October 3, 2019

<https://indiankanoon.org/doc/155871239/>

<sup>23</sup>Ibid para. 60

<sup>24</sup>AIR 2019 SC( CRI) 1378

<sup>25</sup>(1980) 2 SCC 684

<sup>26</sup>(1983) 3 SCC 470

<sup>27</sup>(2017) 6 SCC 1

<sup>28</sup>(1994) 2 SCC 220

<sup>29</sup>(2012) 4 SCC 37

was on the aggravating and mitigating circumstances. From the above discussion; we may resolve that Supreme Court is of the view on non-retroactive effect of punishment. The apex court is firm in protecting the rights assured under Art. 20(1) of the Constitution as fundamental rights of even accused also.

#### **International Criminal Law and Retrospective Effect of Punishment:-**

The principle of legality or *nullum crimen sine lege* being a universal principle for criminal justice system, it squarely applicable to international criminal law also. The contention of applying this invoked in the World War II tribunals I.e. Nuremberg Tribunal ("International Military Tribunal - IMT" and Tokyo Tribunal ("International Military Tribunal for the Far East - IMTFE") on the charges made against the German and Japan war criminals. The same continued in the twin ad hoc tribunals International Criminal Tribunal for the Former Yugoslavia ("ICTY") and International Criminal Tribunal for Rwanda ("ICTR"). The Principle of analogy is intervened to interpret the excuse for legality principle. Analogy principle is an interpretative process when there is no written law to apply with the similar law in question. The comparison may also conduct with reference to general principles of law. But the analogy principle application should be prohibited as it contradicts with legality principle.<sup>30</sup> In the international criminal law, the international crimes are heterogeneous in character that establishes analogy with the national criminal law.<sup>31</sup> This was properly considered by the drafters of Rome Statute of International Criminal Court ("ICC"), 2000 and the analogous was prevented to the maximum.<sup>32</sup> Art. 22 of the Rome Statute of the ICC, 2000, it projected the principle of legality as, "...[A] person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court. (2) The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted." Further Art. 24 of the Statute of ICC expressly mentioned about the protection of Principle of Legality as "Non-retroactive *ratione personae*" which means no one shall be charged or punished for action committed prior to the entry into force of the Statute and if any amendment happened before pronouncing judgement, it shall be considered in favour of the perpetrator.

With respect to the application of retrospective effect, Robert Cryer has contemplated Art. 15 of the ICCPR with Art.22(2) of the Rome Statute of ICC in relation to international law, treaties and customary law. Thus the Statute of the ICC clearly indicated that the crimes under its jurisdictions shall not expanded by the State Parties in fixing the criminal liability.<sup>33</sup> Art.15(2) of the ICCPR shall be considered as an exemption to the principle of legality. The exceptions permitting retrospective application of punishment for an offence if it is crime according to the general principles of law recognised by the international community. Theoretically, according to this principle, if conduct is not criminal under national laws, this will not necessarily bar a person from being tried for that conduct under international law.<sup>34</sup> The war criminals of Germany and Japan claimed that IMT and IMTFE violated the principle of legality by prosecuting them for international crimes. To respond the claim, the Nuremberg and Tokyo Tribunals emphasized that Crimes against peace was a crime under international law and the legality principle was not a limitation to sovereignty.<sup>35</sup> To test the violation of *nullum crime* principle, it has to ascertain that specific act or omission should have prohibited by either customary law or treaty laws. The ad hoc tribunals haven't strictly followed the rule on treaty law, because it might leads to violations to legality principle if either side not party to any treaty. It is crucial to take into account whether it makes sense to assume that the accused would have known his actions were illegal at the time they were conducted. This was discussed in the ICTY in Prosecutor

<sup>30</sup>Kreshnik Myftari & Sevada Guço, Prohibition of the Application of Criminal Law by Analogy within the Principle of Legal Certainty, Volume 9, Iss.5, QUEST JOURNALS JOURNAL OF RESEARCH IN HUMANITIES AND SOCIAL SCIENCE pp.20-28, ISSN(Online):2321-9467, [www.questjournals.org](http://www.questjournals.org) (last visited 14.10.2024)

<sup>31</sup>Beth Van Schaack, The Principle of Legality in International Criminal Law, ASIL PROCEEDINGS 2009 (2011), <http://digitalcommons.law.scu.edu/facpubs/634> (last visited Oct 10, 2024).

<sup>32</sup>Id.

<sup>33</sup>Robert Cryer et al, 2007, An Introduction to International Criminal Law and Procedure, Cambridge University Press, pp.15

<sup>34</sup>International Criminal Law - Practice and Training Material - Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions, funded by the European Union. <https://iici.global/wp-content/uploads/2024/02/icls-training-materials-sec-3-general-principles-of-icl.pdf> accessed on 14.10.2024

<sup>35</sup>Supra Footnote 33, pp.13

v.MitarVasiljevic<sup>36</sup> about the nullumcrimen principle for prosecuting and punishing the accused punishable under the ICTY Statute. The accused was charged with acts punishable under Art. 3 - Violations of the laws or customs of war<sup>37</sup> and Art. 5- Crimes against humanity<sup>38</sup>, in specific, Art. 3 (1)(a) – murder and violence to life and person as a violation of the laws or customs of war as a violation of the laws or customs of war; Art. 5 (a), (b), (h) and (i)- murder, extermination, persecutions on political, racial and religious grounds and other inhumane acts.<sup>39</sup> The Trial Chamber of ICTY discussed about the applicable law on the charge under Art. 3 (1) (a) – “violence to life, health and physical or mental well-being of persons” whether it is violative of principle of legality. This punishable act resembles the Art.3 Common to the Geneva Conventions. While Art. 7(1) of the Statute of ICTY decide the individual criminal responsibility of the accused for crimes enlisted from Arts. 2-5 of the Statute and this in consonance with Art. 1 of the Statute on the jurisdiction of the Tribunal which says it shall act in pursuance of the Statute.<sup>40</sup> The charges on Count 5, 7 and 13 was intended on “violence to life, health and physical or mental well-being of persons” haven’t established as a crime either under Art. 3 or Art.5 of the ICTY Statute. The Trial Chamber interpreted whether the above indictment was covered under customary international law, as customary international law was also a source of international criminal law.

The Trial Chamber refused to accept the charge of “violence to life, health and physical or mental well-being of persons” as a punishable act under Art. 3, as it is violative of legality principle and the Statute. The Tribunal observed in the findings of Trial Chamber judgement that, “...A criminal conviction should indeed never be based upon a norm which an accused could not reasonably have been aware of at the time of the acts, and this norm must make it sufficiently clear what act or omission could engage his criminal responsibility...”<sup>41</sup> The principle of nullumcrimen sine lege “does not prevent a court from interpreting and clarifying the elements of a particular crime”. Nor does it preclude the progressive development of the law by the court. But under no circumstances may the court create new criminal offences after the act charged against an accused either by giving a definition to a crime which had none so far, thereby rendering it prosecutable and punishable, or by criminalising an act which had not until the present time been regarded as criminal.”<sup>42</sup> On the basis of the observation, the Trial Chamber acquitted the accused from the indictment counts 1,4,6,7,10,11,12 & 13 and convicted count 3 – persecution as Crimes against humanity and count 5- murder as a violation of the laws or customs of war.<sup>43</sup>

<sup>36</sup>The Prosecutor v. MitarVasiljevic ICTY Trial Chamber Case No:IT-98-32-T dated 29 November, 2002. Full judgement is available at [https://adatabase.ohchr.org/IssueLibrary/ICTY\\_Prosecutor%20v%20Mitar%20Vasiljevic.pdf](https://adatabase.ohchr.org/IssueLibrary/ICTY_Prosecutor%20v%20Mitar%20Vasiljevic.pdf) accessed on 14.10.2024

<sup>37</sup>According to Art.3 of the Statute - The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; (e) plunder of public or private property.

<sup>38</sup>Art.5 of the Statute of ICTY empowers the Tribunal to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane acts.

<sup>39</sup>Updated Statute of the ICTY is available at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)

<sup>40</sup>Art. 1 of the Statute reads as the Competence of the International Tribunal - shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

<sup>41</sup>International Criminal Law - Practice and Training Material - Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions, funded by the European Union, <https://iici.global/wp-content/uploads/2024/02/icls-training-materials-sec-3-general-principles-of-icl.pdf> (last visited Oct 10, 2024).

<sup>42</sup>Vasiljevic Trial Chamber judgement dated 29 November 2002, paras. 193-196

<sup>43</sup>Id paras. 307-8

To the contrary to the ICTY approach, the ICTR not bothered about the application of customary international law in determining the admissibility of international crimes. The Statute of the ICTR under Art.4 undoubtedly expressed about “Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II” and also ratified the Geneva Conventions and its Additional Protocols. Further, the crimes included under the Statute also relevant to the Rwandan Criminal law.<sup>44</sup>

#### **ICC and Principle of Legality:-**

The International Criminal Court in Ali Muhammad Ali Abd-Al-Rahman<sup>45</sup>Appeal Chamber decision vehemently discussed about the application of jurisdictional issue raised by the accused on the basis of principle of legality. The accused indicted with crimes against humanity and war crimes allegedly committed in Darfur, Sudan, charges were confirmed by the Pre-Trial Chamber on 9 July 2021 and now the trial is under process. This was the first case referred by the United Nations Security Council (“UNSC”) to the Office of Prosecutor of ICC under Art. 13(b) of Rome Statute, 2000.<sup>46</sup> The UNSC passed a resolution in S/RES/1593 (2005) dated 31<sup>st</sup> March 2005 on the report submitted by the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur, decided to refer the situation to the ICC under Chapter VII of the UN Charter. Further, the UNSC encouraged the ICC to act in accordance with the Rome Statute to promote and protect the human rights of the people of Darfur, Sudan.<sup>47</sup> The accused challenged the charges made against him on the (i) jurisdictional issue relating to UNSC Referral and (ii) violation of principles of nullum crimen sine lege and of non-retroactivity *ratione personae* of criminal law enshrined under Art. 22 and 24 of the Statute.

As per the first arguments on the jurisdictional issue, the accused claimed that at the time of Referral decision passed by the UNSC in Resolution 1593/2005 was illegal. The temporal jurisdiction was the primary challenge in this issue. The time period mentioned in the Referral Resolution and alleged offence said to have committed within the territory of Darfur wouldn't have constituted a situation as cited in Art. 13(b) of the Rome Statute, 2000. The geographical area Darfur was restricted and the situation mentioned in the charges referred as Sudan as a whole. The UNSC would have operated a warranted preselection of the crime and there by violated the Art. 13(b). In the argument portion, the defence raised the objection that, Sudan was not a Party to the Rome Statute at the time referred as situation by the UNSC Referral Resolution. The arrest warrant was issued against the principle of legality and the regulations mentioned in Arts. 22(1) and 24(1) of the Statute. The defence claimed the incidents were in the nature of non-international armed conflicts. The offences mentioned under Arts. 7 & 8 of the Statute were not a crime either under the Sudan's national criminal law or treaty law or customary international law.<sup>48</sup> The author limiting the response of the Prosecutor only with the principle of legality issue alone, to restrict the discussion with the subject matter of this paper. As per the contention raised by the accused on *nullum crimen sine lege*, the Prosecutor submitted that the charges made against the accused were fully consistent with the legality and defence

<sup>44</sup>Refer cases like Prosecutor v. Clement Kayishema & Obed Ruzindana, ICTR Trial Chamber Judgement dated 21 May, 1999 – refer paras. 156-158 that discussed about the legality of offences under Art.4 of the Statute. The Tribunal satisfied that Rwanda ratified the four Geneva Conventions on 5 May, 1964 and the Additional Protocols on 19 November, 1984. Hence, there is no question of ascertain the criminal liability under customary international law. To read the full judgement visit

<https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-9501/MS45055R0000620218.PDF>

<sup>45</sup>The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") ICC Trial Chamber judgement ICC-02/05-01/20. Selected document on the Case details available in <https://www.icc-cpi.int/darfur/abd-al-rahman>

<sup>46</sup>Article 13 of the Rome Statute reads as follows: - Exercise of jurisdiction: The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

<sup>47</sup>UNSC/1593/2005 dated 31.3.2005, <https://documents.un.org/doc/undoc/gen/n05/292/73/pdf/n0529273.pdf> (last visited Oct 15, 2024).

<sup>48</sup>Ali Kushayb Pre-Trial Chamber-II, Decision on the Defence ‘Exception d’incompétence’ (ICC-02/05-01/20-302), paras. 11, 12 & 15

only mischaracterising the indictment. But the Pre-Trial Chamber wrongfully interpreted the crust of Arts. 22(1) & 24(1) of the Statute by stating that, "... (that) (i) the crimes against humanity and war crimes proscribed by articles 7 and 8 of the Statute were evidently crimes falling within the jurisdiction of the Court in 2003 and 2004, i.e. at the time when the charged conducts occurred, since the Statute had already entered into force; and (ii) '[a] reasonable person in the position of Mr Abd-Al-Rahman was on reasonable notice, at the material time, that the charged conduct was criminal, not only on the basis of the Statute but also customary international law and even Sudanese domestic law...'"<sup>49</sup> Further, the Pre-Trial Chamber observed that the case before them satisfies all the requisite elements of jurisdiction of Court I.e War Crimes and Crimes against Humanity. The punishable acts were committed within the territory of Darfur, Sudan after the Statute entry into force. As the requirements relating to the Court's jurisdiction *ratione loci* and *ratione personae* are alternative, and the *ratione loci* parameter is satisfied, the fact that the suspect is not a national of a State Party is irrelevant for the purpose of establishing the jurisdiction of the Court. The Chamber further perceived that the examination of issue of jurisdiction and the violation of principle of legality and non-retroactivity of criminal law doesn't arise. The Chamber substantiated its view by deliberating the Art. 22(1) of the Statute, that the contention of this section requires the conduct of the accused with his/her knowledge that it should constitute a crime within the jurisdiction of the Court. This avoids and prevents extensive usage of the jurisdiction of the court and to ascertain the knowledge of the accused about his conduct might be amount to crime. Hence the Chamber decided that there were no violations of principle of legality or non-retroactivity of criminal law in this case.<sup>50</sup>

The Appeal Chamber on Judgment on the appeal of Mr Abd-Al Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302)" again reiterated and uphold the decision passed by the Pre-Trial Chamber. The Appeal Chamber was precise and clear in determining the sustainability of the Arts. 22(1) & 24 of the Statute. The Chamber opined that the charges made against the accused referred to serious violations of human and humanitarian rights recognised internationally including Sudan. As Sudan was not a State Party to Rome Statute, 2000 the crimes shouldn't applicable against him directly. But this was not properly applied by the Pre-Trial Chamber by interpreting Art. 22(1) of the Statute. According to the Appeal Chamber, the Pre-Trial Chamber's decision was error of law in the point that determining the extent and timing of commission of offences, conduct of accused whether criminalised either Sudan's national law or customary international law or treaty law or was unnecessary under the Statute.

Though the Pre-Trial Chamber inequitably explained the legality charges, it shall not cause any material defects on the charges. The UNSC acted on the basis of report submitted by the International Commission of Inquiry which confirmed the internal armed conflict in Darfur by several parties, militia and Janjaweed acted under the authority and support of Sudanese State authorities.<sup>51</sup> At that time, Sudan has entered into various treaties relating to international human and humanitarian laws and laws relating to armed conflicts. By ascertaining the facts only the UNSC criminalised the accused under international crimes. The Appeal Chamber also pointed out that the accused being the citizen of Sudan and the serious violations committed by him happened in Sudan only. Hence the claim of defence on violation of legality principle and non-retroactivity shall not persuasive.<sup>52</sup> Judge Luz del Carmen Ibáñez Carranza's view on the determination of temporal jurisdiction and principle of legality issues were properly addressed by the Pre-Trial Chamber. She approves that the Pre-Trial Chamber erred in addressing the legality query in a vague manner without proper reasoning, but it haven't caused injustice to the finality of determining the charges.<sup>53</sup> This Appeal Chamber judgement is a phenomenal approach of the ICC in addressing the jurisdiction of the Court and the issue over nullum crime sine lege on the non-State Party cases. One of the pioneering judgement

<sup>49</sup>Id paras - 36

<sup>50</sup>Id paras – 38, 39, 40 & 42

<sup>51</sup>Gabriel M. Lentner, UN Security Council Referrals to the ICC and the Principle of Legality, EJIL: TALK! (Nov. 12, 2021), <https://www.ejiltalk.org/un-security-council-referrals-to-the-icc-and-the-principle-of-legality/> (last visited Oct 15, 2024).

<sup>52</sup>Appeal Chamber on Judgment on the appeal of Mr Abd-Al Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302) dated 1<sup>st</sup> November 2021.

<sup>53</sup>Talita de Souza Dias, The Principle of Legality in the ICC's Appeals Judgment on Abd-Al-Rahman's Jurisdictional Challenge: A Follow-up on Merits and Shortcomings, EJIL: TALK! (Dec. 1, 2021), <https://www.ejiltalk.org/the-principle-of-legality-in-the-iccs-appeals-judgment-on-abd-al-rahmans-jurisdictional-challenge-a-follow-up-on-merits-and-shortcomings/> (last visited Oct 10, 2024).

that speaks about the Referral process by the UNSC to the ICC.<sup>54</sup> The application of non-retroactive effect by the ICJ shall be seen in *Germany V. Italy: (Greece Intervening)*<sup>55</sup>. In the above judicial trends, international judicial mechanism also crucially analysed about the application of principle of legality and cautious in non-violation of the same. The judicial bodies considered such violations as causing injustice to the foundational principle of criminal law.

### **Bharatiya Nyaya Sanhita, 2023 and Retrospective effect of Organised Crime:-**

#### **Definition of Organised Crime by various instruments:-**

As per the United Nations Office of Drug and Crime Prevention, the United Nations General Assembly (“UNGA”) adopted an International Convention on Organised Crimes in 2000.<sup>56</sup> The UNGA decided to constitute an international instrument mandate the State parties to go far legal mechanism to combat the Organised Crime per se money laundering, corruption, illicit trafficking, human trafficking etc.. Resolved and adopted the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The UNGA in General Assembly resolution 55/255 of 31 May 2001 adopted Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.<sup>57</sup> The definition of Organised Crimes according to the Conventions and Maharashtra State Act, Gujarat State Act are listed below:

Convention and Protocols	Articles/Sections
United Nations Convention against Transnational Organized Crime	<ul style="list-style-type: none"> <li>• 2(a) &amp; (h) - Organised Criminal Group &amp; Predicate Offence</li> <li>• 5 - Criminalization of participation in an organized criminal group</li> <li>• 6 - Criminalization of the laundering of proceeds of crime</li> <li>• 8 - Criminalization of corruption</li> <li>• 23 - Criminalization of obstruction of justice</li> </ul>
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	<ul style="list-style-type: none"> <li>• 3(a) – Trafficking in person</li> <li>• 5 – Criminalization - Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct of trafficking</li> </ul>
Protocol against the Smuggling of Migrants by Land, Sea and Air	<ul style="list-style-type: none"> <li>• 3(a) – Smuggling of migrants</li> <li>• 3(b) – Illegal entry</li> <li>• 3(c) – Fraudulent travel to Identity documents</li> <li>• 6 – Criminalisation of smuggling migrants, Producing a fraudulent travel or identity document;</li> <li>• (ii) Procuring, providing or possessing such a document; endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) that entail inhuman or degrading treatment, including for exploitation, of such migrants.</li> </ul>

<sup>54</sup>Lentner, *supra* note 51.

<sup>55</sup>Reports of Judgments, Advisory Opinions and Orders Jurisdictional Immunities of the State (*Germany V. Italy: Greece Intervening*) Judgment Of 3 February 2012

<sup>56</sup>The United Nations General Assembly resolution 55/25 of 15 November 2000

<sup>57</sup>Full document on UN Convention against Transnational Organised Crimes and Protocols are available at <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition	<ul style="list-style-type: none"> <li>• 3(a) – Firearms</li> <li>• 3(b) – Parts &amp; Components</li> <li>• 3(c) – Ammunitions</li> <li>• 3(d) – Illicit Manufacturing</li> <li>• 3(e) – Illicit Trafficking</li> <li>• 5 – Criminalization</li> </ul>
Maharashtra Control of Organised Crime Act, 1999	<ul style="list-style-type: none"> <li>• 2(e) – Organised Crime</li> <li>• 2(f) – Organised Crime Syndicate</li> </ul>
Gujarat Control of Terrorism and Organised Crime Act, 2015	<ul style="list-style-type: none"> <li>• 2(c) – Continuing Unlawful Activity</li> <li>• 2(d) – Economic Offences</li> <li>• 2(e) – Organised Crime</li> </ul>

The definition and punishable acts of Organised Crimes according to the UNGA Convention may be measured as “a structured group activity for a prolonged time with an intention to get monetary benefit and the modus operandi of the crime involves threat, coercion, undue influence, misrepresentation etc., according to the domestic law”. The organised crime various as per the subject matter of the Convention and Protocols from corruption, predicate offence, obstruction of legal forces, human trafficking, illicit trafficking of firearms, smuggling of migrants etc., Maharashtra Control of Organised Crime Act, 1999 (“MCOCA”) defines organised crime as an unlawful activity committed singly or jointly by use of force etc., in getting monetary benefit or other advantages either for himself or for others. Gujarat Control of Terrorism and Organised Crime Act, 2015 (“GCTOCA”) says Organised Crimes as, unlawful activities like extortion, large scale gambling rackets, human trafficking for prostitution or ransom etc, committed singly or jointly by use of threat, intimidation or coercion.

#### **Organised Crimes and BNS, 2023 on Retrospective effect:**

Bharatiya Nyaya Sanhita, 2023 introduced some new crimes, repealed some crimes from the Indian Penal Code (“IPC”) and modified penalties for some crimes. Newly included crimes are such as:

- i. Sec. 48. Abetment outside India for offence in India
- ii. Sec. 69. Sexual intercourse by employing deceitful means etc
- iii. Sec. 95. Hiring, employing or engaging a child to commit an offence
- iv. Sec. 103(2): Mob Lynching
- v. Sec. 111. Organised crime
- vi. Sec. 112. Petty organised crime
- vii. Sec. 113. Terrorist act
- viii. Sec. 152. Acts endangering sovereignty, unity and integrity of India
- ix. Sec. 226. Attempt to commit suicide to compel or restraint exercise of lawful power
- x. Sec. 304. Snatching
- xi. Sec. 358. Repeal and savings

From the above list, the unique and distinct offence which attracted the theme of this paper is “Organised Crime” u/s. 111 of the BNS, 2023. With the discussion of the above part, the UN Convention, the UNGA adopted three Protocols to deal with different types of Organised Crimes. The BNS, 2023 defined “Organised Crimes” as a continuing unlawful activity such as, kidnapping, robbery, vehicle theft (theft was listed in Petty Organised Crime), extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapon etc., human trafficking for immoral offence or for ransom etc.,. The modus operandi of the above includes use of threat, violence, intimidation, coercion or any other unlawful means. This crime might be committed singly or jointly or by a member of crime syndicate with an intention to gain monetary benefit or other material benefit. The explanation of “Continuing Unlawful activity” u/s. 111 is the clause for interpretation and dissection on the Principle of Legality or nullum crime sine lege. The explanation reads as, “...[an] activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence...” The first phase of explanation states about the applicability of prohibited act as a cognizable one punishable with 3 years of imprisonment or more; the second

phase discuss about the joint and several liability and the third phase only touching the foundation of criminal law – principle of legality. As soon as it says, which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence, the application of Organised Crime of any nature enlisted u/s. 111(1) of the BNS, 2023 shall be applicable retrospectively.

According to sec. 358(2) of the BNS, 2023 on Repeals and Savings affirmed that, (a) previous operation of the Code shall not be affected; (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code shall not be affected; (c) ) any penalty, or punishment incurred in respect of any offences committed against the Code shall not be affected; (d) any investigation or remedy in respect of any such penalty, or punishment shall not be affected; (e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed. The Sub section 3 of 358 further confirming the legality that Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita. For the Repeal and Savings clause, the law makers referred u/s. 6 of General Clauses Act, 1897 (“GC Act, 1897”). The explanation of sec. 6 of GC Act, 1897 on the effect of repeal is, the common law principle that, repeal renders an act null and void for all future purposes is reversed by Section 6. It says that repealing legislation does not automatically make its predecessors resurrect. Any rights, duties, liabilities, or advantages obtained as a result of the law that was repealed are safeguarded by Section 6. Additionally, it safeguards any ongoing legal actions or inquiries. The exemption for the above rule is, proceedings under a repealed legislation may proceed as if the legislation hadn't been repealed and preventing a different intention being expressed and this encompasses civil as well as criminal cases.

#### **Challenges in implementation of Sec.111 of BNS, 2023:**

From the above discussion, it is clear that the explanation of sec. 111 which gives authorization to the investigating agency to alter the charges under Indian Penal Code for an act enlisted organised crime and modifies the charge u/s.111 of BNS, 2023. This is violative of its own legislation and u/s.6 of GC Act, 1897 and the Constitution of India.

- **Violation of nullum poena sine lege u/s. 358(2)(c) of BNS, 2023 & sec. 6 of GC Act, 1897 - According to sec. 111(2) of the BNS, 2023, the punishment for organised crime ranges from death sentence to imprisonment for life to five years of imprisonment to three years of imprisonment. In addition to imprisonment, fine is also a mandatory punishment and the fine amount ranges from 1 lakh to 10 lakhs. If the offence mentioned as organised crime u/s. 111 would have been committed individually and charged and prosecuted as per IPC, only in rarest provisions, the accused will be punished more than 10 years. The rights to receive punishment prescribed by the law in force at the time of commission of act shall be affected.**
- **Violation of Art.20(1) of Constitution:** As per the explanation to sec. 111(1), the any one of the previous case either charge sheeted or taken cognizance preceding 10 years shall include economic crime. Economic crimes includes forgery, criminal breach of trust, counterfeiting currency and coins, bank notes, Govt stamps, hawala transactions, mass-marketing fraud or running any scheme to defraud several persons or to defraud any bank or financial institutions with an intention to obtaining monetary benefits. Some acts mentioned as economic crimes were not an offence either under IPC or other special laws at the time of commission of such act. The accused also not possess the knowledge about the prohibited nature of the act. Even otherwise, the when Special Legislations inter alia Prevention of Money Laundering Act, 2002, Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The definition under MCOCA, 1999 and GCTOCA, 2015 are only State laws which shall not be applicable outside the territory of Maharashtra or Gujarat.
- **Violation of nullum crimen sine lege:** Some of the offences enlisted under “organised crime” and “economic offences” like vehicle theft, land grabbing, contract killing, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form are not defined either in BNS, 2023 or any other Special legislature in India. Without defining the elements of such offences, giving retrospective effect to preceding 10 years to include those acts as economic crimes, shall be clear violations of nullum crimen sine lege according to u/s. 358(3) of BNS, 2023, is clear indication of retrospective effect.<sup>58</sup>

<sup>58</sup>Overview of the Bharatiya Nyaya Sanhita, 2023 (Penal Code), AZB, <https://www.azbpartners.com/bank/overview-of-the-bharatiya-nyaya-sanhita-2023-penal-code/> (last visited Oct 16, 2024).

- **Violation of international instruments:** as per Art.15 of the ICCPR, Art. 11 of the UDHR, the principle of legality shall be adhere strictly in any of the criminal justice administration without exemptions. The BNS, 2023 failed to give proper explanation regarding invoking the retrospective effect to organised crimes among the newly introduced law. Rome Statute 2000, a distinct international criminal justice system very cautiously implemented the nullum crime sine lege&nullumpoenasine legeprinciple as a fundamental principle. In the above discussed AliKushaybcase, the Appeal Chamber of the ICC classically interpreted and decided that, no one shall be criminally responsible...unless the conduct in question constitute a crime at the time of commission and falls within the jurisdiction of the Court. BNS, 2023 erred in considering the same.

### **Conclusion:-**

Bharatiya Nyaya Sanhita, 2023 has made remarkable changes to the penal law inter alia expanding the definition clause by including “transgender”, introduction of reformatory punishment like community service, special attention towards the protection of women and children by devoting separate chapter and also deleted the repeated, colonial based provisions etc.,. And at the same time, BNS, 2023 also disappointed us by failing to remove provisions like doliincapax, solitary confinement etc., and still inaudible on criminalizing marital rape, gender neutralization of rape offence, sexual harassment etc.,. When compared to the introduction of new offences, other than organised crime provided non-retroactivity of punishment. But, organised crime with retrospective effect shall create misperception and mischaracterisation of the scope, develop issues on jurisdictional matters, duplication or overriding on other separate legislature as discussed above. Though the Constitution of India protect BNS, 2023 when the inconsistency arises, still the violations of fundamental rights guaranteed by the Constitution, international human rights and humanitarian rights, international criminal law shall pose a massive challenge in the implementation of sec. 111 of the Bharatiya Nyaya Sanhita, 2023. As an academician, I am eagerly awaiting for the 1<sup>st</sup> jurisprudential case on the issues relating to nullum crime sine legeor the Principle of legality by the apex court to decide whether, retrospective effect of organised crime is a Boon or Bane.