
ENVIRONMENTAL CRIMES: STRENGTHENING PROVISION IN THE BNS

Kshiteej Jain, BBA LLB, Karnavati University

ABSTRACT

This research paper studies the provisions of the Bhartiya Nyaya Sanhita (BNS) regarding environmental crimes for their strengths and weaknesses in combatting ecological degradation and public health hazards. The effective legal frameworks are of importance in India as more and more environmental challenges arise in the country. The specific objectives of the study include the evaluation of the current provisions of the BNS in the legal response to environmental offenses, identification of gaps, and of the provisions aimed at strengthening legal responses to such offenses. The results will continue to inform debates over legal reform and policy enactment in environmental law that advance more robust principles of environmental protection in India.

CHAPTER: 1 INTRODUCTION

Environmental crimes are a major threat to ecological integrity and public health, and investigation of such crimes requires the existence of an effective legal framework to combat such offenses. *Bhartiya Nyaya Sanhita (BNS)*, a code of conduct, seeks to arrest Criminal activities ranging from environmental crimes to the ones that lead to pollution, illegal deforestation, wildlife trafficking and climate change impacts in India. BNS lacks a chapter on environmental crimes and, despite its efforts, it is criticized for not giving enough emphasis on environmental protection, the absence of a chapter on a crime issues, particularly in terms of lacking clearer and more concrete definition and guidelines. Moreover, major corporate violations may not be sufficiently penalized because the penalties do not deter as corporations are capable of absorbing penalties without changing a big deal about how harmful a practice is. Adding to these are challenges of enforcement and implementation such as lack of resources, lack of specialized expertise within enforcement agencies and bureaucracy delays which fully impede timely justice. The objective of this research is to critically assess the BNS's provisions concerning environmental crimes, identify gaps, and make enhancements that can strengthen a response to environmental crimes. It works to contribute to an ongoing broader discourse around environmental protection and legal reform in India towards keeping the environment accountable and sustainable for future generations.

CHAPTER: 2 LITERATURE REVIEW

S No	Nature of literature	Name of Literature	Review	Research Gap	Intended Research
1	Article	Environmental Crime ¹	Pollution, biodiversity and natural resources are involved in environmental crime which is complex. There are legal ambiguities, different offender scales, and regulatory challenges that make that understanding complicated. Types of pollution and related environmental crimes, causes and research are addressed in the article.	The gap in the research lies in identifying which specific environmental violations constitute offenses, or crimes; or harms and risks; and how offender differences vary between legal contexts.	Research to analyze pollution related environmental crimes, their legal differences and offenders' differences in environmental law and regulations.
2	Research Paper	A COMPARATIVE ANALYSIS OF THE INDIAN PENAL CODE, 1860, AND THE BHARATIYA NYAYA SANHITA, 2023 ²	The Bharatiya Nyaya Sanhita (2023) modernizes India's criminal law focusing on cybercrime, gender neutrality, vulnerable groups, restorative justice and outdated laws, making the transition from	This research gap stems from evaluating how Bharatiya Nyaya Sanhita has had on reducing crime, and being valid, accepted	This research examines the effectiveness of Bharatiya Nyaya Sanhita towards solving the problems of contemporary crime, the

¹ Gibbs, C. and Boratto, R. (2017) *Environmental crime*, *Oxford Research Encyclopedia of Criminology*. Available at:

<https://oxfordre.com/criminology/display/10.1093/acrefore/9780190264079.001.0001/acrefore9780190264079-e-269> (Accessed: 06 November 2024).

² Amitabh Ranjan (no date) *A COMPARATIVE ANALYSIS OF THE INDIAN PENAL CODE, 1860, AND THE BHARATIYA NYAYA SANHITA, 2023*, *SSRN*. Available at: <https://uil.puchd.ac.in/bulletin/uil-bulletin-jan242-1.pdf#page=12> (Accessed: 05 November 2024).

			colonial IPC to the contemporary framework.		societal impact.
3	Research Paper	The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code ³	In addition to controversy over legislative process, the Bharatiya Nyaya Sanhita (BNS) replaces Indian Penal Code that modernizes India's criminal justice system, including greater penalties, community service and offences against women and children.	There is a research gap, concerning BNS's impact on efficiency, effectiveness and public perception of the Indian justice system, in particular over certain controversial expansions of state authority.	To analyze the impact of BNS on India's justice system its effectiveness, public response and the implications for state power expansion.
4	Research paper	CRIMINAL LAW AND ENVIRONMENTAL POLLUTION ⁴	India's environmental protection has gone back to its ancient times, developing from modern laws to international agreements. Progress is being made, but it is insufficient to overcome rising environmental crimes effectively.	This research gap is the evaluation of India's existing environmental laws and reformation of laws meant to reduce environmental crimes and pollution.	Intended research will assess the efficiency of India's environmental laws and suggest any required reforms, to battle environmental crimes and pollution.

³ *The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code* (no date) SSRN . Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4884622 (Accessed: 04 November 2024).

⁴ *CRIMINAL LAW AND ENVIRONMENTAL POLLUTION* (no date) SSRN . Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=405112 (Accessed: 04 November 2024).

5	Research Paper	LEGAL DIMENSIONS OF ENVIRONMENTAL CRIME ⁵	In this research we look at environmental crimes as criminal offenses, examining India's environmental laws, corporate criminal liability, and compare U.S. legislation. It proposes stiffer legal framework and stiffer criminal penalties.	Research gap related to insufficient criminal penalties and legal framework to deal with corporate led environmental crimes in India.	The research seeks to establish the setting of environmental crimes as criminal offenses; evaluate the current laws and; propose new increasing penalties and incidence of corporate accountability
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CHAPTER: 3 RESEARCH METHODOLOGY

3.1 The objectives for the Research

1. To examine the environmental crimes in BNS
2. To find out the provision in BNS

3.2 Research Methodology

1. The Present Study is based on the Secondary Data which has been collected from different related websites, Legal Databases, Law reviews, Journals and Newspapers.
2. This Doctrinal study has been conducted with reference to the provisions in various section

CHAPTER: 4 CONTENT AND ANALYSIS

4.1 Concept of Environment

India's growing threat of environment crimes is an issue which leads to imbalance of the ecology, public health and sustainable development. Illegal crimes that harm the environment are defined as great harm to the environment. There are a wide range of offenses, such as illegal mining, poaching of endangered species, pollution, deforestation and improper disposal of hazardous waste. Rapid industrialization, urbanization and population increase elevate the

⁵ (No date) *Legal dimensions of environmental crime*. Available at: <https://cyberleninka.ru/article/n/legaldimensions-of-environmental-crime/viewer> (Accessed: 04 November 2024).

demand for natural resources and the situation is compounded by it. The country is therefore confronted by an escalating crisis of environmental degradation, a crisis that imperils an ecological integrity and human health.

In the midst of this urgent issue the *Bhartiya Nyaya Sanhita (BNS)*, a comprehensive legal code to change the Indian penal code (IPC), tries to address different aspects of crime including environmental offences. The BNS is an attempt to modernise India's criminal justice system and strengthen the legal provisions on crimes against the environment. In this, it expresses the necessity for strict regulations and intensified liability in responding to environmental violations, indicating an increasing interest in environmental law at present.

4.2 Types of Environmental Crimes in India

1. **Illegal wildlife trade-** The poaching and trafficking of endangered species and their products, including tiger skins, elephant ivory, rhino horns and exotic birds, is involved. This also goes against the *Wildlife Protection Act 1972*⁶, and not only does this threaten biodiversity it also contravenes the *Wildlife Protection Act 1972*.
2. **Deforestation and Illegal Lodging-** Forest cutting by unauthorized people for the timber or land encroachment destroys habitats and also cause accelerate soil erosion and climate changes. Yet protection under the *Forest Conservation Act, 1980*⁷, protected forest lands are often encroached upon for agriculture or development.
3. **Air and Water Pollution-** Highly toxic industrial emissions, vehicular pollution, untreated sewage discharge, and chemical runoff have severe adverse impact on air and water quality. Laws such as the *Air (Prevention and Control of Pollution) Act, 1981* may not be enforced regularly.
4. **Poisoning of Ecosystem-** Agricultural overuse of pesticides and fertilizer that end up in rivers and lakes kill off much of the aquatic life and mess with the ecosystems. Attempts to control this pollution in environmental guidelines are rendered less effective by the fact that agrochemical pollution still persists as a problem.
5. **Biomedical Waste Violations-** The disposal of hospital and medical waste entails very serious risks to public health and the environment due to mismanagement. Many healthcare facilities are non-compliant with the *Biomedical Waste management*.

⁶ *Wildlife Protection Act 1972*

⁷ *Forest Conservation Act 1980*

4.3 Limitations of the Indian Penal Code (IPC) 1860 in Addressing Environmental Offenses

The draft of Indian Penal Code (IPC) made in 1860 is India's main criminal Code and addresses a large number of criminal acts and Social harms. The IPC, however, was not designed to handle the intricacies of modern day environmental problems that have become progressively wider and more severe with industrialization, urbanization and ever growing environmental awareness.

- Lack of Specific Environmental Provisions- There are no targeted sections within IPC that deal with environmental harm or crimes. Although provisions regarding public nuisance (Section 268),⁸ and negligent conduct (Sections 277⁹, 278¹⁰) may apply as to some environmental offences these laws were not made with environmental protection in mind. Often, they are not sufficient to deal with such complex problems as pollution, biodiversity loss and illegal resource exploitation.
- Inadequate Deterrence and Punishments- In most environmental related offenses, under the IPC, the penalties are minimal and insufficient to deter offenders. For instance, Section 277 (polluting water of a public spring or reservoir) and Sections 278 (making the atmosphere noxious to health) call for fines and relatively short jail terms which are generally inadequate to deter serious corporate or industrial polluters. Modern environmental crimes often involve corporations and without sharp fines or penalties these provisions are rendered toothless.

4.4 Provision under Bhartiya Nyaya Sanhita

4.4.1 Public Nuisance

Bhartiya Nyaya Sanhita 2023 Section 270¹¹, public nuisance means an act which affects the general public or people living or occupying places in the vicinity causing common injury, danger or annoyance¹². The main object of this legal provision is activities that disrupt public tranquillity and safety, and it concerns a very wide field of acts that interfere with the well-being of a community.

⁸ Bhartiya Nyaya Sanhita, 2023, § 268 (India).

⁹ Bhartiya Nyaya Sanhita, 2023, § 277 (India).

¹⁰ Bhartiya Nyaya Sanhita, 2023, § 278 (India).

¹¹ Bhartiya Nyaya Sanhita, 2023, § 270 (India).

¹² *What is BNS Section 270?* (no date) *Law4u*. Available at: <https://law4u.in/top-answer/621/what-is-bns-section270> (Accessed: 02 November 2024).

Expanding Section 270 to Address Environmental Nuisance

Section 270 would include environmental negligence by an explicit definition of environmental harm that interferes with the natural resources, interrupts the ecosystem, or contaminates the essential resources such as the water and air. For example, if corporations or even individuals both pollute water bodies that spill over into other bodies of water, or continue to emit hazardous air pollutants, or illegally dump waste, they could be liable under expanded nuisance laws.

Rationale for Expansion-

- Increasing Environmental Threats- With rapid industrialization, urbanization, and population growth have come large area and water pollution, waste management, and biodiversity loss. However, these public nuisances often result in increased problems for communities and they appear in practice as public nuisances. By extending Section 270 to cover environmental harm, it would permit a more useful legal response to these urgent issues.

4.4.2 Negligent Act Likely to Spread Infection of Disease Dangerous to Life¹³

Bhartiya Nyaya Sanhita 2023 Section 271¹⁴ deals with Acts likely to spread infection or disease. This provision makes it a crime of negligence whenever an individual or an entity, without due care, does things that are likely to cause its activities to be made known to the public and place it in a position to cause harm to the public due to an inability or inability to take reasonable care for public health. It isn't intent to hurt, but it's to be careless in a way that can put public health at risk.

Expanding Section 271 to Address Environmental Negligence

Environmental negligence typically includes poor handling of hazardous substances, pollution, and bad waste management that is a nuisance to spread health risks within the members of a community. Section 271 permits authorities to prosecute environmental offenders who, though not deliberately, negligently expose this gene people to the dangers of toxic air, polluted water or contaminated land. Such an application would close that gap between environmental harm and public health issues with parties held accountable for activities which undermine the community's well being.

¹³ Section 271: *Negligent act likely to spread infection of disease dangerous to life*. (2024) *Indian Criminal Law Hub*. Available at: <https://bharatiyanayasanhita.online/ufaq/section-271-of-bns/> (Accessed: 03 November 2024).

¹⁴ Bhartiya Nyaya Sanhita, 2023, § 271 (India).

Rationale for Expansion

- Recognizing Environmental Pollution as Health Threats- Human health can be affected by various diseases, symptoms of which are including environmental degradation and pollution as well as waterborne references. By expanding section 271 to cover such a kind of environmental negligence, it is in line with the purpose section 271 was introduced to, to prevent spread of diseases through carelessness.

4.4.3 Malignant Act Likely to Spread Infection of Disease Dangerous to Life¹⁵

Bhartiya Nyaya Sanhita (BNS), 2023 Section 272¹⁶ deals with the crime which is that of 'malignancy' or which is likely to spread infection or disease, injurious to life. It has historically been used in cases when individuals act in a way that will have a deleterious effect upon public health and, in particular, in the case of infectious disease. This provision makes criminal actions for knowingly endangering public health by spreading or creating conditions favorable to the spread of disease.

Expanding Section 272 to Address Environmental Nuisance

Over the last several decades, the relationship between environmental degradation and public health has become a growing concern, with many forms of pollution and resource degradation being tied directly to the suffering caused by disease and reducing living conditions. An interpretation of Section 272 could criminalize actions that cause ecological damage, and thus create a health risk to the public. A case can be made in such cases of pollution, hazardous waste dumping and other forms of environmental contamination that imperil public health and safety.

Rationale for Expansion

- Connecting Environmental Harm with Public Health Risks:- Conditions that promote disease and illness are created by polluted air and water, industrial emissions, and waste dumping, which hit the hardest at the country's most vulnerable populations. The original intent of Section 272 to prevent actions which endanger public health is met in interpreting environmental harm as a public nuisance which poses a health risk.

¹⁵ Section 272 BNS - section 272 of new Bharatiya Nyaya Sanhita (2024) Sudhir Rao, Advocate at Supreme Court of India. Available at: <https://sudhirrao.com/section-272-bns-section-272-of-bharatiya-nyaya-sanhita-bns/> (Accessed: 02 November 2024).

¹⁶ Bhartiya Nyaya Sanhita, 2023, § 272 (India).

4.4.4 Fouling Water of Public Spring or Reservoir¹⁷

The offense of polluting or fouling water in public springs or reservoirs is dealt with under Section 279¹⁸ of the *Bhartiya Nyaya Sanhita* (BNS), 2023. This provision is put in place to protect water sources from contamination in order to protect public health by preventing water borne disease spread; and to ensure safe drinking water access. A number of applications of Section 279 'traditionally' were limited to discrete acts of water contamination such as such as the putting one's waste in public wells or reservoirs.

Expanding Section 279 to Address Broader Environmental Issues

As water pollution from industrial waste, agricultural runoff, and improper waste disposal worsens, expanding Section 279 to encompass other environmental cases can act as a deterrent to actions which harm public water sources. But expanded to accommodate pollution of rivers, lakes, and other water bodies for drinking, fishing, irrigation, and other community uses, Section 279 may serve as another tool for the police to prosecute such offenses. The application would make individuals and industries responsible for any contamination that puts our public water sources at risk.

Rationale for Expansion

- Recognizing Water as a Public Health Resource- Clean water has an important role in community health. Section 279 expansion, which addresses larger scale environmental pollution affecting community water resources, helps to respond to public health protection.

4.4.5 Making the Atmosphere Noxious to Health

Section 280¹⁹ of the *Bhartiya Nyaya Sanhita* (BNS), 2023 is to be operative for acts which render atmosphere noxious to health. This provision is aimed at accommodating the public from exposure to sky harming substances in the air, for example, fumes, gases or smoke that can affect respiratory wellbeing and overall wellbeing. The application of section 280 has traditionally been to individual cases of air pollution or localized nuisance, but could be expanded in response to broader environmental problems such as industrial emissions, vehicular pollution, and other large scale sources of harmful pollutants.

¹⁷ Section 279 BNS - *Bharatiya Nyaya Sanhita 2023* (no date) *lawrato.com*. Available at: <https://lawrato.com/bharatiya-nyaya-sanhita/bns-section-279> (Accessed: 02 November 2024).

¹⁸ *Bhartiya Nyaya Sanhita*, 2023, § 279 (India).

¹⁹ *Bhartiya Nyaya Sanhita*, 2023, § 280 (India).

Expanding Section 280 to Address Environmental Pollution

With increasing public health concerns related to air quality, there is an opportunity to apply Section 280 more broadly to situations where large scale air pollution is associated with industrial, agricultural or urban practices. Section 280 is being read to apply the larger acts of atmospheric pollution that threaten the public health, which enables authorities to more appropriately give the polluter an accounting for actions they take that jeopardize of air quality.

Rationale for Expansion

- Addressing Public Health Risks of Air Pollution- Respiratory illness, cardiovascular disease and other health problems are directly linked to bad air. Section 280 expands its original intent of protecting public health by prohibiting actions that would injure breathing air quality to sources of harmful pollutants.

4.4.6 Mischief by Killing or Maiming Animal

The section 325²⁰ of the Bhartiya Nyaya Sanhita (BNS), 2023 makes it illegal to kill, poison, maim or render useless of any animal. The traditional use of this provision has been to prosecute actual harm or mischief to animals, especially livestock. As the interconnectedness of ecosystems becomes more widely recognized and the importance of animal welfare is increasingly understood, Section 325 provides an opportunity for wider application of environmental law to protect animals as part of the means by which ecosystems are preserved.

Expanding Section 325 for Environmental Protection

Prosecuting offenses that harm animals in a way that harms ecosystems can be achieved by expanding the application of Section 325. It is consistent with the growing view in environmental jurisprudence that animals are property, but also as integrative components of the environment, the beings whose well-being is essential to sustaining an ecological balance.

• Rationale for Expansion

Recognizing Ecological Interconnectedness- Animals are a keystone to ecosystem stability, and the protection of animals has a wide ripple effect on everything else.

²⁰ Bhartiya Nyaya Sanhita, 2023, § 325 (India).

4.5 Critical Evaluation of the BNS Provisions²¹

4.5.1 Strength

1. Recognition of Indirect Harm to Public Health- BNS provisions are important in clearly indicating the link of environmental harm and public health, which is a vital aspect for a legal foundation for prosecuting an offense prone to both damage to the environment and risk to human health. The BNS also possesses this quality of being able to adapt more readily to situations involving pollution, waste mismanagement, or toxic discharges that have large but indirect health impacts on neighbouring communities.
2. Increased Emphasis on Prevention and Compliance- The BNS sets more stringent guidelines based on preventable practices on prevention and compliance thus making environmental protection more prevention itself. Provisions for regular monitoring, assessment, and control of emissions and the practice of waste disposal make mandatory proactivity on behalf of the entities with respect to their environmental responsibilities.

4.5.2 Weakness

1. Lack of a Dedicated Chapter Solely for Environmental Crimes- The BNS has one of the most significant weaknesses in its lack of a dedicated chapter that talks specifically about environmental crimes. Environmental provisions, however, are scattered throughout the code's various sections. The result can be confusion, inconsistent application, and difficulty in understanding what laws pertain to environmental crime. This would lead to better clarity, and more simple enforcement of the rule, as well as pointing out the environmental protection as an important part of the rules.
2. Insufficient Public Awareness and Engagement- The BNS effectiveness is also limited because the public is not informed about environmental laws and rights. In the absence of a public awareness of their legal protection and the manner of the reporting of environmental violation, citizen engagement is likely to yield less in enforcement.

CHAPTER: 5 CONCLUSION

The Bharatiya Nyaya Sanhita (BNS) stands as an important leap forward into India's legal

²¹ Drishti Judiciary (no date) *Comparative analysis of the definitions under IPC & BNS*, Drishti Judiciary. Available at: <https://www.drishtijudiciary.com/bharatiya-nyaya-sanhita-&-indian-penal-code/comparativeanalysis-of-the-definitions-under-ipc-&-bns> (Accessed: 01 November 2024).

framework for dealing with environmental crimes by extending full provision for protection of the environment, broadening definitions of offenses, and magnifying the penalties. Despite the weaknesses in the subsistence of a dedicated chapter and inadequate penalties for corporate violations, insufficient implementation and enforcement difficulties limit its effectiveness. It is however, compounded by judicial delays and reduced public awareness. Although the BNS represents progress in the fight against environmental degradation, it must improve to achieve full potential in helping to achieve environmental justice and sustainability.

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¹*Section 271: Negligent act likely to spread infection of disease dangerous to life. (2024) Indian Criminal Law Hub*. Available at: <https://bharatiyanayasanhita.online/ufaq/section-271-ofbns/> (Accessed: 03 November 2024).

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